

Italian residential tenancies: history and perspectives

Locazioni abitative in Italia: ricostruzione storica e prospettive future

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ABSTRACT: Since the beginning of the 20th century, Italian residential tenancies have been regulated through various special statutes, with the common purpose of protecting tenants with mandatory rules aimed at stability and affordability. In this context the mainly dispositive rules regarding tenancies in the Italian Civil Codes have always had a residual application. Since the last general reform in 1998, the residential sector has experienced a “controlled liberalization” which had to cope with the significant changes in the housing market in the years prior to and after the beginning of the economic crisis. This article provides an overview of the regulatory framework for tenancies, highlighting the successes and difficulties of this sector which, despite its progressive reshaping in favour of homeownership, still plays a crucial role for the housing needs of our society.

KEY WORDS: tenancy law; contract law; housing; rental market; housing market; tenures; stability; affordability.

SOMMARIO: Dai primi anni del ventesimo secolo, le locazioni ad uso residenziale in Italia sono state disciplinate mediante una successione di leggi speciali aventi in comune l’obiettivo di proteggere il conduttore con norme imperative riguardanti la stabilità della locazione e il livello dei canoni. In un simile contesto, le norme contenute nel Codice civile italiano, di natura prevalentemente dispositiva, hanno sempre avuto applicazione residuale. A partire dall’ultima riforma completa della materia nel 1998, il settore residenziale ha conosciuto una “liberalizzazione controllata”, che ha dovuto far fronte ai significativi cambiamenti avvenuti nel mercato immobiliare negli anni precedenti e successivi allo scoppio della crisi economica. Questo articolo fornisce una panoramica del contesto normativo delle locazioni, sottolineando successi e problematiche di questo settore che, nonostante il suo progressivo ridimensionamento a favore della proprietà dell’abitazione, svolge ancora un ruolo cruciale nel rispondere al bisogno abitativo della nostra società.

PAROLE CHIAVE: locazione; diritto dei contratti; abitazione; mercato immobiliare; stabilità; canon.

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1. Historical introduction

Since the beginning of the twentieth century the evolution of Italian residential tenancy law can be described as a succession of several consecutive statutes creating exceptions to the liberal model of tenancy law enshrined in the 1865 Civil Code, which closely resembled the French Napoleonic Code.

The first step took the form of emergency statutes that came into force to address the housing shortage after the urban migration towards the industrialized cities in the north of the country and the economic difficulties after the First World War. These introduced the mandatory prolongation of residential tenancy contracts and rent freezes in order to protect the interest of tenants to stability and to a fair rent.

In 1942 the Civil Code was replaced by a new code, mainly inspired by the German Civil Code (BGB) and which is still in force. Despite a far-reaching regulation and the fact that it was adopted during the last years of the Fascist regime, the rules regarding tenancy law still basically followed the liberal principle of private autonomy, as in 1865. They remained thus mainly of a non-mandatory nature and left decisions concerning the economic clauses and termination of the contract completely to the parties.

Since the 1950s to the beginning of the 1980s, when Italy had its “economic boom”, the Second World War destructions, the internal migration and the population increase brought housing to the top of the political agenda. In particular Law no. 43/1949 and Law no. 60/1963 promoted the building of a large number of public dwellings to be rented or sold through public institutions to low- and medium-income households.

Even though the Italian Constitution enacted in 1948 does not expressly mention a “right to housing”, Art. 47, subs. 2 – according to which “[The Republic] promotes access to home ownership through the use of private savings ...” - became the justification for policies aimed at supporting people’s access to housing.

Despite the attention for the housing issue, the protection of tenants in the private residential rental sector was left to temporary, emergency legislation that constantly prolonged existing tenancy contracts. Only in 1978 the legislator introduced a general reform of residential tenancy law through the so called “Fair Rent Act” (Law no. 392/1978). Among the other things, this act imposed a below-the-market mandatory rent and a 4-year mandatory minimal length of tenancy contracts. Further rules concerned non-residential tenancies, which were subject to mandatory minimal length too, to protect tenants’ investments in the establishment of professional activities in the rented premises.

This happened in a particular political situation, when the Centre-Catholic party was in power with the external backing of the Communist party, which had just achieved its highest poll results in the republican history. The fair rent procedure was inspired by the goal of distributive justice, and had the aim of reducing the owners’ ground rent while also making access to housing easier for tenants. This reform was also the expression of the constitutional debate over the ‘social function of property’, according to which property is

considered a non-inviolable right, which can be limited by the legislator by different means to grant prevailing rights¹. Nevertheless, the strict regulation of the residential sector showed many downsides: the offer of rented dwellings reduced, their quality worsened and the black market increased dramatically².

From the 1980s the State attention towards the housing issue gradually reduced. This in particular meant lower and lower funds for public properties and tenancies³. At the same time opposition towards the Fair Rent Act increased, thus after various intermediate statutes⁴, the market was liberalized by Law no. 431/1998. Therefore, although both the 1942 Civil Code and the 1978 Act still have some fields of application, currently the 1998 Act is the main source of regulation for Italian residential tenancies.

2. The current Italian housing situation

Italy reflects the traditional features of Southern European systems, having a high rate of home ownership and low level of rents. According to 2014 data by the Italian Institute of Statistics, around 71.2% of households live in dwellings they own, while 18.7% are renting by a private or public owner and the remaining 10.1% have a different kind of tenure (such as commodatum or usufruct)⁵.

The high percentage of home ownership is the consequence of both cultural factors and political choices. Homes are still the favorite form of investment and the main assets handed down to heirs by Italian families⁶. From the political point of view, in the past decades the level of home ownership has been significantly increased by the continuous sale of public dwellings at favorable prices, mainly to the grantees. Today this is negatively regarded as it significantly benefited only a rather limited number of households. The effects are that the public residential sector in Italy is underdeveloped, representing less than one fifth of the rental sector⁷, and that other kinds of subsidies for private tenancies have been neglected.

After the introduction of the 1998 Act the legislator mainly focused on funds to help the payment of rents, such as the 'Social Fund for Rent' and more recently the 'Fund for non-

¹ According to Art. 42, subs. 2 Const. "Private property is recognised and guaranteed by law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all".

² ANNA R. MINELLI, *La politica per la casa*, Bologna, Il Mulino, 2004, pp. 158 f.; CHIARA SARACENO, *Mutamenti della famiglia e politiche sociali in Italia*, Bologna, Il Mulino, 1998, p. 153.

³ The last significant piece of legislation to provide centralized public financing was Law no. 21/2001: see STEFANO CIVITARESE MATTEUCCI, "L'evoluzione della politica della casa in Italia", *Rivista Trimestrale di Diritto Pubblico* (2010), p. 12.

⁴ In 1992 a provision excluded newly-built premises from the application of the 'fair rent' mechanism and allowed the parties to waive it, provided that they accepted the compulsory assistance of landlord and tenant associations: so called '*patti in deroga*', which means 'waiver agreements': See Art. 11 Decree Law 11 July 1992, no. 333, as converted into Law 8 August 1992, no. 359. A few years later, the Constitutional Court held this provision to be unconstitutional as it imposed on the parties the obligation to accept the assistance of these associations: Const. Court, 25 July 1996, no. 309, *Foro Italiano*, 1996, p. 2601.

⁵ ISTAT, *Annuario Statistico Italiano 2015*, <<https://www.istat.it/it/files/2015/12/Asi-2015.pdf>>, 29 December 2015, p. 384.

⁶ MASSIMO BALDINI, *La casa degli italiani*, Bologna, Il Mulino, 2010, pp. 89 ff.

⁷ ISTAT, *Annuario Statistico Italiano 2014*, <<http://www.istat.it/it/files/2014/11/Asi-2014.pdf>>, 2014, p. 366.

guilty tenants in default'. These funds depend on economic resources allocated on a yearly basis at national and local levels, which have varied considerably during last few years. Also they do not help in reducing the price of rents but maintain them fictitiously high⁸.

Since the end of the 1990s a key reason for the increase of levels of homeownership has been the success of housing loans, which only experienced a sudden and drastic reduction in 2007 with the beginning of the economic crisis.

Even after the "rush to buy" of the previous years had finished, tenancies in Italy remain marginal, a last short-term resort for households waiting for the best moment to buy a home, or a long-term solution for households who cannot afford the purchase of a house with a loan or similar measures.

3. The main features of Italian tenancy law

Although Italian residential tenancies after Law no. 431/1998 followed the path of "controlled liberalization"⁹, in particular abolishing mandatory limits to the amount of rents, the protection of tenants, who are considered the weaker party in the contract, remains the most distinctive feature of the Italian tenancy law. The most important provisions can be summarized as follows: optional fair rent negotiated by tenant and landlord associations through national and local model agreements; protection of tenants' stability by a 4-year (or, alternatively, 3-year) minimum length of tenancy contracts; protection of tenants in case of sale of the dwelling and protection of the tenant's family in case of death or divorce of the tenant; limits to discharge or termination of the contract; written form and registration.

Another particular aspect is that, as already mentioned, Italian tenancy law is sharply divided between residential tenancies and non-residential tenancies.

The former are regulated by a succession of laws beginning with the 1942 Civil Code¹⁰. The most significant are the mandatory rules of the 1998 Act which govern aspects such as minimum duration, termination, market rent or optional fair rent, written form and registration. For other aspects the dispositive rules of the 1942 Civil Code still apply: e.g.

⁸ The latest 'Fund for non-guilty tenants in default' could partially limit these negative effects as the tenant can apply for the fund only after receiving a judicial notice to quit for non-payment of rent; in addition, according to the circumstances, landlords have to undertake to stipulate a kind of tenancy with lower than market prices (so called 'assisted tenancy') or to suspend the procedure of eviction (Art. 5 Min. of Infrastructures and Transports Decree 30 March 2016).

⁹ VALENTINA CALDERAI, "La riforma delle locazioni abitative quindici anni dopo: le ragioni di un fallimento dello Stato post-regolatore e gli scenari futuri", *Rivista di Diritto Civile*, (2012), II, p. 371.

¹⁰ Law no. 431/1998 states that most of its rules do not apply to the rent of 'dwellings of cultural interest' according to Law no. 1089/1939 (now Code of Arts and Environment: Leg. Decree no. 42/2004) and dwellings belonging to the cadastral categories A/1, A/8 and A/9, which are palaces, castles, large historical villas and similar dwellings: a very small proportion of Italian buildings. For these categories only the rules of the Civil Code can be invoked because the special statutes provide rules aimed at protecting the tenant and his/her primary interest to find a suitable dwelling. Similar provisions do not appear to be necessary in the case of tenancy contracts regarding particularly expensive dwellings. In any case, in partial derogation of this principle, Law no. 431/1998 also applies for these dwellings if they are rented under the 'assisted tenancy' regime. For similar reasons most of the provisions of Law no. 431/1998 do not apply to dwellings exclusively rented for tourism ('holiday tenancies').

defects of the dwelling and duty of guarantee by the landlord, alterations to the dwelling by the landlord, improvements or additions by the tenant. The most debated rules are included in the 1978 Act, which in part still apply to residential tenancies and regard aspects such as subletting, tenant's withdrawal from the contract, tenant's breach and procedure to avoid discharge of the contract, succession in the contract on the part of the tenant, invalidity of clauses which terminate the tenancy in the case of the sale of the dwelling, additional costs and deposit. The debate is due to the fact that Law no. 431/1998 abrogated Art. 79, according to which the provisions of the 1978 Act were "unilaterally compulsory": they could be derogated only in favour of the tenant, otherwise the relevant clauses were null and void. According to the prevailing opinion there is no longer a general prohibition of derogatory clauses in favour of landlords but the problem is which rules provided by the 1978 Act can now be freely derogated in favour of the tenant in residential tenancies and to what extent derogatory clauses are legal.

Furthermore, some problems of consistency between residential and non-residential tenancies were highlighted, as for the latter Art. 79 is still in force. This raised the suspicion of conflict with the principle of equality granted by the Constitution, as a less protective rule is adopted for residential tenancies, although the latter deal with people's fundamental right to habitation¹¹.

On the other hand, non-residential tenancies are still regulated by specific provisions of Law no. 392/1978, which do not include the "mandatory fair rent" as this form of protection has been always considered not necessary for tenancies not having residential purposes. The Civil Code rules apply also to the latter, as far as the special statutes do not provide otherwise.

The last general feature worth mentioning is that, contract law measures are used to prevent tax evasion such as mandatory written form and registration. This is due to the fact that in Italy the problem of landlords who do not pay taxes on rental incomes is widespread and so called "black tenancies" are estimated to be about 20% of the private sector, which means almost one million contracts¹². These private law measures, in combination with fiscal incentives, have proved to have some positive effects, as better described below.

4. Rent control

After the reform in 1998 parties can choose between two different kinds of tenancies: a "free-market tenancy" in which parties are free to fix the rent according to market criteria but the mandatory duration is longer, and an "assisted tenancy", in which the rent must be

¹¹ GIOVANNI GABRIELLI & FABIO PADOVINI, *La locazione di immobili urbani*, Padova, Cedam, 2005, pp. 9 f.

¹² CGIA MESTRE, *Quasi un milione di affitti in nero*, <<http://www.cgiamestre.com/wp-content/uploads/2013/02/affitti-in-nero.pdf>>, 1 February 2013; "Affitti, quasi un milione sono in nero", *Corriere della Sera*, 2 February 2013, Sect. Economia.

fixed in accordance with legal parameters and in turn the legislator provides a shorter mandatory duration and some further incentives.

This system was introduced in order to overcome the rigidity of the mandatory rent ceiling, aimed at the same time to encourage rents below the market level. Nevertheless the average cost of market rents increased significantly between 1993, when the Fair Rent Act began to be dismantled, and 2008, when the economic crisis began: about +56%¹³. For many years the tax deductions available did not compensate for the difference in free-market rent, which in some cases was more than twice as much as the controlled rent. Therefore in 2010, the market system was found to be largely prevalent in Italy and it was estimated to account for about 80% of the private rental market¹⁴. The situation changed with the onset of the crisis: since then, the percentage of new contracts executed with the regime of “assisted tenancies” seems to be significantly increasing: 37% in 2014 and 43% in 2015¹⁵. This is the consequence of some concurring factors: free-market rents have decreased, in many places the local competent associations have increased the legal amount of rent¹⁶ and the legislator has introduced more generous fiscal incentives for “assisted tenancies”¹⁷.

In these cases rents must be determined in accordance with local agreements between the most representative landlord and tenant associations. The agreements generally use the location and characteristics of the dwelling as parameters: more specifically every municipality is divided into “uniform areas” with similar characteristics and similar housing market values. Dwellings are then divided into classes according to parameters such as type, age, condition, services, parking areas and so on. On the basis of these elements, the table provides a maximum and a minimum parameter for every square metre of dwelling. The result of this multiplication gives the range of applicable rent but parties may freely decide to agree an even lower rent.

“Big real estate owners” have the possibility to execute supplementary agreements with associations of owners and tenants fixing the amount of rent for all their tenants within the above indicated minimum and maximum limits¹⁸.

If parties agree to a higher rent, the clause is null and void¹⁹, nevertheless, a special protective procedure in favour of the tenant is provided, derogating the ordinary Civil Code

¹³ M. BALDINI, 2010, p. 64.

¹⁴ M. BALDINI, 2010, p. 188.

¹⁵ Solo Affitti, 6° *Rapporto Solo Affitti – Nomisma sul mercato della locazione in Italia – 2014*, <<http://www.slideshare.net/SoloAffitti/vi-46485799>>, 31 March 2015.

¹⁶ *Ibidem*.

¹⁷ In case the landlord opts to tax the rental incomes apart, the rate is 21% in the case of ‘free-market tenancies’ and 10% in the case of ‘assisted tenancies’, at least until the end of 2017 if the contract is executed in a municipality that is a provincial capital, in a neighbouring municipality with over 10,000 inhabitants or in a municipality with a ‘scarcity of dwellings’ (Law no. 61/1989) or with ‘significant housing problem’ (Resolution CIPE no. 87/2003). In case the landlord opts for the ordinary fiscal regime, in case of ‘assisted tenancies’, income has a 30% deduction in addition to the ordinary deduction of 5% and also the annual registration tax (2% of the annual rent) is reduced of 30%.

¹⁸ According to Art. 1, subs. 5 Intermin. Decree 30 December 2002 this expression refers to people or companies that own more than 100 residential dwellings.

rules about nullity: within six months of the dwelling being effectively returned²⁰ the tenant can go to court and claim to have the excess rent refunded. If the contract is still effective between the parties, the tenant may request for the clauses to be established by the judge, in accordance with the legal limits.

The choice of fixed rent is compulsory for “temporary tenancies”: contracts with a duration below the minimum legal term permitted to “satisfy the particular needs of the parties”, which include, for example, contracts executed by University students for studying purposes²¹.

On the contrary, in case of “free market tenancies” the legislator grants the parties the right to freely establish the amount of rent at the beginning of the contract, provided that this is indicated in a written and registered agreement. Stricter limits are established for rent increases during the life of the contract.

4.1. Clauses on rent increase

Rules regarding rent increases vary according to the kind of tenancy contract the parties decide to stipulate.

If the parties opt for a “free market tenancy contract”, the general opinion is that parties are free to stipulate clauses which gradually increase rents²², but some limits indicated by Law no. 431/1998 must be considered.

According to Art. 13, subs. 1 “*All agreements which establish rent payments exceeding the amount resulting from the written and registered contract are null and void*”. This subsection is still matter of debate. According to some authors and decisions, this rule considers an agreement valid, in which parties establish a higher rent than in the tenancy contract, provided that the agreement is drawn up at the same time as the tenancy contract, even if this agreement is not registered²³. The non registration of the agreement cannot affect the validity of the contract, as the only purpose of registration is fiscal. However, parties cannot increase the amount of rent during the contract because when the tenant is already occupying the dwelling, the landlord may exploit this situation to obtain more favorable conditions²⁴.

¹⁹ According to Art. 13, subs. 4 (1st sentence) Law no. 431/1998: “*For contracts executed in accordance with subs. 3, Art. 2, any agreement granting landlords a rent exceeding the maximum amount established by local agreements for dwellings with the same characteristics and of the same type are null and void*”.

²⁰ Others believe that the relevant moment is termination of the contract: G. GABRIELLI & F. PADOVINI, 2005, pp. 379 ff.

²¹ See Sect. 5 below.

²² G. GABRIELLI & F. PADOVINI, 2005, p. 363.

²³ NUNZIO IZZO, “La rilevanza degli adempimenti tributari”, *Rassegna delle Locazioni e del Condominio* (1999), p. 372. Cass., 3 April 2009, no. 8148, *Giustizia Civile Massimario*, 2009, p. 583; Cass., 27 October 2003, no. 16089, *Foro Italiano*, 2004, I, p. 1155.

²⁴ Studies on law and economics stress the risk that the imbalance between transaction costs for the landlord of finding a new tenant and for the tenant of finding and moving into a new dwelling can be exploited in order to

According to others, this regulation aims to prevent parties from stipulating a fictitious rent in the registered contract and establishing the real rent in another agreement²⁵; therefore, an agreement executed at the same time as the tenancy contract, if not registered, will also be null and void.

In 2015 the United Sections of the Court of Cassation, the highest Italian judicial division, shared the latter solution, stating that the hidden agreement indicating a rent increase is null and void, notwithstanding the moment in which it was executed, and it cannot be saved by a subsequent registration²⁶.

A further limit is provided by Art. 13, subs. 4 (2nd sentence), according to which “*For contracts executed in accordance with subs. 1, Art. 2 [i.e. “free-market tenancies”], every agreement aimed at granting the landlord a rent exceeding the rent contractually established, is null and void, if it conflicts with the provisions in this statute*”. This subsection tends to be considered as a ban on agreements increasing the amount of rent after the execution of the contract, and not as a general ban on rent increases²⁷. Another debate regards the relevant clauses to take into consideration: according to one opinion only economic provisions directly affecting the amount of rent are relevant²⁸, however, another opinion also considers clauses regarding other aspects, provided that they give an advantage to the landlord (for example, clauses for which the tenant undertakes to pay for maintenance or other work in the dwelling) potentially relevant²⁹.

As for the consequences in cases of violations of Art. 13 subs. 1 or 4, in both cases it is established that within six months from vacating the dwelling the tenant may request the excess rent to be returned³⁰.

The situation is completely different in the case of “assisted tenancies”. According to the Intermin. Decree 30 December 2002, rent increases need to be expressly allowed by local agreements among tenants and landlords associations, which also indicate amounts. These increases cannot exceed 75% of the inflation rate per year as calculated by the Italian Institute of Statistics (*ISTAT*): Art. 2 subs. A.

increase rent during tenancy: see ELENA BARGELLI, “Locazione abitativa e crisi economica”, in *L’esigenza abitativa. Forme di fruizione e tutele giuridiche*, ed by. A. Bucelli, Padova, Cedam, 2013, pp. 274 f. However for a critical evaluation of a similar interpretation of Art. 13, subs. 1, see VINCENZO CUFFARO, “Violazione di obblighi tributari e nullità del contratto (di locazione)”, *Rivista di Diritto Civile* (2011), pp. 368 ff.

²⁵ CRISTINA GRASSI, “Commento sub Art. 13 Legge no. 431/1998”, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, p. 619.

²⁶ Cass., Un. Sec., 17 September 2015, no. 18213, *Giurisprudenza Italiana*, 2016, pp. 324 ff., with a comment by VINCENZO CUFFARO, “Aporie della giurisprudenza e pervicacia del legislatore in tema di locazione e obbligo di registrazione”.

²⁷ G. GABRIELLI & F. PADOVINI, 2005, p. 363; C. GRASSI, 2013, p. 620; VINCENZO CUFFARO, “Le invalidità del contratto”, in *Le locazioni ad uso di abitazione*, ed. by V. Cuffaro, Torino, Giappichelli, 2000, p. 179; VINCENZO CUFFARO & STEFANO GIOVE, *La riforma delle locazioni abitative*, Milano, IPSOA, 1999, p. 60. On the contrary, GIUSEPPE BERNARDI, “Patti contrari alla legge”, in *Il nuovo diritto delle locazioni abitative*, ed. by S. Patti, Milano, Giuffrè, 2001, p. 221, retains that for ‘free market tenancies’ rent increase is allowed also during the contract.

²⁸ C. GRASSI, 2013, pp. 620 ff.; ANTONIO MAZZEO, *Le locazioni nella legislazione speciale*, Milano, Giuffrè, 2002, pp. 112 and 118 ff.; ANTONIO SCARPA, “Patti contrari alla legge”, *Rassegna delle Locazioni e del Condominio* (1999), pp. 155 ff.

²⁹ G. GABRIELLI & F. PADOVINI, 2005, pp. 290 ff.; FRANCO PETROLATI, “Art. 13. Patti contrari alla legge”, in F. Petrolati et al., *Le nuove locazioni abitative*, Milano, IPSOA, 2000, pp. 227 ff.; FORTUNATO LAZZARO, “Limiti di forma e c.d. derogabilità nelle tipologie locazioni abitative”, *Giustizia Civile* (1999), II, p. 118.

³⁰ See respectively Art. 13, subs. 2 and 6 Law no. 431/1998.

A different regulation is provided for the already mentioned “temporary tenancies”. In this case the model contracts approved by the Intermin. Decree do not mention the possibility of rent increase, so this is not considered allowed. The explanation is that for contracts of this kind, all of which have a shorter legal duration, the need to upgrade rents is less important³¹.

A final mention will be given to the *cedolare secca* taxation system introduced in 2011 with the aim of reducing black market and evasion of rental incomes. The law has established that if the landlord opts for this regime, he/she will be renouncing rent increases in any form³². It appears that the provision can be interpreted as referring not only to increases that offset inflation but also to any form of variation in rents for the duration of the contract. This rule applies to both “free market” and “assisted tenancies”.

For residential housing, once rent increase has been stipulated between the parties, it becomes automatically enforceable in the agreed terms without any specific claim by the landlord. This is unlike non-residential tenancies, for which Art. 32 Law no. 392/1978 requires that rent increases, even if they are stipulated in the contract, must be expressly claimed by landlords from tenants.

5. Duration and termination of contract

The Fair Rent Act introduced for the first time a minimum duration of four years for residential tenancy contracts. Law no. 431/98 replaced this rule by introducing two different possibilities, both with the aim of guaranteeing stability to the tenant.

The first concerns “free-market tenancies”: in this case, the minimum duration is four years after which the contract is renewed for another four years. Renewal can be excluded by the landlord by giving notice, but only for one of the reasons expressly provided for by Art. 3, which all have in common the fact that the landlord’s interests take priority over the tenant’s right to housing³³.

Tenants can terminate the contract after the first four years for any reason, and in addition are also entitled to withdraw from the contract at any time “for serious reasons” by giving “six months’ notice” via registered mail (Art. 3, subs. 6). “Serious reasons” must be

³¹ G. GABRIELLI & F. PADOVINI, 2005, p. 363.

³² Art. 3, subs. 11 Leg. Decree, 14 March 2011, no. 23.

³³ The reasons are the following: a) when the landlord wants to use the dwelling for him/herself or his/her spouse, parents, children or relatives to the second level of kinship for a residential, commercial, artisan or professional activity; b) when the landlord is a public, cultural or religious legal entity that wants to use the dwelling for its own purposes, as long as it provides the tenant with another adequate and fully available dwelling; c) when the tenant has a free and adequate dwelling available in the same municipality; d) when the building is seriously damaged and needs repairs that cannot be carried out due to the presence of the tenant; e) when the building is to be integrally repaired or destroyed or raised (in the latter case, the tenant shall live at the top floor and the building needs to be evacuated); f) when the tenant does not continuously occupy the dwelling without a legitimate reason, except in the case of succession in the contract; g) when the landlord wants to sell the dwelling, provided that he or she does not own other residential dwellings, in addition to his or her own house; a pre-emption right is granted to the tenant in similar cases.

unpredictable circumstances, supervening to the execution of the contract, not depending on the tenant's responsibility and making the continuation of the contract particularly burdensome³⁴. These reasons can regard both the tenant's personal circumstances and the objective conditions of the dwelling³⁵.

After eight years the landlord is also free to terminate the contract for any reason. However, if none of the parties gives notice the contract is renewed at the same conditions³⁶.

The second possibility is represented by "assisted tenancies". To stimulate such contracts the law provides for a shorter minimum duration of three years after which, if the parties do not find an agreement to renew (or terminate) the contract, this is automatically extended for a further two years. Again the landlord may withdraw from the contract only by invoking one of the reasons expressly provided for by Art. 3³⁷, while the tenant can withdraw from the contract at any time, but only "for serious reasons" as required by Art. 3 subs. 6. After five years both parties have the right to freely terminate the contract, otherwise, it will also be automatically renewed for the same period and at the same conditions.

If the parties make an agreement for a shorter duration, the clause is null and void, but this cannot extend to the whole contract, which remains valid and is automatically corrected in accordance with the legal duration.

Law no. 431/1998 introduced the possibility for some exceptions through the category of so-called "temporary tenancies". These contracts have a shorter duration to satisfy the needs of the tenant or the landlord - particularly for job-related reasons - that are already clear when the contract is executed. In any case, the law limits the autonomy of the parties in these contracts³⁸. According to a rule criticized for its rigidity (Art. 2, subs. 1 Intermin. Decree 30 December 2002), the duration shall be between one and eighteen months, and is not renewable. Particular focus is on the personal reasons for stipulating a shorter contract: it is necessary to expressly mention this in the contract and to attach documents providing evidence, particularly if this is due to the tenant's wishes. This reason must be confirmed, by registered mail, by the party concerned before expiration of the contract otherwise the

³⁴ LORENZO PELLEGRINI, "Commento sub Art. 4 Legge no. 392/1978", in *Codice Commentato di Locazione e Condominio – Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, p. 369; FRANCESCO TRIFONE, "La locazione ad uso di abitazione", in *I contratti di utilizzazione dei beni*, ed. by V. Cuffaro, in *Trattato dei contratti*, Torino, UTET Giuridica, 2008, pp. 142 ff.

³⁵ They can include diseases, specific economic difficulties, working, studying, family circumstances that make the dwelling no longer suitable and annoying behavior by the landlord.

³⁶ Jurisprudence and the courts have debated whether this renewal must be considered as an automatic legal effect or as an implicit will of the parties. The importance of this issue is due to the fact that, according to Art. 560, subs. 2 Civ. Proc. Cod., after attachment (the procedure that opens execution) the dwelling can be rented only if the judge of the execution gives authorization. So, according to the former opinion, the automatic renewal of Art. 2, subs. 3 Law no. 431/1998 does not require the authorization of the judge, while according to the latter, authorization is necessary. After some contrasting decisions, in 2013 the United Sections of the Cassazione shared the former opinion stating that the renewal does not require any authorization by the judge: Cass., Un. Sec., 16 May 2013, no. 11830, *Foro Italiano*, 2015, I, p. 3607. See also DARIO FARACE, "Sul 'falso' concetto di rinnovazione tacita della locazione", *I Contratti* (2013), pp. 165 ff.

³⁷ More precisely in this case only letters a), b), d), e) and g) can be invoked by the landlord: see Art. 3, subs. 5 Law no. 431/1998.

³⁸ In metropolitan areas (the eleven biggest cities in Italy and their neighbouring municipalities) and in any municipality that is a provincial capital, the rent of 'temporary tenancies' must be established within the regime of fixed rates indicated for 'assisted tenancies' (see Art. 2, subs. 2 Intermin. Decree).

contract will automatically be converted into a contract with the minimum legal duration³⁹. This complex procedure is designed to avoid parties using “temporary tenancies” to derogate the minimum mandatory duration of ordinary tenancies.

A particular kind of “temporary tenancy” expressly provided for by the law is the “tenancy contract for students”. It applies to university students who reside in a municipality that is different to the municipality where they attend university courses. The term is from six months to three years and in the absence of notice by the tenant, the contract can be automatically renewed once for the same period of time.

6. Form and registration of tenancy contracts

Written forms and registrations are mandatory private law tools aimed at protecting tenants (i.e. the weaker party), by granting transparency and informed consent in the execution of the contract and easier evidence of its execution in the case of disputes with the landlord. In Italy both these measures are also expressly used to counteract tax evasion and to more easily reveal the real amount of rents once the tenancy market was liberalized with the 1998 Act. This particular feature distinguishes the role of form and registration from other European countries and affects their interpretation.

According to the 1942 Civil Code, tenancy contracts do not normally require any particular form to be validly executed. An exception is provided by Art. 1350, no. 8 for contracts that concern properties and last more than nine years: in this case, a written form is necessary. In the absence of this requirement, the contract is null and void. The 1998 Law established the written form to execute “valid tenancy contracts” (Art. 1, subs. 4) and this provision outweighed the rules in the Civil Code for practically all residential dwellings⁴⁰.

Registration at the “Agenzia delle Entrate” (Inland Revenue Agency) is compulsory for all contracts for properties that last more than 30 days a year and must be made within 30 days of execution of the contract or of it becoming effective, if earlier.

Over the years very strong measures have been introduced to prevent people not using the written form and not registering.

Jurisprudence and the courts typically consider a contract without a written form null and void⁴¹, but there is debate over the role of this invalidity and therefore, its enforcement. One opinion is that it protects the public interest, avoiding black market contracts: the absence of the written form means that parties do not register the contract and almost without doubt,

³⁹ Art. 2, subs. 4 Intermin. Decree and Art. 2, subs. 2 and 3 Ministry of Public Works Decree 5 March 1999.

⁴⁰ Disputes only concern “dwellings of cultural interest” and dwellings in the cadastral categories A/1, A/8 and A/9: the law states that contracts regarding these dwellings are subject only to the rules in the Civil Code. However, in another passage concerning rules that do not apply for similar dwellings, the statute does not mention rules regarding formal requirements, which is why it has been suggested that the written form is also necessary in these cases.

⁴¹ MARIA VIRGINIA MACCARI, “Commento sub Art. 1 Legge n. 431/1998”, in *Codice Commentato di Locazione e Condominio – Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, p. 559.

that the landlord does not pay taxes on the corresponding income. So nullity can be invoked by a judge or anyone who may have an interest in doing so, and therefore even the landlord can use this rule to evict the tenant at any time⁴². A contrasting opinion is that the rule of invalidity protects the weaker party in the contract (i.e. the tenant) and in particular, its interest in being fully and correctly informed in written form about the clauses of the contract⁴³. Therefore the invalidity should be considered enforceable only by the tenant⁴⁴.

In reality, as mentioned, the Italian legislation, pursues both purposes, so it is not easy to decide the best interpretation.

In this context the legislator introduced a provision according to which if the absence of the written form is the responsibility of the landlord, the tenant has the right to ask the court to ascertain the existence of the contract and to fix its rent at an amount that cannot exceed the amount established for “assisted tenancies”. If the tenant previously paid a higher rent, he/she also has the right to have the difference refunded (Art. 13, subs. 5 Law no. 431/1998).

This provision confirms the principle of the “contrast of interests” between tenants and landlords to counteract black contracts and makes clear that, at least when the tenant provides evidence that the landlord was the only party responsible for the absence of a written form, the informal contract is not null and void but binding and modified in accordance with legal provisions.

This solution was shared by several local courts⁴⁵ and in 2015 confirmed by the United Sections of Cassation. The Court stated that the written form in residential tenancies primarily protects the State’s fiscal interest, and therefore, in the absence of a written form, the invalidity can be claimed both by the tenant and by the landlord and there is no need to protect the tenant’s interest in the prosecution of the contract. Nevertheless, if the tenant provides evidence that the landlord was the party responsible for the absence of a written form, invalidity can be claimed only by the tenant and the special procedure of Art. 13, subs. 5 applies⁴⁶.

⁴² In this sense, G. GABRIELLI & F. PADOVINI, 2005, p. 133, even if criticising the opportunity to use a rule of invalidity to protect a fiscal interest; VINCENZO CUFFARO, “Le invalidità del contratto”, in *Le locazioni a uso di abitazione*, ed. by V. Cuffaro, Torino, Giappichelli, 2000, p. 193; NUNZIO IZZO, “La riforma delle locazioni degli immobili ad uso abitativo (commento alla legge 9 dicembre 1998 n. 431)”, *I Contratti* (1999), pp. 174 ff.; CARLO MARTONE, *La nuova disciplina delle locazioni abitative*, Padova, Cedam, 1999, p. 748; GIORGIO STELLA RICHTER, “Nullità del contratto per difetto di forma e locazione di fatto degli immobili ad uso abitativo”, *Giustizia civile* (1999), p. 381.

⁴³ In this sense, AURELIO GENTILI, “L’invalidità del contratto di locazione”, in *Le locazioni urbane: vent’anni di disciplina speciale*, ed. by V. Cuffaro, Torino, Giappichelli, 1999, p. 83; MARIO NUZZO, “La forma del contratto di locazione degli immobili ad uso abitativo”, *ibidem*, p. 154; UMBERTO BRECCIA, “La forma”, in *La formazione*, ed. by C. Granelli, in *Trattato del Contratto*, directed by V. Roppo, vol. I, Milano, Giuffrè, 2006, p. 543; MAURO DI MARZIO, in M. Di Marzio & M. Falabella, *La locazione*, vol. I, Torino, UTET Giuridica, 2010, p. 268.

⁴⁴ ELENA BARGELLI, “Usi abitativi e interessi tutelati: formazione, forma e contenuto del contratto”, in Aa. Vv., *Cessione e uso di beni*, in *Trattato dei contratti*, ed. by V. Roppo & A. M. Benedetti, vol. II, Milano, Giuffrè, 2014, pp. 1036 ff.; UMBERTO BRECCIA, “Gli interessi tutelati”, in *Le locazioni urbane: vent’anni di disciplina speciale*, ed. by V. Cuffaro, Torino, Giappichelli, 1999, pp. 35 ff.

⁴⁵ In this sense: Trib. Catanzaro, 27 January 2011, *Corriere del Merito*, 2011, pp. 477 ff., with a comment by MARCO RIZZUTI; Trib. Catanzaro, 27 May 2008, *Il Civilista*, 2010, no. 11, p. 19; Trib. Nuoro, 21 June 2007, *Rivista Giuridica Sarda*, 2009, p. 143.

⁴⁶ Cass., Un. Sec., 17 September 2015, no. 18214, *I Contratti*, 2016, p. 465, with a comment by FEDERICA FERRARA, “Locazione abitativa e forma scritta”.

This interpretation aims to find a balance between the State's fiscal interest and the tenants' interest in maintaining their right to live in the property. Informal tenancies are sanctioned, tenants are protected from the risk of being evicted and have an incentive to report tax evasion but only in case they are not responsible for the absence of a written form; also the landlord's position is somehow protected as the tenant must provide evidence that the landlord did not want to sign a written agreement.

The downside is that this measure has rarely been applied in practice. This is probably due to the fact that in most cases tenants agree with landlords to execute a non-written agreement in turn, for example, of a reduced rent or at least they have difficulties in giving evidence of the landlord's exclusive responsibility. In these circumstances, according to the last opinion of the Cassation, they could not avail of the special procedure of Art. 13, subs. 5 and they would lose the dwelling as the contract is null and void. Clearly this is a strong deterrent to report informal tenancies.

For this reason, an interpretation which recognizes the existence of the contract notwithstanding the tenant's responsibility could be preferable⁴⁷. Nevertheless a solution to this problem can be found in the new rules regarding registration of the contract at the Inland Revenue.

According to Art. 1, subs. 346 Law no. 311/2004 tenancy contracts are null and void, if they are not registered when this is required. The problem is again the way this nullity affects the contract. In 2011 the legislator introduced a provision similar to Art. 13, subs. 5, according to which, in case a non-registered contract was discovered, the amount of rent and the duration were compulsorily changed in a way more favourable for the tenant, in order to pursue a deterrent and punitive effect for the landlord⁴⁸. This implied that the contract remained binding and enforceable between the parties. Nevertheless, this provision was declared as unconstitutional by the Constitutional Court in 2014 for procedural irregularities by the government in its implementation⁴⁹.

After this the legislator amended Art. 13 Law no. 431/1998 stating that the former procedure of subs. 5 (now subs. 6) for informal contracts applies to non-registered contracts: the tenant may claim for the rent to be set by the court according to the lower, non-market amount negotiated by landlords and tenants associations and is entitled to the restitution of the extra-rent paid. In doing so, the legislator confirms again that the non-registered contract is binding for the parties and enforceable. Accordingly the Cassation has recently confirmed that a subsequent registration can validate *ex post* the hidden contract⁵⁰.

⁴⁷ E. BARGELLI, 2014, p. 1039.

⁴⁸ Art. 3, subs. 8 Law 14 March 2011, no. 23.

⁴⁹ Const. Court, 14 March 2014, no. 50, *Guida al Diritto*, 2014, no. 14, p. 13.

⁵⁰ In this sense Cass., 28 April 2017, no. 10498, *Guida al Diritto*, 2017, no. 23, p. 44, according to which this solution is not inconsistent with the above mentioned Cass., Un. Sec., 17 September 2015, no. 18213, because this decision regarded the simulation of the rent and not the registration of the whole contract.

In addition, the legislator made clear, through Art. 13, subs. 1 Law no. 431/1998, that the landlord is the only party required to register the contract⁵¹. This means that the tenant has always the right to invoke the procedure of Art. 13, subs. 6; on the contrary, according to the United Sections, the former procedure of subs. 5 could not be invoked by the tenant if he/she was responsible for the lack of the written form. But as obviously a non-written contract is also not registered, it seems reasonable that the tenant can now always invoke the special procedure of subs. 6, also in the absence of the written form.

In this way the subsequent registration of the contract gives the revenue the possibility to discover the tax evasion but does not threaten the tenant's stability, as the contract remains binding and enforceable, though with a legally established content which favours the tenant and gives him/her an incentive to report the hidden tenancy.

7. Change of landlord and "*emptio non tollit locatum*" principle

Italian law basically follows the "*emptio non tollit locatum*" principle, which means that the tenancy contract is typically unaffected by a change of landlord. This is an instrument to guarantee the tenant's interest in stability, because it implies that the tenancy contract can be affected by the acts of disposal of the dwelling only in very limited circumstances.

Article 1599 Civ. Cod. contains the rules regarding "acts of disposal of the rented thing" which may affect the tenancy and provides that the latter has effect on the new holder of the thing if it was certainly executed before the sale of the thing⁵². In the case of tenancies lasting more than nine years, the further requirement of transcription in the Register of Properties is necessary and in the absence of this the contract can only be enforced for nine years. In the absence of a suitable document attesting the beginning of the tenancy, Art. 1600 civ. Cod. gives relevance also to the fact that the tenant already possessed the dwelling before the sale and grants the tenant the right to continue the contract for a limited period of time. After the introduction of Law no. 431/1998 this rule, in the case of residential dwellings, implies the application of the minimum mandatory duration indicated therein; in practice this means that in most cases the result will be the same as those granted by Art. 1599, subs. 1⁵³.

In addition the agreement between the landlord and tenant, in which the tenancy contract is terminated if the dwelling is sold, is now forbidden by Art. 7 of the Fair Rent Act both for residential and professional tenancies regulated by special statutes.

⁵¹ V. CUFFARO, 2016, p. 600.

⁵² According to Art. 2704 Civ. Cod. the date indicated in a document written or authenticated by a public notary or in a simple written document when there are some other conditions, such as registration, is considered "certain".

⁵³ Trib. Torino, 27 February 2006, unpublished; Trib. Monza, 23 February 2000, *Archivio delle Locazioni e del Condominio*, 2001, p. 272.

In other words, in Italian law the “*emptio non tollit locatum*” principle has become a mandatory rule, which can only be derogated in very limited situations⁵⁴.

8. Change of tenant and succession in the contract

Art. 6 of the Fair Rent Act, which is still in force for residential tenancies, indicates how a crisis in the marriage or the death of the tenant affect tenancy contracts regarding the family home.

For a marriage crisis, the provision is that a spouse to whom the judge has recognised the right to live in the family home automatically succeeds in the contract, becoming tenant. A similar right is normally granted to a parent who has custody of children or with whom children aged over 18 live. This principle applies in the event of legal separation and divorce (Art. 6, subs. 2). In the event of consensual separation or nullity of the marriage, the same change in tenant is possible provided that the spouses reach a relevant agreement (Art. 6, subs. 3).

In 1988, Art. 6 was partially considered unconstitutional by the Constitutional Court⁵⁵, which therefore extended its field of application to *de facto* separations (i.e., a long-lasting interruption of life together between husband and wife, even though not formalized) and to interruptions of *more uxorio* cohabitations (i.e. a continuous and permanent relationship between a couple).

The presence of the couples’ children has been considered a necessary element to apply Art. 6 to non-married couples. This implies that so far people of the same sex have not the possibility to invoke this rule. Though criticized⁵⁶, the court has confirmed this interpretation on two other occasions⁵⁷.

As far as the death of the tenant is concerned, according to the general provisions on succession law, tenancy contracts continue with the heirs of tenants⁵⁸. However, Art. 6, Law

⁵⁴ In case of hereditary succession in all the rights and obligations of the landlord, although not expressed by a specific provision, the general rule is that contracts regarding the deceased continue with his/her heirs and tenancies do not constitute an exception, at least not from the landlord’s point of view. In case of forced assignment of the dwelling Art. 2923 Civ. Cod. regulates the effects of tenancy contracts in a way very similar to Arts. 1599 and 1600. Only in case of acquisition of a right as a consequence of possession and limitation of actions (*‘usucapione’* in Italian law), the right of the new holder does not derive from the position of the previous holder; this implies that the new holder is not normally bound to the tenancy contract executed by the previous owner, provided that the possession over the thing was exercised without an awareness of the tenancy.

⁵⁵ Const. Court, 7 April 1988, no. 404, cit.

⁵⁶ LUIGI PRINCIPATO, “Il diritto all’abitazione del convivente *more uxorio* e la tutela costituzionale della famiglia, anche fondata sul matrimonio”, *Giurisprudenza Costituzionale* (2010), p. 113.

⁵⁷ Const. Court, 14 January 2010, no. 7 (ord.), *Famiglia e Diritto*, 2011, pp. 981 ff., with a comment by CRISTINA CILIBERTO, “Successione nel contratto di locazione del convivente senza figli naturali”; Const. Court, 11 June 2003, no. 204 (ord.), *Giurisprudenza Costituzionale*, 2003, p. 1572.

⁵⁸ G. GABRIELLI & F. PADOVINI, 2005, pp. 737 ff. Article 1614 Civ. Cod., which grants to the heirs of the tenant the right to withdraw from the contract within three months from the death of the tenant, seems to confirm this solution. However others retain that the choice of a tenant with certain characteristics is an essential element of tenancy contracts (so-called “contracts based on *intuitus personae*”), so these cannot automatically continue

no. 392/1978 introduced a special rule also in this case, stating that the following people are entitled to continue the contract in the event of the tenant's death: the spouse, the heirs, the tenant's relatives and the relatives of his/her spouse, provided that they "regularly lived with the tenant"⁵⁹. Succession in the contract regards all these, who have the said requirements, in the same way. For them, as for the landlord's heirs, the succession is automatic and binding⁶⁰. The purpose of this provision is to guarantee stability to the family of the tenant in case of his/her death.

The 1988 decision by the Constitutional Court also extended this provision to *more uxorio* cohabitants. Even though in this case the presence of children is not required, in 1988 it was mainly regarded that this decision did not concern homosexual partners. Today, the situation appears to have changed: over the last few years, despite denying the right for people of the same sex to marry, the Constitutional Court has recognised that those in long-lasting, same-sex relationships are protected as a social group by Art. 2 Const.⁶¹. Accordingly, some tribunals have specified that people of the same sex can also be considered *more uxorio* cohabitants⁶². Therefore, these interpretations suggest that the rule of succession in the contract may now be invoked for homosexual couples.

Finally, it is worth mentioning that the rule of automatic succession in the contract is also confirmed, though with some differences, in the area of public housing (Art. 12 D.P.R. 30 December 1972, no. 1035 states that the dwelling is assigned to the spouse and the children of the dead assignee) and similarly in the field of commercial tenancies (Art. 37 Law no. 392/1978 states that tenancy contracts are assigned to people entitled to continue the tenant's enterprise).

with heirs without the landlord's consent: ANTONIO TULLIO, "I diritti successori del coniuge superstite", *Famiglia, Persone e Successioni* (2012), p. 304.

⁵⁹ FABIO PADOVINI, "La successione nel contratto", in *Le locazioni urbane: vent'anni di disciplina speciale*, ed. by V. Cuffaro, Torino, UTET, 1999, pp. 122 ff.; ANDREA NATALE, "La successione nei rapporti di locazione", in *Trattato di diritto delle successioni e donazioni*, ed. by G. Bonilini, Milano, Giuffrè, 2009, pp. 1045 ff.; CLAUDIO CAVALERA, "La successione *mortis causa* nel contratto di locazione *ex latere conductoris*", *Immobili & Proprietà* (2012), pp. 376 ff.

⁶⁰ Some scholars and decisions suggest that if Art. 6 Law no. 392/1978 is not applicable, because there are no heirs or other people cohabiting with the tenant, Art. 1614 Civ. Cod. should still apply, granting to non-cohabiting heirs the right to succeed in the contract: see, for example, Trib. Firenze, 15 May 2012, *Archivio delle Locazioni*, 2012, p. 701. In this sense also G. GABRIELLI & F. PADOVINI, 2005, pp. 753 ff. However, most decisions, particularly from the Court of Cassazione, consider Art. 1614 Civ. Cod. no longer applicable because it is implicitly abrogated by the provision of Art. 6 Law no. 392/1978: see, for example, Cass., 22 May 2001, no. 6965, *Giustizia Civile Massimario*, 2001, p. 1029.

⁶¹ Const. Court, 15 April 2010, no. 138, *Giurisprudenza Costituzionale*, 2010, p. 1604.

⁶² App. Milano, 31 August 2012, no. 407, *Rivista Critica di Diritto del Lavoro*, 2012, p. 1044. It is worth remembering that the same principle was also stated by the European Court of Human Rights in accordance with Arts. 8 and 14 of the European Convention on Human Rights, although with regard to the legislation of other countries: ECtHR, 24 July 2003, *Karner vs. Austria* (proceedings no. 40016/98), in *I Diritti dell'Uomo. Cronache e Battaglie*, 2004, pp. 74 ff., with a comment by RAFFAELE AVETA, "Vita familiare e coppie dello stesso sesso: il caso Karner c. Austria innanzi alla Corte europea dei diritti dell'uomo"; ECtHR, 2 March 2010, *Kozak vs. Polonia* (proceedings no. 13102/02), in *Famiglia e Diritto*, 2010, pp. 873 ff., with a comment by CARMELO DANISI, "Successione nel contratto di affitto: quale protezione per la famiglia tradizionale dopo il caso Kozak c. Polonia alla Corte di Strasburgo?".

9. Subletting

The original rule regarding subletting in the Civil Code grants tenants the right to sublet (partially or totally) the dwelling without the landlord's consent, unless prevented from so doing by a clause in the contract (Art. 1594, subs. 1 Civ. Cod.). In most cases, however, including those of residential dwellings, this provision has been supplemented by special rules provided by Law no. 392/1978.

Art. 2, subs. 1 states that the tenant has the right to sublet the property in its entirety only with the consent of the landlord. Total subletting demonstrates that the tenant can afford another dwelling and this would not justify the protection granted by special statutes to tenants, who are considered weak subjects. This is partially confirmed by Art. 59, no. 7 Law no. 392/1978, according to which subletting is presumed if the dwelling is inhabited by one or more people who are not employed by the tenant nor are his relatives up to the fourth degree of kinship. In this case, if the original tenant does not even reside in the dwelling, the landlord has the right to discharge the contract.

The tenant is, however, typically entitled to partially sublet his/her dwelling, provided that the landlord is informed of the identity of the new tenant, the duration of the contract and the rooms sublet (Art. 2, subs. 2 Law no. 392/1978). Here, 'partially' must be interpreted as referring only to some rooms in the whole dwelling and not, for example, to total subletting limited to a certain period of time.

These rules are dispositive and parties may always agree to limit or extend the right to sublet the dwelling but if the tenant sublets a room without the permission of the landlord or without informing him/her when required, the landlord is entitled to terminate the contract and claim damages. The tenant should probably give the landlord the rent received from the subtenant as damages: this is the consequence of the general principle of unjust enrichment or "enrichment obtained by committing a tort" (Art. 2043 Civ. Cod., a general clause in Italian law).

10. Duties of guarantee by the landlord

The first duty of the landlord is to offer the rented property in a good state of repair and to maintain this for the duration of the contract (Art. 1575, no. 1 and 2 Civ. Cod.). On the other side, the tenant shall use the property with due diligence (Art. 1587, no. 1 Civ. Cod.) and is considered responsible for losing or spoiling the property, unless evidence is given of the contrary.

The Italian Civil Code provides for a range of remedies according to the type of failure affecting the dwelling. These may be "vices", "failures" and "factual" or "legal nuisances".

Note that these topics have not been significantly modified by the statutes that came into force after the Civil Code was drawn up and, therefore, the latter's provisions are dispositive and can be modified by the parties.

a) *Vices of the dwelling*

"Vices" affect the structure of the dwelling and its quality, not simply its state of maintenance, must derive from an original problem in the dwelling⁶³, and become relevant if they significantly affect a tenant's ability to use and enjoy the property⁶⁴.

In such cases a tenant can alternatively ask for contract discharge or rent reduction, but he/she cannot ask landlords to carry out work to eliminate the building's vices.

Tenants cannot invoke the above-mentioned remedies where vices were known or easily recognizable when the contract was executed.

In practice, it may often happen that landlords exclude their guarantee for part of or for all the vices but these agreements are invalid if the landlord fraudulently concealed the vices or when they are of a type that makes the use of the dwelling impossible⁶⁵.

A further exception is provided by Art. 1580 Civ. Cod.: in the event that vices seriously endanger the tenant's health or that of his/her family or his/her employees, tenants can discharge the contract, even when they knew of the vices or had agreed to limit or exclude the landlord's responsibility. This rule is considered mandatory because it protects people's health. On the contrary, the other rules regarding vices can be derogated by the parties.

Tenants may also ask for damage compensation except that landlord proves that they were aware of the vices, or could have known the same, when the dwelling was handed over (Art. 1578, subs. 2 Civ. Cod.).

b) *Failures of the dwelling*

"Failures" indicate damage to the dwelling deriving from age, fortuitousness and 'wear-and-tear'. Art. 1576, subs. 1 specifies that: *The landlord shall carry out, during tenancy, all the necessary repairs, save small repairs which are incumbent on the tenant.*

The landlord's duty concerns both ordinary and extra-ordinary repairs, provided that they affect the agreed use of the dwelling. In these cases the landlord shall restore the property

⁶³ CHIARA SRUBEK TOMASSY & LUIGI G. VIGORITI, "Commento sub. Art. 1581", in *Codice Civile Commentato*, vol. II, ed. by G. Alpa & V. Mariconda, Milano, IPSOA, 2013, pp. 1264 ff.

⁶⁴ Art. 1578 Civ. Cod. – *If, upon delivery, the rented thing is affected by vices which substantially diminish its suitability for the use agreed, the tenant may ask for the contract to be discharged or for the reward to be reduced unless these vices were known or easily recognizable to him.*

The landlord shall compensate the tenant for the damage deriving from vices in the thing unless he can give evidence that he was not aware of them without any fault upon delivery.

⁶⁵ According to prevailing opinions, limitations of responsibility are allowed when landlords are negligent, albeit grossly. The explanation is that the general rule of Art. 1229 Civ. Cod., which excludes the exemption of responsibility both in cases of intention and gross negligence by a party, would not apply in this case as it is derogated by Art. 1579: in this sense, G. GABRIELLI & F. PADOVINI, 2005, pp. 261 ff.

to its original state, but he/she cannot be required to rebuild the dwelling if it has been totally or partially destroyed: in both cases, the supervening impossibility of performance can be invoked. Obviously damage caused by the tenant or his/her family or guests shall not be repaired by the landlord.

The landlord's duty does not include "small repairs". These are defined as damage caused by wear-and-tear which can be repaired at limited cost⁶⁶. These repairs must be done directly by the tenant who cannot ask to be refunded⁶⁷.

According to the Civil Code rules, parties may decide to limit or extend the respective responsibility for maintenance of the dwelling. The limit is that, according to Art. 1229 Civ. Cod., the landlord cannot be exempted by the consequences caused by serious fault or fraud in the lack of maintenance⁶⁸. In addition, even though Art. 1580 Civ. Cod. expressly refers to "vices", it seems reasonable that also in case of "failures" that are serious dangers to the health of the tenant or his/her family, the contract can be discharged, notwithstanding any limitation of the guarantee⁶⁹.

With regard to contracts regulated by special statutes, the decision to limit or extend the duty of maintenance is more debated, as it is again concerned with the general problem of the freedom to fix the amount of rent. In particular the extension of responsibility of the tenant represents a burden that, according to some, increases the global rent to an extent that exceeds the legal limits⁷⁰.

According to Arts 1583 and 1584 Civ. Cod., if the dwelling needs urgent repairs that cannot be delayed, the tenant should tolerate them, even though they limit the use of the dwelling. Nevertheless, if repairs last more than one sixth of the tenancy (or, in any case, more than 20 days), the tenant may request a corresponding reduction of rent. Finally, if repairs, whatever their duration, affect the possibility of the tenant or his/her family living in the dwelling, the contract can be discharged.

c) *Legal and factual nuisances*

Problems such as exposure to noise from a building site or from neighbors, and damage or occupation by third parties, can be classified neither as vices nor as failures according to the Italian law. They all belong to the sphere of "nuisances", against which other specific rules

⁶⁶ PAOLA VALORE, "Commento sub Art. 1578 c.c.", in *Codice Commentato di Locazione e Condominio – Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, pp. 29 ff. For example, damage to water taps, handles, glasses, locks, lamps and so on.

⁶⁷ Art. 1609 further specifies this rule with reference to residential dwellings, stating that small maintenance that is the tenant's responsibility is limited to spoiling as a consequence of the use and not the age of the dwelling, or of fortuitous events

⁶⁸ G. GABRIELLI & F. PADOVINI, 2005, p. 288.

⁶⁹ G. GABRIELLI & F. PADOVINI, 2005, p. 287 suggest that in case failures prevent the use of the dwelling, the general actions for total or partial impossibility of performance can be invoked (Arts. 1463-64 Civ. Cod.).

⁷⁰ See about this topic G. GABRIELLI & F. PADOVINI, 2005, p. 291; G. BERNARDI, 2001, p. 210; A. MAZZEO, 2002, pp. 109 ff.; V. CUFFARO & S. GIOVE, 1999, pp. 60 ff.; C. GRASSI, 2013, pp. 620 ff.; A. SCARPA, 1999, p. 136.

are provided for by the law⁷¹. These rules are considered specifications of the general duty of the landlord to “guarantee peaceful enjoyment of tenancy” (Art. 1575, no. 3 Civ. Cod.).

Legal nuisances regard third parties who claim rights over the rented thing affecting the tenant’s full enjoyment. The most common example of such a case is a subject claiming a “real” right, such as an usufruct, over the thing which conflicts with the rights granted to the tenant. In such circumstances landlords shall take whatever action is required to guarantee their tenant’s position, when necessary taking the matter to court. Tenants, on their side, shall immediately give the landlord notice of such nuisances so that the latter can promptly intervene.

Factual nuisances, on the contrary, regard third party behavior that does not involve claiming any right over the thing but simply disturbs the tenant. An example of this is water damage from a neighboring property. Landlords have not the duty to guarantee tenants against such nuisances because the latter are entitled to take any action directly. For example, the tenant can take out an injunction for recovery, as provided for by Art. 1168 Civ. Cod. (called “*azione di spoglio*”) in the event he/she is violently or covertly deprived of possession over the thing, within one year of the deprivation or its discovery⁷².

Guarantees regarding nuisances can be derogated by the parties, as can guarantees for vices and failures. Again, the limits appear to be Art. 1229 Civ. Cod., for which the parties cannot exclude or limit their own responsibility for breach caused by serious fault or fraud, and Art. 1580 Civ. Cod., which protects people’s health.

d) Alterations to the dwelling by the landlord

According to Art. 1582 Civ. Cod.: *The landlord cannot carry out alterations to the thing which reduce the tenant’s enjoyment of it.*

The relevant alterations have been interpreted in a wide-ranging sense. They can concern the quality or the quantity of the agreed enjoyment over the dwelling, and affect it only for a certain period of time. The prohibition surely does not include alterations limited to the extent that they will barely be noticed by the tenant⁷³.

⁷¹ Art. 1585 – *The landlord shall guarantee the tenant in case of nuisances diminishing the use or the enjoyment of the thing and made by third parties claiming rights over the thing.*

The landlord is not obliged to guarantee the tenant in case of third party nuisances not claiming rights over the thing, save the tenant’s right to personally take action against them.

Art. 1586 – *In cases where third parties causing nuisances claim rights over the rented thing, the tenant shall give prompt notice to the tenant, otherwise he shall compensate for the damages.*

In cases where third parties file a judicial proceedings, the landlord shall turn himself in Court, in case an action is filed against him. The tenant has the right to be excluded, simply indicating the landlord, if he is not interested in remaining in the proceedings.

⁷² In case the deprivation is ‘simple’ (i.e. without violence or hidden ways) the tenant is not entitled to directly take action. Whether the tenant is allowed to invoke the injunction provided for by Art. 1170 Civ. Cod. (called “*azione di manutenzione*”) is disputed. This action can be used in cases in which the enjoyment of the thing is limited or threatened by a third party, without affecting the holder’s possession.

⁷³ Some scholars suggest that alterations should be “significant”, as in the case of vices, but not everyone shares this opinion. See for references, P. VALORE, 2013, p. 49.

In cases of significant alterations, the landlord can do the work only with the other side's agreement. As these Code rules are not mandatory, the parties are free to establish in the contract that the landlord has the right to carry out future alterations, also in general terms, without indicating them precisely. The validity of such clauses has been contested in case alterations are so massive that they modify the subject matter of the contract, or *de facto* reduce its minimum legal duration⁷⁴.

The tenant has several instruments that can be used against illicit behavior by the landlord. He/she can, first of all, ask for compensation for damage done. In addition, he/she can ask that the alteration is removed and, in the most serious cases, he/she can terminate the contract because of breach. If the alteration completely deprives the tenant of the use of the dwelling, the prevailing opinion is that he may also take out an injunction for recovery ("*azione di spoglio*").

Nevertheless, exceptions to the above described rules are provided in general terms in the case of urgent restoration work⁷⁵. If it is not possible to live in the dwelling because of restoration, the contract can be terminated by the tenant; otherwise, if habitability is not affected but work lasts more than one sixth of the contract or in any case more than twenty days, a proportionate reduction of rent can be claimed. Outside the cases listed here, the tenant will have to tolerate the restoration.

11. Deposit

According to Italian law, a deposit is a form of guarantee for any kind of breach of contract by the tenant, such as non-payment of rent, damage to the dwelling and so on. It deals with fungible goods, such as money, which therefore become the property of the creditor. The latter is obliged to give back the same amount upon expiration of the contract⁷⁶, except in the case of compensation for unpaid credit towards the debtor. The landlord, at the end of the contract, cannot automatically retain the deposit: he/she shall file a civil proceeding to ascertain the amount due and be authorised to retain it.

Art. 11 Law no. 392/1978 indicates that the deposit cannot exceed three months' rent and that it produces legal interest which should be given to the tenant at the end of each year. Before the abrogation of Art. 79 Law no. 392/1978, case law specified that Art. 11 was

⁷⁴ G. GABRIELLI & F. PADOVINI, 2005, pp. 298 ff.; ANDREA Tabet, "La locazione-conduzione", in *Trattato di Diritto Civile e Commerciale*, ed. by A. Cicu & F. Messineo, vol. XXV, Milano, Giuffrè, 1972, p. 418.

⁷⁵ Art. 1583 – *If during tenancy the thing needs restoration which cannot be delayed until the contract expires, the tenant shall tolerate them even when they imply non-enjoyment of part of the rented thing.*

Art. 1584 – *If restoration work lasts over one sixth of the tenancy duration and, in any case, over twenty days, the tenant has the right to a reduction in the rent, in proportion to the whole duration of the restoration and the entity of their non-enjoyment.*

Notwithstanding their duration, if the execution of the restoration makes part of the dwelling necessary for the landlord's or his family accommodation uninhabitable, the landlord can obtain, according to the circumstances, the discharge of the contract.

⁷⁶ More precisely, the duty to give the deposit back has been specified to only arise when the tenant effectively leaves the dwelling: Trib. Modena, 9 March 2012, <www.iusexplorer.it>.

mandatory. The situation changed with Law no. 431/1998, which saved Art. 11 of the previous statute but abrogated Art. 79, coherently providing a more favourable approach towards parties' autonomy. Currently, the rules regarding the amount and interest of the deposit are generally considered dispositive, at least with regard to "free-market tenancies". In order not to violate Art. 13, subs. 1 and 4 of the 1998 Act, the only limit is that parties decide and indicate the clauses in favour of the landlord at the beginning of the contract and register it⁷⁷. In the case of "assisted tenancies", the model contract of Intermin. Decree 30 December 2012 establishes that payment of interest can be derogated only if the duration of the contract is less than four years (without considering the two-year legal prorogation).

If the dwelling is sold, the deposit follows the property and remains as a guarantee for the new owner⁷⁸; similarly, in the case of assignment of the contract the new landlord is entitled to receive it.

12. Termination for breach

Tenancy contracts can be terminated for expiration of the contract or for withdrawal of one of the parties at the conditions we have already described above⁷⁹.

In addition the contract can be terminated also for breaches of the contract. The most frequent breach is non-regular payment of rents or other additional costs by the tenant. The importance of this issue is due to the special provisions introduced to balance the opposing interests of tenants and landlords.

First, while the Civil Code requires, in general terms, a breach of "not limited importance" with regard to the interest of the other party to waive the contract - Art. 5 of the 1978 Law expressly indicates the necessary delay and amount. The provision states that the contract can be discharged when the tenant fails to pay rent 20 days after the due date. The same consequence applies in the event of delayed payments of other sums due by the tenant when the amount exceeds two months' rent (such as costs for utilities and small repairs in the building: so called "additional costs"). The legislator has thus excluded judicial discretion in evaluating the importance of the breach: this is in part considered as a form of protection for the tenant and, at the same time, as a guarantee for the landlord.

Second, tenancy contracts cannot be discharged for breach without judicial proceedings unlike what is provided by the ordinary contract law rules. According to Art. 658 Civ. Proc. Cod., with the above conditions, the landlord may send the tenant notice to leave, which is

⁷⁷ See A. MAZZEO, 2002, pp. 112 and 118 ff.; G. BERNARDI, 2001, pp. 219 ff.; A. SCARPA, 1999, pp. 155 ff.; V. CUFFARO & S. GIOVE, 1999, p. 60. However, some authors insist that indirect economic advantages for the landlord are also not allowed: F. PETROLATI, 2000, pp. 227 ff.; F. LAZZARO, 1999, p. 118. Surely these rules are still mandatory for non-residential dwellings, which is a difference that has been criticised by G. GABRIELLI & F. PADOVINI, 2005, p. 444. For an application of these principles, see Trib. Modena, 23 July 2004, *I Contratti*, 2004, p. 939.

⁷⁸ Cass., 11 October 2013, no. 23164, *Diritto e Giustizia*, 14 October 2013.

⁷⁹ See Sect. 5 above.

at the same time a writ of summons. Therefore, the tenant is required to appear in court so that the judge can ascertain that the contract is discharged and sentence the tenant to leave the dwelling.

In addition, Art. 55 Law no. 392/1978 grants the tenant the right to avoid termination of the contract: at the first hearing the tenant can offer to pay the sums due, plus interest and legal expenses. In the event of proven difficulty of the tenant to pay, the judge can fix a term of 90 days for this payment. This procedure cannot be used more than three times in four years. If the breach is a consequence of the tenant's economic problems, which began after execution of the contract and are dependent on unemployment, illness or other serious difficulties, the procedure can be used four times and the judge can fix the above indicated term for payment at 120 days. This mandatory rule aims to find a balance between the tenant's interest in avoiding evictions when he/she is able to continue the contract and the landlord's interest in being compensated for the damage incurred for delay in the payment.

The above-mentioned limits and procedure to discharge the contract cannot be derogated in favour of the landlord.

13. Eviction and social measures protecting tenants

We have already said that in case the landlord needs to discharge the contract for breach a judicial procedure is necessary. The same rule applies in the event of termination of the contract when the tenant does not spontaneously leave the dwelling and eviction is necessary.

In particular, Arts. 657 et seq. Civ. Proc. Cod. provide special and non-mandatory rules that can be used for evictions, both in cases of the contract expiring and for default of regular payment. These summary procedures are generally quite rapid and effective, so they are generally preferred to the ordinary procedure for tenancy law disputes. The Code gives the landlord two possibilities: the landlord may send notice to quit at least six months before the expiry date of the contract (together with a summons to appear) so that he/she can immediately start a judicial procedure and obtain an order to quit the dwelling. He/she can then use this decision against the tenant if the latter does not leave the dwelling when the contract expires. Otherwise, the landlord can send notice to quit and summons to appear only after he/she has already given notice according to the rules in the 1998 Act, just in case the tenant does not spontaneously leave the dwelling.

The Italian legislator has always been concerned with the social implications of evictions, and over the decades it has issued a number of different rules or, more generally, policies to prevent such decisions or to mitigate their effects, such as "suspension" or "graduation" of evictions. As these provisions must find a delicate balance between the opposing interests of

tenants and landlords, they have always been debated and in some cases problems of compliance with the Constitution and the ECHR have also arisen.

On one side, according to Art. 56 Law no. 392/1978, the enforcement of decisions granting the landlord the right to evict a tenant can be delayed by the judge for six months (twelve in exceptional cases), with explanations taking into account the situation of the landlord and of the tenant, the reason for eviction and, in cases of termination/expiry of the contract, the time from the notice. Furthermore, in accordance with Art. 6, subs. 4 and 5 Law no. 431/1998, also the tenant can request that the date of the execution fixed by the judge is delayed.

On the other side, Art. 1591 Civ. Cod. states that the tenant shall continue to pay the rent and compensation for further damage until he/she leaves the dwelling. In 1989 the legislator limited the amount of this compensation to 20% of the rent, but in cases of suspension of the eviction, this is automatically granted to the landlord without the need for any specific evidence or claim. The Constitutional Court ruled that the limitation of the indemnity to 20% of the rent can be applied only for the periods of suspension of eviction established by the law or by the judge and not in other cases, such as when eviction is not carried out because the police simply have not intervened⁸⁰. In such cases the landlord can claim a higher damage, giving evidence of it.

After several decisions of the European Court which sentenced Italy for violation of property rights (Art. 1, Prot. 1 ECHR) and unreasonable delay of the judicial procedures (Art. 6 ECHR)⁸¹, suspension of evictions have been progressively limited to most serious cases in accordance with general principles set by Law no. 9/2007. Then since 2015 no other prorogations of this law have been adopted and the government has expressed its intention to deal with the eviction issue through different measures.

Although these legislative and judicial initiatives have greatly limited unreasonable delays in the execution of evictions and introduced some possibilities for landlords for compensation, according to the circumstances times for evictions can still be lengthy and not easily predictable.

⁸⁰ Const. Court, 9 November 2000, no. 482, *Foro Italiano*, 2001, I, p. 417.

⁸¹ In particular we can mention: ECtHR, 28 July 1999, no. 22774, *Corriere Giuridico*, 1999, p. 1347; ECtHR, 29 January 2004, *Sorrentino Prota vs. Italia* (proceedings no. 40465/98); ECtHR, 29 January 2004, *Bellini vs. Italia* (proceedings no. 64258/01); ECtHR, 4 March 2004, *Fossi e Mignolli vs. Italia* (proceedings no. 48171/01); ECtHR, 16 December 2004, *Mascolo vs. Italia* (proceedings no. 68792/01); ECtHR, 21 April 2005, *Lo Tufo vs. Italia* (proceedings no. 64663/01); ECtHR, 28 July 2005, *Stornelli e Sacchi vs. Italia* (proceedings no. 68706/01); ECtHR, 8 December 2005, *Cuccaro Granatelli vs. Italia* (proceedings no. 19830/03); ECtHR, 6 April 2006, *Mazzei vs. Italia* (proceedings no. 69502/01), all available at <www.echr.coe.int>.

14. Conclusions

Rented tenures are still not very attractive in Italy and certainly less attractive than home ownership, even after the adverse economic situation post-2007, especially for banking loans, and its effects on house purchases.

A crucial problem is rent affordability, particularly for young people and families with children. Rents have not decreased as much as the average income in the last few years, although the problem is particularly evident, with some dramatic cases, in the biggest Italian cities, while less apparent in the smaller towns and the countryside. As mentioned, during the last few years there have been improvements in the percentage of “assisted tenancies” executed, due to the increasing focus on fiscal incentives, together with the reduction in rents of “free-market” tenancies. Nevertheless this improvement still represents too limited a contribution to the problem of rent affordability.

Given these circumstances, a multilateral approach combining different measures still seems necessary to properly deal with this problem. In particular, both public and social housing measures and policies to counteract vacancies should be improved by the Italian legislator.

Further aspects critically affect tenancy law from a regulatory perspective and reduce the interest in such a housing solution. These problems require a fair balance between protection and flexibility.

The importance of protection against abusive behaviour of the other party in tenancy law is evident considering the long tradition of provisions protecting tenants, who are regarded as the weak parties in the contract: we have mentioned the rules regarding duration, termination, eviction, the automatic conversion of the contract in the case of a lack of registration or lack of a written form, the “*emptio non tollit locatum*” principle and the succession of new tenants in the contract.

In other aspects, the protection of tenants is still limited, such as the quality of the dwelling, for which only the rules of the 1942 Civil Code apply. No minimum standards of quality or safety are required to rent a dwelling and the landlord only has a responsibility towards the tenant in the case of defects of the dwelling. However, as mentioned, these latter rules are mainly dispositive and so there is always the risk that a tenant in a difficult situation will accept to live in an unhealthy dwelling to save money. Therefore a more careful approach by the legislator would be advisable, as in the French law, where landlords have the duty to provide a dwelling with several mandatory requirements, or in the German law, where the landlord’s responsibility for the dwelling’s defects can be excluded only in the case of strict liability. Obviously it is important that the costs related to the application of similar provisions are not simply transferred from the landlords to the tenants through an increase in rent⁸².

⁸² This requires that the demand is relatively elastic, the supply is relatively inelastic and the market is competitive: see V. CALDERAI, 2012, pp. 395 f.

Another significant element directly connected to the problem of defects is the duty of disclosure during negotiations. Italian law does not provide any specific duty to inform the other party about the characteristics of the dwelling or the parties, so if information is not duly provided, such behaviour can be challenged only according to the general principles of good faith. This issue should be improved considering the evident asymmetry of information between the parties in tenancy contracts, not only on the side of the tenant, with regard to the conditions of the dwelling, but also from the landlord's standpoint, with regard to the reliability of the tenant.

On the other hand, Italian tenancy law does appear to require a higher degree of flexibility.

One aspect of rigidity is the duration of the contracts, which is strictly regulated by the law. So-called "temporary tenancies", with a shorter duration, are possible, but also in the case of the documented necessities of the tenant, they must have a mandatory duration and cannot be renewed. In the case of longer contracts, the tenant has the right to withdraw at any moment for "serious reasons" with six months' notice. However, although courts tend to give a wide interpretation of this clause, it can only be used for events which are unpredictable, supervening to the execution of the contract and not depending on the tenant's responsibility. Consequently, it cannot be used for circumstances that the tenant could have known about from the beginning of the contract. In addition, in the case of opposition by the landlord, a judicial proceeding is necessary, which is another strong deterrent to tenants availing themselves of the clause in cases that are uncertain.

It thus seems preferable that when the tenant is able to give evidence of his/her real and valid necessities, "temporary tenancies" have a duration of less than 6 months or over 18 months and, under the same conditions, can be renewed.

Once the contract has terminated, the times and procedures to evict tenants are also major causes for concern for landlords, and also hinder companies willing to invest in the residential tenancy market in Italy. We have seen how the law has progressively limited and abolished mandatory measures to suspend evictions. At the same time, the proceedings before the ECtHR against Italy regarding these issues and the violation of property rights almost completely stopped. Despite this positive evolution, the problem still exists and mainly concerns the time required to obtain an eviction after the order of the judge, when the tenant does not spontaneously leave the dwelling and the intervention of public force is necessary.

The importance of overcoming these problems of tenancy law is evident because a sufficiently widespread tenancy market is particularly useful in a society in which mobility is an increasing necessity to find suitable job opportunities, particularly for young people. Therefore buying a house is not always possible and is not necessarily a good option.

In this context, although at the European level, tenancy law has been traditionally considered a national issue, the importance and benefits of a comparative perspective are

evident. It could help in finding innovative and efficient solutions to common problems and could be a first step towards harmonization, thus facilitating real freedom of movement.

Bibliography

- "Affitti, quasi un milione sono in nero", *Corriere della Sera*, 2 February 2013, Sect. Economia
- BALDINI, MASSIMO, *La casa degli italiani*, Bologna, Il Mulino, 2010
- BARGELLI, ELENA, "Usi abitativi e interessi tutelati: formazione, forma e contenuto del contratto", in Aa. Vv., *Cessione e uso di beni*, in *Trattato dei contratti*, ed. by V. Roppo & A. M. Benedetti, vol. II, Milano, Giuffrè, 2014, pp. 1024 ff.
- BARGELLI, ELENA, "Locazione abitativa e crisi economica", in *L'esigenza abitativa. Forme di fruizione e tutele giuridiche*, ed by. A. Bucelli, Padova, Cedam, 2013, pp. 267 ff.
- BERNARDI, GIUSEPPE, "Patti contrari alla legge", in *Il nuovo diritto delle locazioni abitative*, ed. by S. Patti, Milano, Giuffrè, 2001, pp. 209 ff.
- BRECCIA, UMBERTO, "La forma", in *La formazione*, ed. by C. Granelli, in *Trattato del Contratto*, directed by V. Roppo, vol. I, Milano, Giuffrè, 2006, pp. 463 ff.
- BRECCIA, UMBERTO, "Gli interessi tutelati", in *Le locazioni urbane: vent'anni di disciplina speciale*, ed. by V. Cuffaro, Torino, Giappichelli, 1999, pp. 15 ff.
- CALDERAI, VALENTINA, "La riforma delle locazioni abitative quindici anni dopo: le ragioni di un fallimento dello Stato post-regolatore e gli scenari futuri", *Rivista di Diritto Civile*, (2012), II, pp. 367 ff.
- CAVALERA, CLAUDIO, "La successione *mortis causa* nel contratto di locazione *ex latere conductoris*", *Immobili & Proprietà* (2012), pp. 376 ff.
- CGIA MESTRE, *Quasi un milione di affitti in nero*, <<http://www.cgiamestre.com/wp-content/uploads/2013/02/affitti-in-nero.pdf>>, 1 February 2013
- CIVITARESE MATTEUCCI, STEFANO, "L'evoluzione della politica della casa in Italia", *Rivista Trimestrale di Diritto Pubblico* (2010), pp. 12 ff.
- CUFFARO, VINCENZO, "Orwell e il contratto di locazione: note a margine dell'art. 1, co. 59, legge 28 dicembre 2015, n. 208", *Il Corriere Giuridico* (2016), pp. 597 ff.
- CUFFARO, VINCENZO, "Aporie della giurisprudenza e pervicacia del legislatore in tema di locazione e obbligo di registrazione", *Giurisprudenza Italiana* (2016), pp. 324 ff.
- CUFFARO, VINCENZO, "Violazione di obblighi tributari e nullità del contratto (di locazione)", *Rivista di Diritto Civile* (2011), pp. 357 ff.

CUFFARO, VINCENZO, "Le invalidità del contratto", in *Le locazioni ad uso di abitazione*, ed. by V. Cuffaro, Torino, Giappichelli, 2000, pp. 193 ff.

CUFFARO, VINCENZO & GIOVE, STEFANO, *La riforma delle locazioni abitative*, Milano, IPSOA, 1999

DI MARZIO, MAURO, in M. Di Marzio & M. Falabella, *La locazione*, vol. I, Torino, UTET Giuridica, 2010

FARACE, DARIO, "Sul "falso" concetto di rinnovazione tacita della locazione", *I Contratti* (2013), pp. 165 ff.

GABRIELLI, GIOVANNI & PADOVINI, FABIO, *La locazione di immobili urbani*, Padova, Cedam, 2005

GENTILI, AURELIO, "L'invalidità del contratto di locazione", in *Le locazioni urbane: vent'anni di disciplina speciale*, ed. by V. Cuffaro, Torino, Giappichelli, 1999, pp. 75 ff.

GRASSI, CRISTINA, "Commento sub Art. 13 Legge no. 431/1998", in *Codice Commentato di Locazione e Condominio - Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, pp. 616 ff.

ISTAT, *Annuario Statistico Italiano 2015*, <<https://www.istat.it/it/files/2015/12/Asi-2015.pdf>>, 29 December 2015, p. 384

ISTAT, *Annuario Statistico Italiano 2014*, <<http://www.istat.it/it/files/2014/11/Asi-2014.pdf>>, 2014, p. 366

IZZO, NUNZIO, "La riforma delle locazioni degli immobili ad uso abitativo (commento alla legge 9 dicembre 1998 n. 431)", *I Contratti* (1999), pp. 165 ff.

IZZO, NUNZIO, "La rilevanza degli adempimenti tributari", *Rassegna delle Locazioni e del Condominio* (1999), pp. 372 ff.

LAZZARO, FORTUNATO, "Limiti di forma e c.d. derogabilità nelle tipologie locative abitative", *Giustizia Civile* (1999), II, pp. 118 ff.

MACCARI, MARIA VIRGINIA, "Commento sub Art. 1 Legge n. 431/1998", in *Codice Commentato di Locazione e Condominio - Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, pp. 547 ff.

MARTONE, CARLO, *La nuova disciplina delle locazioni abitative*, Padova, Cedam, 1999

Mazzeo, Antonio, *Le locazioni nella legislazione speciale*, Milano, Giuffrè, 2002

MINELLI, ANNA R., *La politica per la casa*, Bologna, Il Mulino, 2004

NATALE, ANDREA, "La successione nei rapporti di locazione", in *Trattato di diritto delle successioni e donazioni*, ed. by G. Bonilini, Milano, Giuffrè, 2009, pp. 1045 ff.

NUZZO, MARIO, "La forma del contratto di locazione degli immobili ad uso abitativo", in *Le locazioni urbane: vent'anni di disciplina speciale*, ed. by V. Cuffaro, Torino, Giappichelli, 1999, pp. 151 ff.

PADOVINI, FABIO, "La successione nel contratto", in *Le locazioni urbane: vent'anni di disciplina speciale*, ed. by V. Cuffaro, Torino, UTET, 1999, pp. 115 ff.

PELLEGRINI, LORENZO, "Commento sub Art. 4 Legge no. 392/1978", in *Codice Commentato di Locazione e Condominio - Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, pp. 365 ff.

PETROLATI, FRANCO, "Art. 13. Patti contrari alla legge", in F. Petrolati et al., *Le nuove locazioni abitative*, Milano, IPSOA, 2000

PRINCIPATO, LUIGI, "Il diritto all'abitazione del convivente *more uxorio* e la tutela costituzionale della famiglia, anche fondata sul matrimonio", *Giurisprudenza Costituzionale* (2010), pp. 113 ff.

SARACENO, CHIARA, *Mutamenti della famiglia e politiche sociali in Italia*, Bologna, Il Mulino, 1998

SCARPA, ANTONIO, "Patti contrari alla legge", *Rassegna delle Locazioni e del Condominio* (1999), pp. 155 ff.

Solo Affitti, *6° Rapporto Solo Affitti - Nomisma sul mercato della locazione in Italia - 2014*, <<http://www.slideshare.net/SoloAffitti/vi-46485799>>, 31 March 2015

SRUBEK TOMASSY, CHIARA & VIGORITI, LUIGI G., "Commento sub. Art. 1581", in *Codice Civile Commentato*, vol. II, ed. by G. Alpa & V. Mariconda, Milano, IPSOA, 2013, pp. 1264 ff.

STELLA RICHTER, GIORGIO, "Nullità del contratto per difetto di forma e locazione di fatto degli immobili ad uso abitativo", *Giustizia civile* (1999), pp. 381 ff.

TABET, ANDREA, "La locazione-conduzione", in *Trattato di Diritto Civile e Commerciale*, ed. by A. Cicu & F. Messineo, vol. XXV, Milano, Giuffrè, 1972

TRIFONE, FRANCESCO, "La locazione ad uso di abitazione", in *I contratti di utilizzazione dei beni*, ed. by V. Cuffaro, in *Trattato dei contratti*, Torino, UTET Giuridica, 2008, pp. 142 ff.

TULLIO, ANTONIO, "I diritti successori del coniuge superstite", *Famiglia, Persone e Successioni* (2012), pp. 290 ff.

VALORE, PAOLA, "Commento sub Art. 1578 c.c.", in *Codice Commentato di Locazione e Condominio - Locazione*, ed. by V. Cuffaro & F. Padovini, Torino, UTET Giuridica, 2013, pp. 36 ff.

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