

Understanding a lease termination

The Act No. 116/1990 Coll. on the Lease and Sublease of Non-residential Premises as amended (hereinafter as “Act on lease and sublease”) as lex specialis to general regulation enacted in the Slovak Civil Code stipulates an essential list of forms and grounds based on which leases of non-residential premises can be terminated. In addition to statutory regulations, the parties can agree on other specific conditions with regard to the principle of contractual freedom as described below.

Contracts for definite term/ indefinite term

The statutory reasons for lease termination differ for contracts concluded for a definite term and for an indefinite term:

Options to terminate a lease

Contracts for a definite term

Expiry of the lease term

Notice of termination on grounds stipulated in par. 9 (2) of the Act on lease and sublease assigned to the landlord and par. 9 (3) of the Act on lease and sublease assigned to the tenant

Pursuant to par. 14 of the Act on lease and sublease, unless otherwise agreed between the parties

Mutually agreed reasons as specified in the lease agreement

Agreement and other general termination methods under the Slovak Civil Code

Contracts for an indefinite term

Notice of termination – no reason necessary (alternatively any reason agreed between the parties)

Pursuant to par. 14 of the Act on lease and sublease, unless otherwise agreed between the parties

Mutually agreed reasons as specified in the lease agreement

Agreement and other general termination methods under the Slovak Civil Code

Notice of termination

With reference to the termination grounds stipulated in the Act on lease and sublease, the

parties may terminate the lease agreement with three months notice period, unless otherwise agreed between the parties. The notice period runs from the first day of the month following the month in which the notice was delivered to the other party. As the parties have the right to provide for a notice period different from the one stipulated in the Act on lease and sublease, the practical implementation has brought some questions about the extent of this option, mostly related to the minimum length of the notice period. In this respect the Slovak courts even acknowledged that the notice period specified by the word “immediately” is valid and in compliance with the Slovak law. Although it is questionable if the immediate character of the termination following the notice of termination shall not be considered as withdrawal, it is, generally speaking, acknowledged to include either the shorter or the longer notice period into the contract.

Diverting from the statutory regulation

Another disputed issue arises in respect to the character of the list of enumerated termination grounds as provided by the Act on lease and sublease. The prevailing opinion underlies the fact that the regulation with regard to grounds related to the

option of terminating the contract for definite period by notice is mandatory, i.e. the exclusion of the statutory regulation shall be deemed invalid. This leads us to the question whether the contractual parties are entitled to agree on additional termination grounds except those provided by the Act on lease and sublease. In respect to this question, the expert legal opinions differ. One of the opinions suggests that it is not possible to even extend the statutory grounds; the other opinion implies that the parties may agree on additional termination grounds. Nevertheless, it is mostly accepted that the parties may agree on another termination mechanism aside from the mandatory mechanism which in reality means that the parties agree on the right to withdraw from the lease agreement and at the same time agree on the specific grounds for such action.

Reinstatement in case of destroyed or damaged premises

While trying to foresee any risk potentially arising during the lease term, landlords tend to incorporate a mechanism limiting the tenant's options to terminate the lease agreement in the case that the leased premises are destroyed or damaged (e.g. by fire, smoke, storm, lightning,

explosion, riot, third party malicious damage, flood, explosion or overflowing of water tanks, earthquake, and such other risks) and very frequently propose a certain period (i) during which the premises shall be reinstated and (ii) the termination reason pursuant par. 14 of the Act on lease and sublease, which stipulates that the lease agreement ceases to exist in case of destruction of the leased premises, shall not be invoked. Although par. 14 of the Act on lease and sublease grants the parties the option to agree differently, par. 9 (3) limb (b) of the Act on lease and sublease cannot be omitted. This provision stipulates that the tenant is also entitled to terminate the lease agreement by written notice if the non-residential premises have become unsuitable for the agreed use, with no fault of the tenant. Since this provision is mandatory, it is questionable if it is possible to exclude the application of this termination option by incorporating the restriction described above. Nevertheless, this mechanism is commonly used in lease agreements and with respect to par. 14 of the Act on lease and sublease represents legitimate and valid contractual arrangements, although the risk that the tenant will invoke his right to terminate the agreement cannot be overlooked.

Conclusion

As described above, the Act on lease and sublease implies many outstanding questions related to lease termination that might have serious consequences on the particular lease. However, precisely and correctly drafted lease agreement may significantly reduce any risks arising thereof.



*Mgr. Lucia Plaváková
Junior Associate
Ružička Csekes s.r.o.*