FROM THE IUSTORIA BLOG

Double Rent: Who Pays When a New Tenant Has Already Moved In

> *A tenant returned the keys before the notice period ended, the landlord re-let the flat at once and kept the last month's rent from the deposit. What the Constitutional Court said in April 2026.*

IUSTORIA TEAM

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A tenant gives notice, finds a new place to live and hands the flat back a few days before the notice period ends. The landlord does not want the flat standing empty, so lets it to a new tenant straight away. When returning the deposit, the landlord then deducts the rent for the last month: after all, the tenancy was still running. Yet the new tenant has already paid for that same month.

We see disputes like this regularly at the firm, and both sides tend to be convinced they are right. In April this year, in its judgment (*nález*) of 15 April 2026, file no. II. ÚS 98/26, the Constitutional Court explained how they should be resolved. According to the Court, the courts may not reject double rent merely by pointing to good morals. The tenant can defend against it, but has to reach for the specific remedy the law provides.

The judgment has practical consequences both for a tenant who moves out early and for a landlord who wants to re-let the flat without a gap. The dispute also shows how much weight the handover report carries when the deposit is returned.

What the dispute was about

The tenancy agreement for the flat was concluded for a fixed term from 1 October 2020 to 30 September 2021 and, according to the court of appeal, allowed the tenancy to be terminated by written notice. On 30 April 2021 the tenant sent notice via WhatsApp, but only to one of the two landlords, and by post to both on the same day; the letter arrived in May. In the notice she stated that, as agreed by phone, the tenancy would end on 31 July 2021. She handed over the flat on 23 July 2021 with a handover report and returned the last keys on 27 July 2021.

The landlords let the flat almost immediately to a new tenant, who paid them rent for August. Out of the CZK 66,950 security deposit (*jistota*), they then returned only CZK 4,542.60 to the tenant. They set off the rest: arrears in service charges (which the tenant acknowledged), CZK 29,500 in rent for August and CZK 30,475 for repairing the fitted kitchen. The tenant sued for CZK 58,511.80.

The courts concluded that the tenancy was still running in August, so the rent for August was formally due to the landlords. Even so, they did not award it. In their view, demanding rent from a tenant who could not use the flat, because a new tenant was living there and paying for it, was contrary to good morals. They found the scratch on the kitchen worktop to be normal wear and tear. The landlords therefore had to repay the entire disputed amount with default interest. The Supreme Court rejected their appeal on a point of law (*dovolání*) by order of 4 November 2025, file no. 26 Cdo 1800/2025.

What the Constitutional Court said

The Constitutional Court agreed with the landlords on one point: in its view, the courts had decided arbitrarily. They used the principle of good morals and the prohibition of abuse of rights (Section 8 of the Czech Civil Code) as a "shortcut", and so avoided a genuine assessment of the case (paragraphs 3 and 30). Yet the Civil Code expressly provides for this situation in Section 2208(1).

The judgment reaches four key conclusions:

- **Double letting is valid.** The Constitutional Court did not question the courts' starting point that letting a flat twice does not affect the validity of either tenancy agreement (paragraph 2). As early as its judgment of 13 September 2019, file no. II. ÚS 4235/18, it had said that a second tenancy agreement cannot be treated as invalid merely because the property had already been let (paragraph 42), and that collecting double rent is not prohibited by law (paragraph 39).
- **Double rent is not immoral in itself.** According to the Court, double letting "does not in itself release either tenant from the obligation to pay rent, nor, therefore, deprive the landlord of the right to double rent" (paragraph 32).
- **The tenant's defence lies in Section 2208.** If only one of the tenants uses the flat and the other is thereby prevented from using it, "the second tenant may claim a waiver of rent (or may terminate the tenancy without a notice period)" (paragraph 33).
- **Rights belong to the vigilant.** The Constitutional Court expressly recalled the principle that "the law is written for the vigilant" (paragraph 35). A waiver of rent (*prominutí nájemného*) therefore does not happen by itself; the tenant has to ask for it.

So why did the landlords lose anyway? In the proceedings, the tenant argued that she did not have to pay for August because the new tenant was using the flat and paying for it. The Constitutional Court read this as meaning that "in the light of Section 2208 of the Civil Code, the only reasonable interpretation is that she wanted the rent waived" (paragraph 42). The courts thus made two mistakes, but the outcome stood (paragraph 46). The Constitutional Court therefore merely declared that a right had been violated and did not set aside the contested decisions, because new proceedings would have brought the landlords nothing (paragraphs 47 and 48).

One question the Court expressly did not decide: whether the tenancy really continued in August. It took as its basis what the ordinary courts had concluded (paragraph 42).

Tenants moving out early: what the judgment means

Handing back the keys does not end the tenancy. Notice terminating the tenancy of a flat must be in writing and must reach the other party. The notice period runs from the first day of the month after the notice is received (Section 2286(1) of the Civil Code). With a three-month notice period, this means that if the notice arrives on 30 April, the tenancy ends on 31 July; if it arrives on 2 May, it ends only on 31 August. The day the notice was sent does not matter. In the dispute described here, the courts proceeded on the basis that the tenancy continued into August, even though the WhatsApp message had reached one of the landlords on 30 April. So sign the notice, send it to all the landlords (for example both spouses or all the co-owners) and send it so that it arrives well before the end of the month. How to write and deliver the notice is explained in our guide to giving notice on a flat (in Czech). A tenant may terminate a fixed-term tenancy by notice only if circumstances change substantially (Section 2287), unless the agreement allows notice.

If you want to leave early without paying, make an agreement. The phone arrangement on ending the tenancy, which the tenant mentioned in her notice, did not carry the day in this dispute: the courts proceeded on the basis that the tenancy continued into August. The safe route is a written agreement ending the tenancy on the day the flat is handed over, signed by both the tenant and the landlord. The same document should also say what happens to the deposit.

If the landlord has re-let the flat, ask for the rent to be waived. In this case the tenant succeeded only because the court read her defence as a request for a waiver. We do not recommend relying on that. Write to the landlord that, from the date the new tenant has been using the flat, you are claiming a waiver of rent under Section 2208(1) of the Civil Code because the landlord has made it impossible for you to use it. The time limit is six months from the day you discovered or could have discovered the obstacle. If you assert the right later and the landlord objects, the court will not grant it (Section 2208(3)). If you find out while the tenancy is still running, you can also terminate the tenancy without a notice period in the same letter (Section 2208(1)); the tenancy then ends, and there is no dispute over any further months. The six-month time limit applies to the notice as well.

The end of the tenancy is determined neither by the day the keys are handed over nor by the day the notice was sent, but by the day the notice reached the other party; if there are several landlords, send it to each of them. A notice that arrives one day later, at the turn of the month, extends the tenancy by a whole month (Section 2286(1) of the Civil Code).

Landlords who want to re-let the flat straight away

The Constitutional Court confirmed to landlords that a second tenancy agreement is valid even while the first tenancy is still running, and that asking for double rent is not immoral in itself. But a valid agreement does not mean the landlord is not in breach of anything: throughout the tenancy, the landlord must ensure the first tenant's undisturbed use of the flat (Section 2205(c) of the Civil Code). That is why, as a rule, the landlord will not get to keep rent from both tenants. A landlord who prevents the first tenant from using the flat must expect the tenant to claim a waiver of rent, and will then receive nothing from that tenant for the period. The Court did allow that there may be cases in which double rent stands (paragraph 34). For a flat that only one of the tenants can live in at any one time, however, we do not recommend counting on it.

The second risk is the security deposit. When the tenancy ends, the landlord returns it and sets off only what the tenant owes under the tenancy (Section 2254(2) of the Civil Code). A landlord who deducts more owes the difference with default interest and, if it comes to a dispute, the costs of the proceedings as well. In the case described here, the amount at stake was just under CZK 60,000, yet the dispute lasted more than four years and went through four courts.

Moving out before the notice period ends? Sign an agreement with the landlord ending the tenancy on the day you hand over the flat, and in the same document agree on the return of the deposit.
Did the landlord re-let the flat while your tenancy was still running? Within six months, notify the landlord in writing that you are claiming a waiver of rent under Section 2208(1) of the Civil Code.

As a landlord, do not deduct from the deposit the rent for a month in which a new tenant was already living in the flat and paying for it. Instead, end the old tenancy by agreement before you sign the new one.

A scratch on the kitchen worktop: normal wear and tear

The landlords did not succeed with the second amount either, the CZK 30,475 for the fitted kitchen. An expert did not examine the worktop until December 2023, more than two years after the flat was handed over, and found several cut marks about 1 mm deep. The worktop could not be repaired, only replaced, but it could still be used, and the manufacturer's own materials anticipate scratching. The handover report recorded only one scratch, and the landlords proved nothing more. The courts therefore concluded that this was normal wear and tear, for which the tenant is not liable (Section 2293(1) of the Civil Code).

The Supreme Court added that deciding what still counts as normal wear and tear is a matter for the court's judgement in the circumstances of the case, and that it will interfere with that judgement on an appeal on a point of law only if it is manifestly unreasonable (order 26 Cdo 1800/2025, paragraphs 10 and 11). The Constitutional Court rejected the complaint on this point as manifestly unfounded (paragraph 26). No general rule that “a cosmetic defect is always wear and tear” follows from this. What does follow is how much weight the handover report carries. Whatever is not recorded in it is hard to prove later. How to draw up the report is explained in our guide to the handover report for a flat (in Czech).

At a glance

Question	Answer	Provision
Does handing back the keys before the notice period ends terminate the tenancy?	No, the tenancy lasts until the end of the notice period, unless the parties agree otherwise.	Section 2286(1) of the Civil Code
Is a second tenancy agreement for the same property valid?	Yes, the agreement is not invalid merely because the property had already been let.	II. ÚS 4235/18, paragraph 42; II. ÚS 98/26, paragraph 2
Is double rent in itself contrary to good morals?	No, the situation is governed by a specific provision on tenancy.	Sections 8 and 2208 of the Civil Code; II. ÚS 98/26, paragraphs 32 and 35
What can a tenant do if the landlord has made it impossible to use the flat?	Ask for the rent to be waived, or terminate the tenancy without a notice period.	Section 2208(1) of the Civil Code
By when must the tenant claim the waiver?	Within six months of discovering the obstacle; otherwise the court will not grant it if the landlord objects.	Section 2208(3) of the Civil Code
What may the landlord set off against the security deposit?	Only what the tenant actually owes under the tenancy.	Section 2254(2) of the Civil Code
Does the tenant pay for normal wear and tear of the flat?	No, the tenant returns the flat in the condition in which they took it over, allowing for normal wear and tear.	Section 2293(1) of the Civil Code

Has your landlord not returned your deposit, or are you a landlord dealing with a tenant who left early? Send us the tenancy agreement, the notice, the handover report and the correspondence. We will work out when the tenancy ended and what each side may set off, and prepare a letter to the other party or a claim. We handle residential tenancies as part of our real estate law practice. Get in touch.

Conclusion

The judgment in II. ÚS 98/26 does not change much about how disputes over double rent end. It does change how the court gets there: the court is to decide not by what is “decent”, but under Section 2208 of the Civil Code. A tenant who moves out early should therefore not rely on the court rejecting double rent of its own accord. The tenant has to ask for the waiver in time and expressly.

The cheapest solution is the same for both sides: a short written agreement ending the tenancy on the day the flat is handed over. It saves a dispute that would otherwise drag on for years over a single month's rent.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 8, 2205, 2208, 2254, 2286, 2287 and 2293 (as in force from 1 January 2026).
- Constitutional Court judgment of 15 April 2026, file no. II. ÚS 98/26.
- Constitutional Court judgment of 13 September 2019, file no. II. ÚS 4235/18.
- Supreme Court order of 4 November 2025, file no. 26 Cdo 1800/2025.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; for any particular tenancy, what decides is the wording of the tenancy agreement, the day the notice was delivered and what the parties confirmed in writing when the flat was handed over.

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