FROM THE IUSTORIA BLOG

“The Tenant Isn't Paying, So I'll Change the Locks.” What a Landlord Is Actually Allowed to Do

> *Changing the lock, cutting off the electricity or putting the tenant's things out in the hallway can make a landlord an offender. What to do instead: notice, retention, security deposit, eviction.*

IUSTORIA TEAM

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The tenant is behind on a third month's rent, does not answer the phone and ignores letters. The landlord, who pays off a mortgage from the rent, has a simple plan: turn up on Saturday with a locksmith, change the lock cylinder, carry the tenant's things down to the cellar, and hand over a new key once the tenant pays. It is the landlord's flat, after all.

At the firm we hear this plan about flats, and just as often about offices, workshops and shops. We understand it, but we always advise against it. Changing the lock turns a creditor who is in the right into someone who has disturbed the tenant's possession, against whom the court must rule within fifteen days, and at worst into a defendant in a criminal case. And the debt still goes unpaid.

So it is worth knowing where an owner's rights end and a criminal offence begins, and what a landlord may do instead: give notice, retain the tenant's belongings, set the debt off against the security deposit (*jistota*) and sue for eviction. On key points, the rules differ between flats and premises used for business (*prostor sloužící podnikání*).

Why changing the lock does not work, even when you are in the right

The Czech Civil Code allows self-help (*svépomoc*), but only narrowly. A person whose right is threatened may take matters into their own hands only if it is clear that intervention by the public authorities would come too late, and even then only in a proportionate way (Section 14(1) of the Civil Code). In our view, these conditions are not usually met where rent is owed. The debt can be recovered and the eviction enforced through the courts. That this takes longer than the landlord would like does not mean the court would come too late.

Moreover, the tenant is in possession of the flat. No one may arbitrarily disturb possession, and a possessor whose possession is disturbed may demand that the person disturbing it stop doing so and restore the previous state of affairs (Section 1003). The possessory action (*žaloba z rušené držby*) must be brought within six weeks of the day the possessor learned of their right and of who is disturbing it, and at the latest within one year (Section 1008(1)). The law requires the court to decide within 15 days of the start of the proceedings (Section 177(1) of the Czech Code of Civil Procedure). The court examines only the last possession and its arbitrary disturbance (Section 178). The argument “they owe me three months' rent” plays no role in these proceedings. A co-owner whose fellow co-owner has changed the lock defends themselves with the same action; it is described in detail in our guide for co-owners who have been locked out (in Czech).

Do not rely on a clause in the agreement saying that the landlord may lock up the premises if the tenant falls into arrears, or that the tenancy “ends” upon default. In the tenancy of a flat, provisions that curtail the tenant's rights under the special rules on residential tenancy are disregarded (Section 2235(1)), and in one of the criminal cases described below the Supreme Court remarked that a contractual “end of the tenancy” upon default would probably be invalid.

The same goes for cutting off water, electricity or heating. Throughout the tenancy, the landlord must ensure the tenant's undisturbed use of the property (Section 2205(c)) and, in the case of a flat, keep both the flat and the building fit for use (Section 2257(1)). By disconnecting utilities, the landlord breaches their own obligations and hands the tenant an extra argument in the dispute.

When a landlord becomes an offender

The Czech Criminal Code protects tenants through two provisions. Anyone who unlawfully prevents an entitled person from using a house, flat or non-residential premises faces up to two years' imprisonment (Section 208(2) of the Criminal Code). The same penalty applies to unlawful entry into another person's dwelling (Section 178(1)); a flat in which a tenant lives is also a dwelling (Section 133).

The Supreme Court has dealt with this in two criminal cases. The order of 15 February 2012, file no. 7 Tdo 115/2012, concerned the managing director of a landlord company who had the door to a room let to a tenant secured with a bar and a lock. According to the Supreme Court, non-payment of rent does not entitle a landlord to prevent the tenant from using non-residential premises, for example by locking the door, while the tenancy lasts. A landlord who does so anyway fulfils the elements of the offence under Section 208(2).

The second case is harsher. The landlady of a house in which the tenant lived and ran a tailoring workshop let herself into both the flat and the workshop with her own key, turned the tenant out with only her personal belongings, changed the lock, had the tenant's things taken to a garage and sold the house. In her defence, she argued that she had merely been retaining the belongings because of unpaid rent. The courts found her guilty of theft and of trespass on a dwelling (*porušování domovní svobody*) and gave her a 20-month suspended prison sentence. In its order of 30 May 2018, file no. 5 Tdo 444/2018, the Supreme Court rejected her appeal on a point of law (*dovolání*). It stated that not even the right of retention (*zadržovací právo*) entitles a landlord to enter the let premises, expel the tenant from them and remove belongings from them, however far the tenant may be in arrears, and not even if the tenancy has ended (paragraph 30).

The end of the tenancy does not change this prohibition. Even after the notice period has expired, a landlord may not enter a flat in which the former tenant still lives, nor move the tenant's belongings out of it. The flat comes back to the landlord only from the tenant, whether the tenant hands over the keys or clearly abandons the flat, or through a court or a court bailiff (*soudní exekutor*) acting on an eviction order.

Notice on a flat: the fast route goes through a demand to remedy

The fastest lawful route is termination without a notice period. The landlord may give such notice if the tenant breaches their obligations in a particularly serious way, and the first example the law gives is failure to pay rent and service charges for at least three months. The tenant must then hand over the flat without undue delay, and no later than one month after the tenancy ends (Section 2291(1) and (2)).

These notices most often fail on two conditions. In the notice, the landlord must state what the particularly serious breach consists of, and before the notice is delivered the landlord must call on the tenant to remedy the breach within a reasonable time, in other words to pay the debt. Without this, the notice is disregarded (Section 2291(3)). The safe course is to send this demand only once the arrears have reached three months, and to give notice only after the deadline set in it has passed without payment. The notice must be in writing and must inform the tenant of the right to raise objections and to apply to the court for a review of the notice; otherwise it is invalid (Section 2286).

If the amount owed is disputed and the tenant deposits the amount owed or disputed with a notary (*notářská úschova*) and informs the landlord, notice cannot be given for non-payment (Section 2253(1)). In the demand, therefore, break the debt down by month and by item.

If the tenant owes less than three months' rent but repeatedly pays late, notice with a three-month notice period for a gross breach of obligations may be an option (Section 2288(1)(a)). Our template notice, including the demand to remedy, is available in Czech. The notice period, the tenant's time limit for applying to the court and the tenant's defences are described in our guide to notice from a landlord (in Czech).

Offices, workshops, shops: different time limits, the same prohibition

The tenancy of premises used for business has its own rules (Sections 2302 et seq. of the Civil Code), and in some respects they are more favourable to the landlord. A fixed-term tenancy may be terminated by notice even before the agreed term expires if the tenant is in gross breach of their obligations, in particular if they are more than one month in arrears with rent or service charges (Section 2309(b)). The notice must state the reason, otherwise it is invalid, and the notice period is three months (Section 2310). A tenancy for an indefinite term may be terminated with six months' notice, or with three months' notice if a party has a serious reason (Section 2312).

The tenant can defend themselves by raising objections, but only within one month of receiving the notice; if they do not raise them in time, the right to ask the court for a review lapses (Section 2314). If the tenant vacates the premises in accordance with the notice, the notice is deemed valid and accepted without objections (Section 2313). In the case of a particularly serious breach that causes the other party considerable harm, the law allows termination without a notice period for any tenancy (Section 2232).

The ban on self-help applies just as it does to flats; case 7 Tdo 115/2012 in fact concerned a non-residential room. Business premises where nobody lives are not a dwelling, so trespass on a dwelling is out of the question. Preventing the use of non-residential premises (Section 208(2) of the Criminal Code) and taking away someone else's belongings, however, very much remain on the table.

Retaining belongings and the security deposit: what the landlord has to work with

The law gives the landlord a right of retention: to secure a claim against the tenant, the landlord may retain movable items that the tenant has on or in the let property (Section 2234). In practice, it is narrower than it sounds. A person who holds someone else's property wrongfully, in particular having seized it by force or by deception, may not retain it (Section 1396(1)). So the landlord may not enter the let premises for this purpose or take belongings out of them, even if the tenancy has already ended (5 Tdo 444/2018, paragraph 30). In practice, then, the right of retention mainly comes into play when the tenant is carrying items out or moving out and the landlord takes them over without entering the premises. The debtor must be informed of the retention and the reason for it, which we recommend doing in writing, and the retained item must be looked after with due care (Section 1397).

A security deposit is more reliable protection. For a flat, the deposit together with any contractual penalty may not exceed three times the monthly rent, and when the tenancy ends the landlord sets off against it whatever the tenant owes under the tenancy (Section 2254). How to settle the deposit is explained in our housing and tenancy guide (in Czech). For premises used for business, the law does not cap the deposit, and how it may be used is governed by the agreement. We recommend expressly agreeing that the landlord may use the deposit to cover unpaid rent while the tenancy is still running, and that the tenant must then top it up.

The tenancy has ended and the tenant will not leave

The tenant must hand over the flat on the day the tenancy ends. The flat counts as handed over when the landlord receives the keys and nothing prevents the landlord from accessing it (Section 2292). Until then, the landlord is entitled to compensation equal to the agreed rent (Section 2295). So the debt keeps growing, but as a claim that can be taken to court.

Watch the time limit for fixed-term tenancies. If the tenancy ended because the agreed term expired and the tenant goes on using the flat for at least three more months without the landlord calling on them in writing during that time to leave, the tenancy is deemed renewed for the same term, but for no more than two years (Section 2285). A fixed-term tenancy of premises used for business is renewed in the same way (Section 2311). If the tenancy ended by notice, it is not renewed even without such a demand (Supreme Court judgment of 12 December 2016, file no. 26 Cdo 4354/2016). We nevertheless recommend sending a written demand to leave the flat as soon as the tenancy ends; it heads off any dispute over how and when the tenancy ended.

Next comes the action for eviction, which can be combined with a claim for unpaid rent and compensation for use. Unpaid rent on its own can also be claimed by applying for a payment order (*platební rozkaz*); the difference in court fees is explained in our guide to payment orders (in Czech). The judgment is enforced by eviction, either through court enforcement or through enforcement by a court bailiff (Section 59(2)(a) of the Czech Enforcement Code). The court notifies the person being evicted at least 15 days in advance of when the eviction will take place (Section 340(2) of the Code of Civil Procedure); their belongings are removed from the flat and handed to them, and if that is not possible, they are inventoried and placed in storage at their expense (Section 341).

The exception is a tenant who has disappeared. If the tenant leaves the flat in such a way that the tenancy can be regarded as ended beyond any doubt, the flat is deemed handed over immediately (Section 2292). The landlord looks after items that apparently belong to the tenant at the tenant's expense; if the tenant does not collect them without undue delay, the landlord may, after prior warning and an additional reasonable period, sell them in a suitable manner (Section 2296(1)). The “beyond any doubt” test is a strict one, however. Before you enter the flat, document that it has been abandoned: keys returned or dropped in the letterbox, emptied wardrobes, uncollected post, reports from neighbours. And take a witness with you.

Is the tenant behind on rent? Send a written reminder straight away. Planning to terminate the tenancy of a flat without a notice period? As soon as the arrears reach three months, send a demand to remedy with a reasonable deadline, and give notice only after that deadline has passed without payment. Keep proof of delivery.

Do not touch the locks, keys or utilities until the tenant has handed the flat back to you. If the tenant will not leave, the flat is cleared by a court or a court bailiff on the basis of a judgment, not by you. Unpaid rent is no excuse, not even after the tenancy has ended.

Has the tenancy of a flat ended but the tenant is staying put? Send a written demand to leave straight away (for a fixed-term tenancy that ended because its term expired, within three months at the latest, otherwise the tenancy is renewed), and bring an action for eviction together with a claim for unpaid rent and compensation for use.

At a glance

Question	Answer	Provision
May a landlord change the lock if the tenant owes rent?	No; while the tenancy lasts, it may be a criminal offence	Section 208(2) of the Criminal Code; 7 Tdo 115/2012
May the landlord enter the flat and move belongings out after the tenancy ends?	No; the flat is returned by the tenant, or by a court or a court bailiff	Section 178 of the Criminal Code; 5 Tdo 444/2018, paragraph 30
How can a tenant whose lock was changed defend themselves?	With a possessory action within six weeks; the court must decide within 15 days	Sections 1003 and 1008 of the Civil Code; Section 177 of the Code of Civil Procedure
Terminating the tenancy of a flat without a notice period	Arrears of at least three months, a prior demand to remedy, a description of the breach	Section 2291 of the Civil Code
Notice on a fixed-term tenancy of non-residential premises	Arrears of more than one month, the reason stated, a three-month notice period	Sections 2309(b) and 2310 of the Civil Code
Retaining the tenant's belongings	Only items the landlord holds lawfully, without entering the premises	Sections 2234, 1395 and 1396 of the Civil Code; 5 Tdo 444/2018
Security deposit for a flat	No more than three times the rent; set off when the tenancy ends	Section 2254 of the Civil Code
A fixed-term tenancy has expired and the tenant stays	A written demand within three months, otherwise the tenancy is renewed; no renewal after notice	Sections 2285 and 2311 of the Civil Code; 26 Cdo 4354/2016

Is your tenant not paying, and do you want to end the tenancy properly? Send us the tenancy agreement, a record of payments and the correspondence so far. We will prepare a demand for payment, the notice and, if the tenant does not leave, an action for eviction. We handle tenancies as part of our real estate law practice. Get in touch.

Conclusion

Changing the lock or cutting off utilities moves the dispute to a place where the debt is not dealt with: the court examines only who shut whom out of using the property. A demand, notice and a lawsuit take longer, but they lead to a vacated flat and to an enforceable title on which the debt can be recovered.

The landlord who saves the most time is the one who speaks up right after the first unpaid month, keeps an eye on the time limits and does not wait once the tenancy has ended.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 14, 1003, 1008, 1395 to 1397, 2205, 2232, 2234, 2235, 2253, 2254, 2257, 2285, 2286, 2288, 2291, 2292, 2295, 2296, 2302 and 2309 to 2314.
- Act No. 40/2009 Coll., the Criminal Code, Sections 133, 178, 205 and 208.
- Act No. 99/1963 Coll., the Code of Civil Procedure, Sections 177, 178, 340 and 341.
- Act No. 120/2001 Coll., the Enforcement Code, Section 59.
- Supreme Court order of 15 February 2012, file no. 7 Tdo 115/2012.
- Supreme Court judgment of 12 December 2016, file no. 26 Cdo 4354/2016.
- Supreme Court order of 30 May 2018, file no. 5 Tdo 444/2018.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; whether a notice will stand and what can be done with the tenant's belongings depends on the wording of the tenancy agreement, on the delivery of the demands and on whether the property is a flat or premises used for business.

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