GOVERNMENT SHUTDOWN INFORMATION & GERMAN HOUSING RENTAL AGREEMENTS

07 October 2025

A. GERMAN LANDLORD-TENANT LAW – FAILURE TO PAY RENT

(1) Extraordinary Termination (effective immediately) (§ 543 BGB)

Based on § 543 para. 2 No. 3 BGB. (Bürgerliches Gesetzbuch, German Civil Code) a landlord may terminate the lease for cause without notice for a compelling reason. A compelling reason is given if the tenant fails to pay the rent or a substantial amount of the rent (usually amounting to one-month's rent PLUS 1 cent) for a consecutive period of two months or the arrears amount to a sum equal to two months' rent (§ 569 para. 3 No. 1 BGB) (see also, Judgment of July 23, 2008, BGH, XII ZR 134/06; BGH BeckRS 2008, 20020; NJW-Spezial 2022, 129 referring to Judgment of December 8, 2021, BGH, VIII ZR 32/20; BGH BeckRS 2021, 41684).

Example:
(a) Tenant does not pay his rent on Nov. 1. Landlord cannot terminate IAW § 574 para. 2 No. 3 BGB b/c it requires one month of rent plus 1 cent. Only if Tenant continues to be delinquent on his rent payment and he does not pay the November rent and does not pay the December rent in full, the landlord may terminate.

(b) Tenant pays ½ of his rent for Nov. 1. Again, Landlord cannot terminate IAW § 574 para. 2 No. 3 BGB b/c it requires one month of rent plus 1 cent. If Tenant pays ¾ rent on Dec 1, he still will not be in default with an amount equal to 1-month rent (1 ¼ months paid, only 3/4 of one month missing).

If Tenant goes down that path, he is probably going to owe in arrears an amount equal to 1-month rent in January. At that point Landlord can terminate based on § 574 para. 2 No. 3 BGB.

(2) Ordinary Termination (for Cause) (§ 573 BGB)

Based on § 573 para. 2 No. 1 BGB (Bürgerliches Gesetzbuch, German Civil Code) a landlord may terminate the lease if the tenant's rent arrears amount to more than one gross rent payment.

According to the law, landlord has a legitimate interest in terminating the lease if the tenant violates his obligations under the lease to a significant extent by failing to pay his rent. A prior warning notice is not required.

(3) An extraordinary termination can become invalid (but an ordinary termination cannot).

The landlord may provide an extraordinary termination notice (§ 542, § 569 BGB) and an ordinary termination notice (§ 573 BGB) at the same time and for the same reason, if the requirements are met. Yet, the landlord's extraordinary termination notice becomes invalid if the tenant actually pays the rent due within the first two months following the filing of a lawsuit for eviction against him. Regrettably, an ordinary termination notice will stay in effect even if the rent arrears are paid. Such a termination will stay in effect and require the tenant to move out in three months.

(3) Rental Security Deposit

The landlord may(!) use the rental security deposit if the tenant defaults on his rent ((Judgment of May 7, 2014, BGH, VIII ZR 234/13; BGH BeckRS 2014, 11616 = BGH NJW 2014, 2496). Thereafter, the tenant has to settle the rental security account, again.

B. RECOMMENDATIONS:

- It is advisable to pay at least part of the rent.

- The landlord may be amenable to any late payment if approached and the situation gets explained, *i.e.,* the default is due to the government shutdown and the Government Employee Fair Treatment Act of 2019 mandates that military personnel and other federal employees will receive retroactive backpay once a shutdown concludes.

- If the landlord depends on the rental income to pay off his debts/mortgage, he may use the rental security deposit (which will need to be repaid by the tenant).

C. BOTTOM LINE:

Unless there have already been prior furlough unrelated financial problems, no landlord will be able to terminate a lease if the November rent is not paid in part or full. Nevertheless, the tenants are advised to inform the landlord up front if they cannot pay the rent in November.

Note, some landlords may not even know the governing German rental laws and send an invalid termination notice. The tenants should neither be tricked or scared by such action but contact their legal assistance office.

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