

The landlord doesn't need **any reason for termination** if the flat is located in the house inhabited by the landlord and there are only 2 flats. The same applies if the rented rooms are in the flat inhabited by the landlord. If the rooms are furnished, a termination notice is valid until the 15th of a month for the respective end of the month.

The termination notice can be opposed if it would signify a disproportionate hardship for the tenant (**social clause**). In this case, you should absolutely take legal advice. Contract terminations should always be checked for formal errors.



Temporary rental contracts are admissible in full in favor of the tenant. They are only allowed in favor of the landlord if a reason for the time limitation is already specified in the rental contract (this reason must correspond to a reason for termination). Temporary rental contracts are valid under the said preconditions for the agreed period and **cannot be terminated without a good cause**, e.g., change of study location, termination of studies etc., but also marriage (possibly also non-marital partnership) and pregnancy if for these reasons the living space is not sufficient. The tenant also needs to find a new tenant. Having found a **cheaper room** is unfortunately **not a good cause!** A waiver of termination can be specified in the contract, but it is only valid if it is limited to 4-years period. 🙌

E. Restitution of the living space

When the rental agreement has been successfully ended, the rooms or the flat must be completely cleared (possibly the cellar and the garage too) and all keys (also self-made copies) must be restituted. If nothing is specified in the contract, the flat must not only be cleaned but also renovated. The majority of rental contracts obligate the tenant to **cosmetic repairs** 🙌. They only include: painting and wallpapering ceilings and walls, painting the floors (hardly relevant nowadays), radiators, heating pipes, inner doors, as well as windows and outside doors from the inside. Real reparations don't belong to the cosmetic repairs (maintenance obligation for the landlord!), though damages caused by the tenant must be repaired.

Important: pre-formulated clauses on cosmetic repairs, especially those in older contracts, are not valid according to the case law of the German Federal Court of Justice (Bundesgerichtshof). In case of a contract termination, a competent examination of the original agreements is recommended.

Tip: let the landlord confirm the proper return of the flat, e.g., through an **acceptance record**, in order to avoid unpleasant surprises later. Furthermore: bring at least one witness with you while returning the flat, and possibly take some picture with him/her before the restitution!

If you don't move out in time, you will need to pay a compensation for use (equal to the current rent, or higher). If you have terminated the contract, you might need to pay the damages, for example if the next tenant is not able to move in in time.

F. Diverging provisions for student residences

On the whole, the general law of tenure is also valid for **student residences**, but there are some peculiarities:

Deposit: it is not necessary to pay interests on the deposit. However, Studierendenwerke pay interests on them internally and the interests are credited as income for the student residences. This allows a rent reduction.

Rent: rents are calculated following the II. Calculation Regulation (Berechnungsverordnung). Rent increases in case of increased costs are possible at any time, just as for ☞ social housing. The Law on Rent Rate (Miethöhegesetz) and the Heating Costs Ordinance (Heizkostenverordnung) **do not apply** to student residences.

Rental contract: temporary contracts are allowed without limitations (principle of rotation).

Termination: for temporary contracts only possible for good cause. (☞ D. Temporary rental contracts).

Termination without notice: same as for other rental agreements.

Temporary rental contract: generally allowed for student residences.

Security of tenure: usually temporary rental contracts, the continuation of the agreement cannot be requested, since the legitimate interest for the time limitation is prescribed by law following the "principle of rotation". Exception: corresponding provisions in the usage regulations or general terms and conditions for rental.

Moving out: it is generally not necessary to renovate a student residence when moving out, unless it has been specified in the contract. The student is though liable for damages, just like in all other rental agreements.



Information and counselling about tenancy law

Mieterverein Heidelberg e.V. (Tenants' Association),
Poststr. 46, 69115 Heidelberg, Tel. 06221/20473;
beratung@mieterverein-heidelberg.de

Office hours: Mo-Thu 9-12 am and 2-6 pm, Fr 9 am - 2 pm; Consultancy for members only (64€ annual contribution). Trial membership for students: students receive a legal consultation with a specialist lawyer for 25€, plus a letter to the landlord and the examination of his reply.

Information material: "Tenant's lexicon" (700 pgs. for 13€, language: German), "Tenancy law for students" (for free) and brochures about issues like damages, additional costs, rent increase, etc.

Legal assistance of the Studierendenwerk Heidelberg:

Tue from 2.30 -4.00 pm, Marstallhof 1, ground floor;
www.studierendenwerk.uni-heidelberg.de

Student Council: StuRa office: Albert-Ueberle-Str. 3-5, Tel. 06221/54-2456; www.stura.uni-heidelberg.de

You can get the **rent index for Heidelberg** at any registration office (Bürgeramt) or at the Tenants' Association for 5 €. You can read it online and print it (keyword rent index) under www.heidelberg.de

Text: Tenants' Association Heidelberg, status: 10/2017

V.i.S.d.P.: Vorsitz der Verfassten Studierendenschaft der Universität Heidelberg



Important information on tenancy law

In case of doubt, you should take legal advice for all points marked with 🙌

☞ means that the point will be described in detail somewhere else.

A. Conclusion of the contract

It used to be common for a landlord to commission a **letting agent**, while the tenant had to pay for it. For brokerage contracts that were concluded after 1.6.2015, the "Bestellerprinzip" applies: the one who commissions the letting agent has to pay.



The **deposit** cannot be higher than 3 monthly rents (without the additional cost flat rate or advance payments). You can pay in 3 instalments, the first one would be due at the beginning of the tenancy. The landlord must pay interests on the deposit (certificate of deposit rate) and put it in a bank, separated from his own assets.

Tip: The best thing is to have a savings account in the name of the tenant with a blocking notice in favor of the landlord. You can also choose a bank or a form of saving with high interest rates. For the billing and the return of the deposit after the end of the contract, the landlord has an inspection and reflection period of more than 6 months. **Important: Do not pay** – no matter if commission, rent, or deposit, **without requiring a receipt**.

A **rental contract** doesn't have to be concluded in written form, but it is difficult to prove it before moving in if it was concluded orally. If you move in without a written contract, only what has been agreed orally is valid, together with the tenancy law of the German Civil Code (BGB), which is usually more convenient than all written form contracts. In written contracts, many other agreements can be made. There are no standardized pre-printed rental contracts (and no "standard rental contract"). However, on the market there are many rental contracts forms that are usually drafted from the point of view of the landlord.

Tip: You can find tenant-friendly forms at the Tenants' Association.

Attention: not everything written in a rental contract form is legally valid. Some clauses (usually to protect the tenant) could be invalid. It is advisable to have the rental contract examined before signing it (if there's enough time) or later, to get more clarity about the content.

However, you also shouldn't immediately question such clauses, otherwise you might risk to jeopardize the conclusion of the contract - just keep it into consideration for any occurrence.



B. Rent

The **rent** can be either a **flat rate rent** (all inclusive), a **gross cold rent** (inclusive operating costs, heating costs charged separately), or a **net cold rent** (all additional costs charged separately as advance payment or in a lump sum). **Important:** the rental contract must contain the **explicit provision** that **additional costs** are calculated **in addition** to the rent. If that's not the case, you do not need to pay additional costs. Only operating costs that are mentioned in the contract can be charged to the tenant. A reference to § 2 of the German Regulation on Operating Costs, where all permitted operating costs are listed, is sufficient. **But:** paying for several years in a row operating costs which had not been agreed can be seen as a tacit modification of the contract and can imply a contractual obligation for the future. For this reason, you should have the operating costs settlement immediately examined!

If you pay an additional costs flat rate, then everything is already settled and you don't need to make subsequent payments if the actual costs were higher than the flat rate. However, you won't receive a refund in case the costs were lower.

Tip: if you have problems paying the rent, you should check if you can apply for a housing allowance (Wohngeld). You can find on the website of the Federal Ministry of Building (<http://www.bmvbs.de> – Search terms Wohngeld and Wohngeld table) the brochure and the tables. **Only students who are not entitled (anymore) to claim for the BAföG can receive a housing allowance.** If you're not sure, apply for the housing allowance and have your application checked.

The approval for a **rent increase** 🏠 can only be demanded to the tenant via a written increase declaration if:

1. The rent has remained unchanged for at least one year,
2. The new rent doesn't exceed the local reference rent,
3. The rent won't be increased by more than 20% within 3 years.

The rent increase must be justified with a reference to a rent index, the identification of three comparison objects or by presenting an expert report. Only in the cities of Heidelberg and Mannheim the rent index provides information about the local reference rent (net cold rent for rented living space). A rent index for student residences doesn't exist! In case of a rent increase, the tenant has a special right of termination.

A **graduated rent or an index rent** (i.e., the rent increase is already specified in the contract) is generally permitted. The rent must however remain unchanged for at least one year. During the duration of the graduated rent, a rent increase is excluded and only additional costs can be increased.

Important: In case of a rent increase, the tenant has a **special right of termination** 🏠!

Rent reduction 🏠 is allowed in case of damages or defects in the flat, and the amount depends on the level of the damage. If the damages are not eliminated, the tenant can fix them at costs of the landlord (substitute performance). The tenant also has an extraordinary termination right.

Important: the tenant must show the defect to the landlord. If a dispute arises, the tenant must prove the existence of the defect and its timely notification. It is therefore advisable to settle everything in written form. In case of renovation measures, the right of the tenant of a rent reduction might be restricted.

If a new rental contract signed after the 1.10.2015 is 10% higher than the local reference rent (for Heidelberg the rent index), the rent control might be applied in Heidelberg, Eppelheim, Sandhausen, Leimen and Dossenheim. In this case, you need a consultation to know if you can make a reclaim after moving in. Exceptions are new buildings and completely renovated flats.

C. Tenancy

A **renovation** 🏠 must be tolerated by the tenant if it is necessary to improve the flat or the house, for saving energy or water or to create new living space. **Exception:** if the measures represent a non-justifiable hardship for the tenant, they do not need to be tolerated. The landlord must inform in written form about the type, extent, begin and estimated duration of the works 3 months before their begin, as well as about the rent increase. The tenant has a special termination right. In case of significant improvements and non-significant rent increase, this won't be valid.

If a change of ownership takes place on the landlord's side, the rental contract won't be affected, and it is not necessary to make a new contract. Even in case of death of the landlord, the contract will continue with the heirs. When **transforming** rental flats in owner-occupied flats, the former landlord can only terminate the contract following the general termination rules, i.e., he needs a reason for termination. If the transformation in an owner-occupied flat takes place after it has been rented and the flat is then sold, the new owner can terminate the contract only five years after the sale.



The **sublease** of a flat is only possible with the permission of the landlord. In case of legitimate interest, the landlord is obliged to give his consent. **Important:** the flat cannot be overcrowded during the sublease (rule of thumb: not more than one person per room). In case of sublease, the landlord has the right to increase the rent, the additional cost flat-rate or the advance payment.

A **change of tenant** in case of more than one main tenant (especially for shared-apartments) must be communicated to the landlord. It is possible to claim the approval of the landlord: he can claim to be informed about the names of the subtenants of a shared-apartment who are not under the rental contract. Subtenants in the shared-apartments conclude a sublease contract with the main tenant/s which automatically ends with the main rental contract. If the landlord doesn't allow a sublease, the tenant can terminate the

contract giving a 3 months' notice. For the sublease, different notice periods apply. (⇒ **Termination**)

Animals can be kept in the flat only with the consent of the landlord, unless otherwise specified in the contract. Small animals in cages or fish in aquaria cannot be forbidden. It can be forbidden to keep dogs and cats only if they might cause damages. A general prohibition of keeping animals contained in the rental contract is not valid.

D. Termination of the tenancy

A tenancy agreement can be ended through termination (**tenancy agreement for an indefinite time**) or through expiry of the term (**temporary rental contract**) if a valid reason for termination is included in the contract.

A **termination**, no matter if by the tenant or the landlord, must **always** be done **in written form** and be signed **by all** tenants or landlords or by those concerned.



The **ordinary termination** for the tenant is permitted from the third working day of the month for the end of the after next month (3 months period). The relevant time is the **receipt of the termination** notice. The notice period is prolonged after 5 and 8 years since the rental start of respectively 3 months. For living spaces that are rented for temporary use, shorter notice periods can be agreed for both parties. If a landlord rents single **furnished rooms** in a flat in which he lives, the termination can take place for both parts not later than the 15th of a month for the end of that month. For rental contracts which were signed before 01.09.2001, temporal limits with temporary extensions can be specified in the contract.

Important: The statutory periods of notice apply both for the landlord and for the tenant. The three-month notice period can only be shortened with the consent of the landlord. **The common assumption that it is sufficient to nominate three new tenants in order to receive the consent of the landlord to move out immediately is false.**

Special right of termination 🏠: In case of rent increases or performance of renovation measures, the tenant is allowed to terminate the contract with a shorter period of notice.

A **termination without notice** 🏠 is possible for good cause:

For both parts: when a contracting party consistently disturbs the peace of others.

For the tenant: if the contractual use is not guaranteed, the flat has significant harmful damages or the damages have not been eliminated despite warnings.

For the landlord: in case of improper use despite warnings (e.g., unauthorized sublease), serious breaches of obligations and disturbance of the peace, constantly unpunctual payments or rent arrears of over two months.

The **security of tenure** 🏠 does not allow the landlord to terminate a contract offhand. Only the one who has a legitimate interest in ending a tenancy agreement can terminate it. The reasons could be the **personal use** (the landlord needs the flat for him/herself or for a relative), the prevention of an appropriate commercial utilization (e.g. planned sale or renovation).