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Federal Supreme Court decision on lease termination for late payments

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Article 257d of the Code of Obligations provides that where a tenant is in arrears with rent or accessory charges, the landlord may set a time limit for payment and notify the tenant that in the event of non-payment, it will terminate the lease. In case of leases for residential and commercial premises, the landlord may terminate the contract subject to at least 30 days' notice following the expiry of the time limit.

A tenant had rented a flat in Marin (canton of Neuchâtel) for almost 40 years. Disputes between the tenant and landlord had arisen on several occasions. On this particular occasion they had disputed heating costs of Sfr329.25 for 2008 and 2009. The conciliation proceedings initiated by the tenant were suspended by the parties, who agreed that should an amicable solution not be found by March 31 2010, the proceedings should be regarded as having failed and the parties could resort to the court within 30 days. The parties failed to reach an agreement, but neither party began proceedings. On August 5 2010 the tenant opposed an order for payment by the landlord for Sfr329.25. Subsequently, the landlord summoned the tenant to pay and threatened to terminate the lease. The tenant paid half the amount. The landlord terminated the lease on grounds of late payment of Sfr164.60. The tenant challenged the termination and succeeded before the cantonal courts, mainly because the termination was deemed harsh and abusive.

However, the Federal Supreme Court concluded otherwise.⁽¹⁾ With reference to a previous landmark decision,⁽²⁾ the court ruled that non-payment of Sfr164.60 does not qualify as insignificant and does not make a termination contestable on the grounds of late payment. The court also held that it was not disproportionate, and therefore not abusive, if termination was issued after a lease term of almost 40 years without late payments, provided that the tenant knowingly withheld the money despite having been sent a warning letter by the landlord.

The court considered that Article 257d must be applied strictly, as its purpose is to ensure that landlords are paid on time and leases are terminated in case of late payment. Only in exceptional circumstances can a termination be considered abusive. In this case, the termination was not abusive as the landlord had complied with Article 257d and had requested payment for the final time under threat of termination, which the tenant knowingly withheld.

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Endnotes

(1) Federal Supreme Court, 4A_271/2014, November 18 2014.

(2) BGE 120 II 31.

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