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Federal Supreme Court decision on standing to challenge lease termination

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The Federal Supreme Court⁽¹⁾ recently considered whether a co-tenant had standing to challenge wrongful termination of a lease contract on her own. A mother had been living with her daughter in a Geneva apartment since 2006; both mother and daughter were parties to the lease contract (dated December 1990). In October 2008 the rent had been settled before the conciliation authority at Sfr600 per month. After the mother died in February 2009, leaving behind three children, the landlord refused the daughter's request to confer the lease on her and terminated the contract by formally notifying all three heirs. The daughter, after unsuccessful conciliation proceedings, submitted a request to the Geneva Rental Court to declare the termination null and void, suing the landlord and her siblings as co-heirs. The landlord denied the daughter's standing to initiate legal proceedings and argued that she could challenge the termination only along with her co-heirs. The Geneva Rental Court and the Geneva Justice Court disagreed with the landlord's argument and, by acknowledging the daughter's standing to initiate legal proceedings, declared the termination inadmissible because it had taken place during the three-year proscribed period initiated by the 2008 settlement. The landlord subsequently turned to the Federal Supreme Court.

The Federal Supreme Court stated that the legal doctrine is divided on the issue of whether co-tenants must take action together to challenge wrongful termination of a lease contract. Some scholars deny a co-tenant's standing to initiate legal proceedings independently by highlighting the unity of the lease contract and, as a consequence, that its wrongful termination can be challenged only by all co-tenants together. Others scholars emphasise social protection, arguing that even a spouse who is not a party to a lease contract is offered the right to initiate legal proceedings against lease termination. Such right must be granted to the co-tenant. The court stated that a lease contract cannot be terminated for one co-tenant only and not the others. Therefore, all parties concerned must participate in an action challenging the lease termination. However, this does not mean that all co-tenants must be on the same side of the bar. The court held that social protection is especially important regarding housing. The daughter could therefore challenge the termination in an action on her own. However, since such action leads either to maintaining the lease or to its termination, all co-tenants not opposing the termination must be sued alongside the landlord.

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Endnotes

(1) Federal Supreme Court, 4A_201/2014, December 2 2014.

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