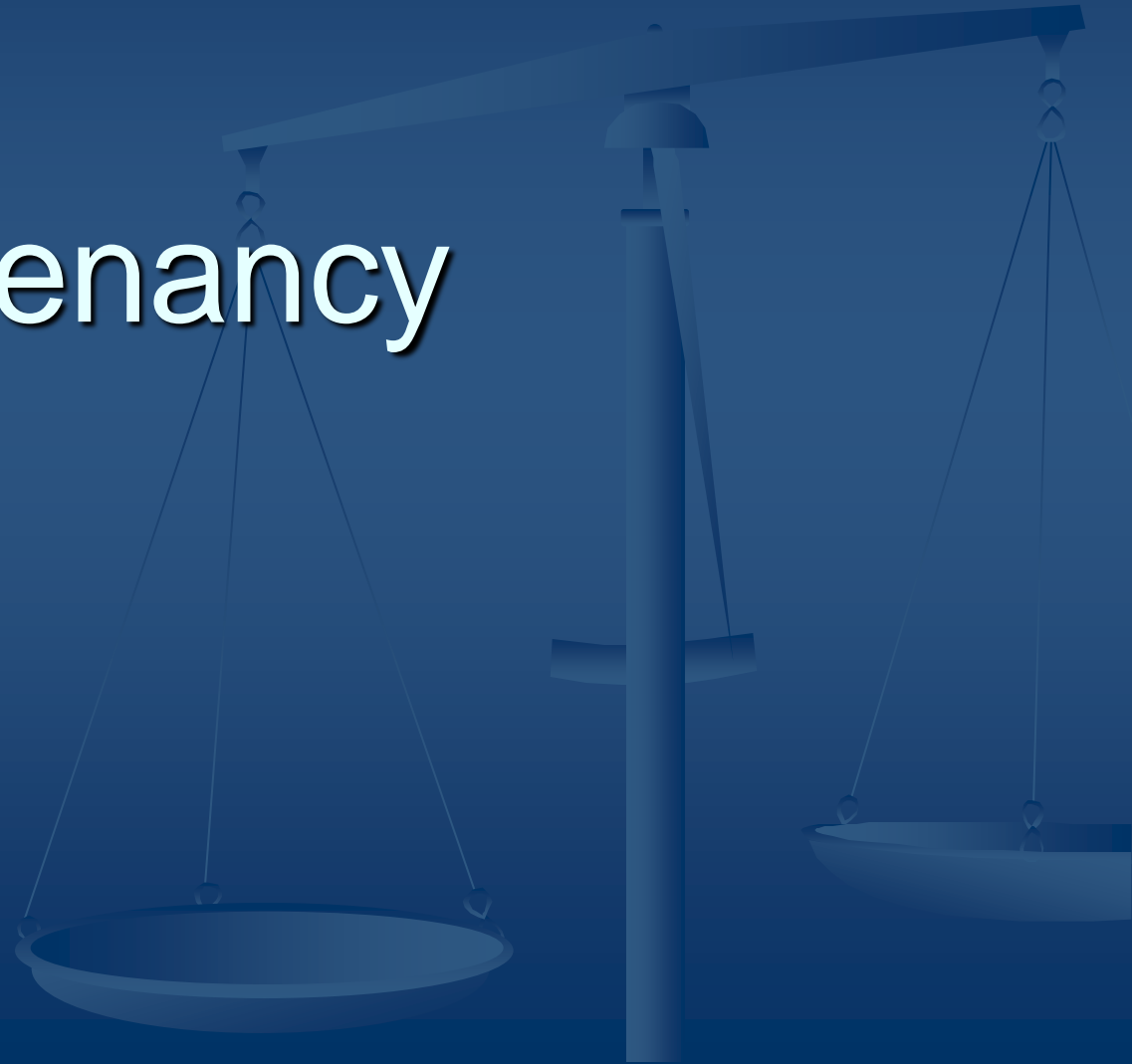




Session 38

Contract Law 3
Tenancy and work

Tenancy



Lease (tenancy) agreement

A lease agreement – tenancy agreement, is a contract whereby the lessor (i.e. land-person) is bound to hand over the use of an asset to the lessee (i.e. tenant) in return for a rent (CO art 253, RTActO, s; CCQ, s 1851) .

In Switzerland the tenancy provisions extend to commercial assets as well as movable and immovable assets; the same in Quebec.

In Ontario the Residential Tenancy Act seeks to protect tenants, only whereas the commercial aspects are covered in the Commercial Tenancies Act.^More info for Ontario: <http://www.ontariotenants.ca/law/legislation.phtml>

Form

The lease agreement does not require any particular form, yet for tax purposes a written form is necessary (social deduction).

In Ontario a written form is eventually mandatory (RTActO, s 12)

Classes of tenancy

A lease agreement may be concluded for (CO 255; CCQ, s 1851):

- Determined duration – fixed term: when it expires, without express notice, at the end of the agreed period.
- Undetermined duration: when the expiry is not specified but the contract is renewed on a periodic basis.

In the latter case, the contracts are usually concluded on a month, three-month, six-month or annual basis – periodic tenancy, depending on the nature of the asset leased, and the contract becomes automatically renewed unless a party has received a termination notice or when the agreement is of determined duration.

Rent

The lessee must pay the rent, and if the occasion should arise, the ancillary expenses, at the end of each month, but at the most on expiration of the contract, unless otherwise agreed (CO, art 257). Thus, the lessee must pay the rent and any additional charges (heating, heated water, usage of public areas, administrative and social costs) in advance, at the end of the current month for the following month.

If payment is delayed, the lessor must remind the lessee in writing and state a limit for payment beyond which, payment default will automatically result in the immediate termination of the contract. The lessee is then given an eviction notice (CO, art 257d; see also RTActO, s 80; CCQ, s 1966 ff)

Security deposits

Lessees are required to pay a security deposit, which is used to pay for damages done on termination of the contract.

In Switzerland deposits are set on one's bank account; in Canada with the land-person (RTActO, s 105).

Obligations

The lessor has the following obligations (CO, art 256 ff; RTActO, s 20 ff; CCQ, s 1854 ff):

- Delivers the asset the date mutually agreed and in a condition suitable to be leased (i.e. fit for habitation)
- Communicates the previous rent as well as the report on the condition of the asset upon expiration of the previous lease.
- Informs the lessee about forthcoming maintenance works – notice of entry
- Undertakes renovation works during the lease period by taking into account the interests of the lessee.

Obligations (cont.)

The lessee has the following obligations (CO, art 259 ff; RTActO, s 30ff):

- Uses the asset with care; to prevent and to a certain extent repair any defects – the lessee becomes liable for damages; the lessee should communicate any defects as soon as they are discovered or appliance failures that they occur
- Lets the lessor visit the property in the cases of maintenance and subsequent lease.
- Respects the neighborhood – failure to do so may result in the automatic and immediate termination of the contract

Obligations (cont.)

- Upon termination of the contract, hands back the asset in a condition suitable to be leased – failure to do so, the lessor may request the lessee to undertake works to restore the condition of the asset.
- Does not undertake any renovation works without the consent of the lessor.
- Pays the rent – even if the asset is not used.
- Can sublease (i.e. sublet) the asset but remains liable for its use.

Termination

The following scenarios:

- Contractual termination CH: if the lease agreement is of a determined period, termination takes place on the date set (CO, art 266); if the lease agreement is of undetermined period, termination takes place at the end of every set period by means of a notice (CO, art 266a).
- Contractual termination CDN: determined or undetermined period, termination takes place at the end of every set period by means of a notice (details as per RTActO, s 44)
- Advance termination: takes place by means of a notice in cases when there is a breach of contract on valid grounds

Work



Definition

A contract of work and labor is an agreement whereby one of the parties, the contractor/entrepreneur, undertakes to produce a work for a price that the other party, the contractee/maître, agrees to pay (CO, art 363; CCQ, s 2098).

Unlike Swiss law where contracts of work only apply to tasks related to buildings, Quebec law extends to intellectual work – in Switzerland such services fall under the mandate (CO) and are additionally regulated by Labor Law.

Contracts of work do not require any specific form; it is however advisable to establish a written contract.

Obligations

The contractor (CO, art 365 ff; CCQ, s 2100 ff):

- Use care when executing the work.
- Use good quality materials.
- Perform the work personally.
- Provide the tools necessary for the performance of the work, unless otherwise agreed
- Is responsible for any third parties involved with the work.
- Begin the work in due time.
- Is responsible for any defects or deviations from the contract.

Obligations (cont.)

The contractee (CO, art 367 ff; CCQ, s 2101 ff):

- Examine the work in question as soon as finished.
- Not interfere with the performance of work, unless otherwise agreed.

Notes

Should the contractee accept expressly or impliedly the work, the contractor is discharged from his obligations. The same applies when the contractee has caused defects either by giving directions contrary to the express dissuasion of the contractor (CO, art 369).

The price is usually paid on delivery of the work; should the price be fixed in advance, the contractor has the obligation to complete the work for such a price with the exception of unforeseen and justified circumstances; in the case of an estimate, the contractor becomes liable when the actual value exceeds the estimate by far (CO, art 372 ff; CCQ, s 2106 ff).