

CAP ON RENT INCREASES IN PRIVATE SECTOR CONFIRMED

On Tuesday, 23 March, the Dutch Rent Increase Cap for Liberalised Tenancy Agreements Act (*Wet maximaliseren huurprijzverhogingen geliberaliseerde huurovereenkomsten*) was passed by the Dutch Senate. The new act will enter into force on 1 May 2021. Under the new act, starting 1 May 2021, the maximum annual increase that is permitted for rents in the liberalised market will be that year's inflation plus 1 percent. This means that any arrangements between landlords and tenants that provide for a rate of increase that exceeds this cap will become invalid. This is seen as a considerable constraint on the principle of freedom of contract.

At present, around 560,000 households rent homes in the private sector: self-contained homes with an initial rent above the liberalisation threshold that applied when the tenancy agreement was first formed. At 1 January 2021, that threshold was a monthly rent of €752.33. Under the existing rules, the only restriction that the law imposes on rent increases for privatised tenancy agreements is that landlords may raise the rent no more than once per twelve months. By how much the rent is then increased is subject to the principle of freedom of contract. This means that the landlord and tenant may agree as they please, even if the increase is substantial. The new act that has been passed spells the end for this freedom of contract for rent increases, at least temporarily.

The new legislation is part of a series of measures to help newcomers renting for the first time and people in the middle income brackets. According to Dutch Caretaker Minister for the Interior Kajsa Ollongren, the lack of sufficient housing makes it particularly difficult for those first-time renters and middle incomes to find affordable rental homes. This will be amplified if the COVID-19 pandemic has a negative impact on residential construction. One of the factors in this problem is the possibility of high rent increases for tenants in the private sector, which can make renting excessively expensive. To counter that possibility, Minister Ollongren believes that annual rent increases in the private sector should be capped.

Limiting annual rent increases to inflation (as defined in Article 10(3) of the Dutch Residential Tenancies Rents (Implementation) Act (*Uitvoeringswet huurprijzen woonruimte*)) plus 1 percent, the cap will apply to both future and existing liberalised tenancy agreements. Under the new act, any clause in a tenancy agreement will be invalid in so far as it provides for a rent increase by a percentage that exceeds the legal cap on rent increases. However, an exception is made for investments that result in home improvements: landlords that make investments to improve the rental home may raise the rent by more than inflation plus 1 percent, as long as the increase is proportionate to the amount that the landlord has invested. The Dutch Rent Tribunal will handle disputes relating to rent increases. Lastly, as soon as the new legislation comes into force landlords will no longer be permitted to forcibly raise the rent by making a reasonable offer for a new tenancy agreement, in which the new rent is the only term that changes. If the tenant refuses such an offer, this will no longer give the landlord legally valid grounds to cancel the agreement.

The new act will remain in force for three years, starting on 1 May 2021. It will be reviewed within two and a half years after its introduction to decide whether it should remain in effect beyond the initial three-year period. During that time at least, any clause in a tenancy agreement will be invalid in so far as it results in a higher rent increase than is legally allowed.



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