

Termination of rental agreement due to urgent own use



Tenants of residential property generally enjoy considerable rent protection. Therefore, a landlord cannot terminate the tenancy agreement without a reason stated in the law. One of these reasons is termination due to urgent personal use, including renovation, for example. But can there also be urgent personal use if the property is made available to someone other than the landlord? This blog looks at a recent judgment of the District Court of Amsterdam in which urgent personal use was assumed despite the fact that the house would be made available to someone else.

Case study

The landlord owns a four-storey building, of which the first floor and the third floor (storage space) are rented to a tenant. In addition, the second floor (31m²) is rented to the landlord's son who lives there with his girlfriend. At some point, the landlord wants to thoroughly renovate the entire property. According to her, the property no longer meets today's requirements and is in urgent need of renovation. She points out, among other things, the noise, the crooked floors and the lack of an escape route.

However, she is unable to finance this renovation without her son, who in turn only wants to do so if he can continue to live in the building. Something that, according to the son, is not possible if he, his girlfriend and future children, only have 31 square metres at their disposal. The landlord's plan is therefore to merge the three upper floors into a single dwelling for her son. She therefore wishes to terminate the tenant's rent on the first floor due to urgent personal use so that the house can be renovated.

However, the tenant does not agree with the termination of the lease. The tenant states that this is not personal use, but that the termination of the lease is mainly done so that the son will have

access to extra floors. Simply put, according to the tenant it is not the landlord's own use, but use by a third party.

Judgement of the court

First of all, the court ruled that the landlord has made it sufficiently clear that the house is actually in need of renovation. Next, it must be assessed whether this renovation

the landlord's own interest, and whether this interest exceeds the tenant's interest in continuing to live in the dwelling. According to the court, there can indeed be 'personal use' if the house is to be used by someone else, such as, in this case, the son. Such use can be considered personal use if the landlord's own interest is served.

In this case, if the son would not have access to the other floors, he would use his limited financial resources to purchase (larger) living space elsewhere. As a result, he would no longer be able to co-invest in the necessary renovation of his mother's premises. Without this investment, she would not have been able to meet the maintenance obligations as lessor, which would have forced her to sell the property. Therefore, the Court is of the opinion that the renovation does serve the lessor's own interests and that the lessor therefore has a legitimate ground for termination.

Conclusion

In order to be able to terminate a lease on a property, a landlord needs a reason as described by law. One of those reasons is if the landlord urgently needs the rented property for his own use, which is the case with a large-scale renovation. This renovation must then be in the landlord's own interest, and in principle this is not the case if the landlord wants to make the rented property available to friends or family. However, in this case, the landlord could not retain the property if her son did not co-invest in the renovation, and that included her own interest to terminate the rent. The fact that the house would then be used by her son is therefore irrelevant.

It is striking that in this case the tenant did not dispute the fact that the landlord would have insufficient means at her disposal. Therefore, it was not investigated whether the landlord had other possibilities to pay for the renovation, other than through her son. It is true that the lessor did not have sufficient resources, but it is possible that another investor or a loan would also have made the necessary renovation possible without jeopardising the tenant's rental position on the first floor. Incidentally, in the event of eviction or relocation due to renovation, a tenant is always entitled to a relocation allowance.

Do you want to terminate a rental agreement due to urgent personal use or are you renting correctly and your landlord wants to terminate the rental agreement without legitimate reason? In that case please feel free to contact M2 Advocaten.

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