

## **The tenant of a property may not be required to pay a new security deposit when the property is sold**

### **The transfer of the lease agreement pertaining to a property sold to a purchaser occurs regardless of whether the lease agreement is a notarial deed or a private deed.**

Yet, the lease agreement must bear a so-called *date certaine* (i.e. a fixed undisputable effective date).

In case of a private deed, this means that the lease agreement must be filed with the competent tax office prior to the transfer of ownership, or, in the absence of such a filing, the purchaser must have been informed of the existence of a tenancy prior to the sale.

The subrogation of the purchaser in the rights and obligations of the seller only becomes effective on the date on which the ownership of the property is transferred.

As such, the purchaser may not seek from the tenant the payment of rents due for the period prior to the sale of the property or invoke such outstanding rents to seek the termination of the lease agreement<sup>[1]</sup>.

On the other hand, the new owner/landlord may request an indemnification for damage caused to the leased property by the tenant, even if such damage dates back prior to the date of acquisition of the property<sup>[2]</sup>.

The purchaser, as a successor to certain particular rights of the seller, is not liable for the debts of the former landlord, unless otherwise provided for and agreed upon.

As such, works that seller should have performed within the leased property prior to the sale are nor to be borne by the new landlord<sup>[3]</sup>.

On the contrary, any compensation that may be due to the tenant at the end of the lease, for example by virtue of the improvements made by the latter to the leased property, shall be payable by the party that is the landlord as at the end of the lease agreement. The seller of a leased property has the obligation to inform the purchaser of the existence of this claim for compensation that may be brought by the tenant.

French courts have also ruled that, if the leased property is transferred by way of a specific bequest, the initial landlord remains liable for the repayment of the security deposit to the tenant<sup>[4]</sup>.

It is probably on this last court decision that the purchaser of a leased property relied to request from its tenant the payment of new security deposit in the case abdicated by the *Cour de Cassation* (French Supreme Court) on March 26, 2014<sup>[5]</sup>.

However, the judgment rendered on October 20, 2011 by the Court of Appeals of Aix-en-Provence was upheld by the *Cour de Cassation* that ruled that the authentic deed of sale pertaining to the leased property clearly provided for the transfer of the lease agreement and did not contain any provision addressing the issue of the security deposit paid by the tenant to the former landlord / seller.

This decision is to be welcomed, both legally speaking as the purchaser may not have more rights than the seller, and ethically speaking as a tenant should not be forced to pay twice the amount of a security deposit.

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[1] 3<sup>rd</sup> Civil Chamber of the *Cour de Cassation*, October 2, 2002: *Loyers et copr.*, Dec. 2002, comm. 276, p.12, note B. Vial-Pedroletti.

[2] *Cour de Cassation*, November 21, 2001: *Loyers et copr.* March 2002, n°57, p.10, note B. Vial Pedroletti.

[3] 3<sup>rd</sup> Civil Chamber of the *Cour de Cassation*, February 25, 2004: *Dict. perm. Gestion imm.*, bull.353.

[4] 3<sup>rd</sup> Civil Chamber of the *Cour de Cassation*, February 25, 2004, appeal n° 02-16589.

[5] 3<sup>rd</sup> Civil Chamber of the *Cour de Cassation*, March 26, 2014, appeal n° 13-10698.

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