



## **NEW DECISION FROM THE DANISH SUPREME COURT ON THE PERIOD WITHIN WHICH NOTICE MUST BE GIVEN FOR HIDDEN DEFECTS UPON THE TENANT'S VACATION OF THE PREMISES**

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The rules for the landlord's notice for defects upon the tenant's vacation of the premises are found in the Danish Lease Act, Section 98(2). According to this provision, the landlord must give notice for defects to the tenant no later than two weeks from the date of vacation or in case the landlord leases out more than one residential apartment, two weeks from the date of the vacation inspection (in Danish: "*Flyttesynet*").

The rules in the Danish Lease Act, Section 98(2), on the other hand, do not state the period for notifications for hidden defects, i.e., defects that cannot be detected with usual “alertness”. Such claims must be made within “reasonable time”, which is naturally subject to legal interpretation.

A new decision from the Supreme Court of Denmark provides interpretative aid for determining what a “reasonable time” is. The decision will be explained in further detail in this newsletter.

### **The Facts and Results of the Case**

In March 2017, the tenant vacated the leased premises. The landlord summoned the tenant to a mandatory vacation inspection which was held 17-20 March 2017. The vacation inspection showed that the painting of the premises carried out by the tenant was insufficient and that the work had to be redone by the landlord, which was agreed upon between the parties. Subsequently, it turned out that the paint which the tenant had used was of a wrong type, which meant that the landlord was unable to paint over the walls, doors, ceilings, etc. This was a hidden defect since it was not ascertainable during the vacation inspection.

On 4 May 2017, the landlord emailed the tenant describing the problems with the paint. In the email, the landlord furthermore gave notice that additional costs associated herewith must be paid by the tenant. 7 June 2017, the landlord sent a vacation invoice (in Danish: “*Flytteafregning*”) to the tenant.

The Housing Court (in Danish: “*Boligretten*”) decided that the landlord could not claim compensation for the expenses since the landlord had not claimed compensation “without undue delay” and within “reasonable time”. The Housing Court furthermore decided that the landlord could not claim for any expenses other than those stated in the vacation inspection report.

The Eastern High Court reached the same conclusion. However, the boundaries of “hidden defects” were clarified. It was clear to the High Court that the defects of the tenant’s painting could not have been ascertained during the vacation inspection. The High Court concluded that the landlord should not have to test the correctness of the painting in detail and that the landlord consequently had shown the required “alertness”.

The High Court hereafter specified that the Danish Lease Act, Section 98(2), provides that the landlord must make their claim “without undue delay” after detecting the defect or after the landlord ought to have detected the defect. Failing to do so results in the landlord having forfeited the claim.

The High Court found that the landlord must have had detected the defect at the end of March 2017 and that the landlord sent the email with notice to the tenant on 4 May 2017, which was not within a “reasonable time”. The High Court, therefore, reached the same decision as the Housing Court.

In the Supreme Court, the same decision was also reached. The Supreme Court based its decision on the legislative history behind the Danish Lease Act (in Danish: “*Forarbejderne til Lejeloven*”) and argued that the landlord had failed to present any reasonable explanations for the delay. Stating that there might be circumstances that may result in the landlord not being able to react promptly “without undue delay”, the Supreme Court found that this was not the case in the specific matter.

The decision meant that the landlord was cut off from claiming additional compensation.

### **Our Comments**

The decision from the Supreme Court does not give a precise answer as to exactly how long the claim period for hidden defects is in such cases. However, it is clear from the decision that a period of 34 calendar days (from the end of March to early May) is not “without undue delay”. The Supreme Court also seems to accept that some cases might have extenuating circumstances that can justify a longer period for sending such notices.

Moalem Weitemeyer has vast experience in assisting in matters related to the Danish Lease Act, including advising on vacation matters. We continuously advise a wide range of clients in lease matters related to e.g., compliance, negotiations, or disputes. For further information, please do not hesitate to reach out to us.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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