



ADEN IMMOBILIEN

BERLIN - PARIS



The Guide to renting out an apartment as a landlord in Berlin

www.aden-immo.com

Introduction

This PDF guide by ADEN IMMOBILIEN defines everything you need to know as a landlord renting out an apartment in Berlin: the rules for rental contracts and tenant protection, the monthly charges to expect, and an explanation on the rental brake law (Mietpreisbremse).

Owning property in Germany is not an easy affair. Between all the different charges, taxes and regulations, owning property in Berlin and renting out an apartment can be confusing!

So what do you need to know as a landlord in Germany? ADEN IMMOBILIEN walks you through everything you need to know: rental contracts, rental income tax, communal charges, tenant protection and much more in this complete guide to being a landlord in Berlin!

Please keep in mind that ADEN IMMOBILIEN is a real estate broker: check with a tax advisor, for official information specific to your situation.



Being a co-owner:

Building management and Rücklage

It is important to look at the bigger engagement that an apartment in Berlin represents. Being a co-owner in a city building means that you have to pay monthly charges for the maintenance of building itself. These can be represented in the side costs of rent (Nebenkosten). But larger renovation works (regarding the facade, for example) are the responsibility of the co-owners themselves. Co properties have different ways of handling these projects. And that may or may not include financial provisions for upcoming renovations.

So what documents can help you anticipate your costs as a landlord in Berlin?

>> **Budget / economic planning (Wirtschaftsplan):** it describes the different expenses of the property every year. In Germany, when a building needs renovation, all the co-owners are responsible for the costs. There may be a reserve of money, called the Rücklage, for renovations which have to be carried out regularly (every 5-20 years): The property management (Hausverwaltung) is responsible for managing the Rücklage. There are two systems for collecting this fund:

- Either every landlord pays a smaller sum every month to the Hausverwaltung, into a collective account called the Rücklage which is then available to finance the renovations.
- This collective account, helps to finance future renovations and maintenance works.
- The monthly amount paid to the Rücklage is voted in the General Assembly meetings of the co-owners, held once per year, and usually varies between 0.5-1 euro per sqm per month.
- It is possible, however, to receive exceptional calls for participation (Sonderzahlungen), in case of unexpected works needed in the building.

>> **Monthly expenses (Hausgeld):** It should give you an overview of the costs of the monthly building management budgets: weekly cleaning service of the shared areas, central heating, trash and street cleaning, Hausverwaltung fees, etc.

>> **Energy consumption assessment (Energieausweis):** make sure you know about the heating costs in order to assess them correctly for your tenants.



Understanding the monthly costs of your apartment

The monthly costs of renting out an apartment in Berlin

The rent is the general amount that is paid to the landlord every month. This includes the net or 'cold' rent, the Kaltmiete. It should be calculated on the Berliner Mieterspiegel based on the size of the apartment.

On top of the Kaltmiete, there are additional costs of living, called Nebenkosten or Betriebskosten, which are paid by the tenant every month. The total (Kaltmiete + Nebenkosten) is called the Warmmiete and is what the landlord should receive every month. A landlord can legally include in these utility costs the following:

- >> **Heating costs** (unless the heating is paid individually through the electricity bill for example).
- >> **Cost of water supply and heating**
- >> **Fees for wastewater, determined at the municipal level**
- >> **Fees for garbage collection and street cleaning, which are also set by the municipality**
- >> **Land tax (Grundsteuer), which is usually quite low in Germany** (consult our guide on real estate taxes)
- >> **Cost of a caretaker or cleaning and gardening** (usually managed by the Hausverwaltung)
- >> **Cost of the building insurance in some cases**

Electricity and internet are always acquired by the tenants themselves unless the lease is a short-term, sublet or perhaps a furnished apartment. In this case, it is common for the contract to stipulate a "Pauschal" (lump sum) that should cover everything and cannot be amended if the tenant's consumption is higher than expected.

The additional costs (Nebenkosten or Betriebskosten) depend on the property type, size of the apartment, location, etc. They are usually specified in the budget planning of each apartment when it is sold. They should be individually listed in the rental contract, and the tenant is entitled to a detailed summary of the expenses every year. Sometimes, the tenant is entitled to a reimbursement, but sometimes the landlord needs to ask for an increase, if the consumption exceeded the predicted amounts.

Beware that the following are not at the charge of the tenants and are the responsibility of the landlord, even when the flat is rented out:

- >> **Monthly deposits for the co property reserve** (Rücklage)
- >> **Fees of the property manager: in buildings with several apartments, there is usually a caretaker** (Hausmeister) or a management company (Hausverwaltung) that are responsible for cleaning, small maintenance, and organising larger repairs.
- >> **Repairs and maintenance: while maintenance costs are covered by the tenant in the Nebenkosten, most repairs** (for instance, a plumbing leak, a broken heater or a change of windows) are the responsibility of the landlord.
- >> **Account maintenance fees or other bank charges**

Renting out an apartment: rental contracts and tenant protection

In Germany, whenever an apartment is rented out, a rental contract has to be signed by both the landlord and the tenant. The contract must contain:

- >> **length of the agreement (the standard contract in Berlin is unlimited (unbefristet))**
- >> **rent amount per month, also called the cold rent, Kaltmiete**
- >> **additional costs, known as the Nebenkosten:** heating, water, garbage disposal, building management fees, etc.
- >> **terms of notice for finishing the agreement** (the tenant usually has 3 months of notice, but different rules apply for the landlord)
- >> **amount of the deposit, called Kaution** (up to 3 months cold rent, see the dedicated paragraph below)
- >> **an agreement on redecoration (painting)** when you move in or move out
- >> **conditions for rent increases (see below an explanation of the Mietspiegel in Berlin)**
- >> **in the case of furnished apartments, an inventory of all items** (check in the presence of the tenant whether all the items are in good order. Damaged furniture or equipments should be documented in writing in the Übergabeprotokoll. The tenant can send a written amendment up to 2 weeks after moving in, if they notice any further damages).
- >> **the general house rules, also known as Hausordnung.** They list for instance, the quiet hours (usually between 22:00-7:00 and 13:00-15:00).

i

Discover more about rental income tax in our
**COMPLETE GUIDE TO REAL ESTATE TAXES AND
FISCALITY IN GERMANY !**



Deposits: the importance of the two Übergabeprotokollen

The deposit (Kaution) is usually quite high in Germany. Landlords are legally entitled to ask for up to three months' cold rent in advance. The two parties must arrange how the deposit should be transferred. One common option is to have three monthly instalments, the first at the beginning of the contract, and the rest during the second and third months of the tenancy. **While it is common that deposit is transferred directly to the landlord's account, it is not an obligation, and the Kaution does not have to be cash either. Instead tenants can ask to pay the deposit into a bank account that is separated from the assets of the landlord, in order to protect the deposit.**

At the end of the tenancy, the landlord must pay back the deposit to the tenant. However, the landlord may retain part of the deposit if there are any repairs needed for damages caused by the tenant. **That's why the ingoing inventory (entry Übergabeprotokoll) is an important document that should be filled in before the tenant moves in, in the presence of both parties. At the end of the contract, an outgoing inventory (final Übergabeprotokoll) establishes what may have been damaged by the tenant.** If there are any defects, the tenant should be given a 'reasonable' period of time to fix it (a few weeks or months). Only after that period, can the landlord retain a part of the deposit. If there are damages noticed after the outgoing inventory was signed, the tenant is not held liable and nothing can be deducted from the deposit.

Some landlords can require their tenants to show proof of insurance, in order to cover them in the event of damage to their own property or liability for adjoining properties. These policies cover personal effects (Hausratsversicherung) and personal liability (Haftpflichtversicherung).



Ending a rental contract in Germany

In Germany, rental contracts are not just one-to-one agreements. They must respect the German constitutional law on rentals, the Mietrecht, which is meant to protect tenants. In standard rental contracts, the notice period is usually three months for both the tenant and the landlord, but it has to be justified. **The period increases by three months after 5, 8 and 10 years of occupation by the same tenant. When the lease is not conventional (sublets or short term rentals), a shorter period can be agreed upon (for instance, one month).**

A landlord can terminate a rental agreement only under the following circumstances:

- >> If the tenant has broken the conditions of the lease on repeated occasions** (for instance, the tenant is often late paying their rent).
- >> If the landlord or a close relative wants to use the property for himself** (called the Eigenbedarf), which needs to be proven.
- >> If the landlord intends to modify the property in a drastic way beyond simple renovations** (one has to prove that having a tenant would make these plans impossible).
- >> If the landlord, for economic reasons, must sell the property and having a tenant would reduce the sale price of the apartment** (one has to prove that they are bankrupt and need the full value of the apartment to survive).

Keep in mind that the tenants can object to the termination with reasons (Härtegrund) that can explain why they think the lease should be continued. Some examples of reasons include old age, health issues, inability to obtain housing elsewhere... The longer a tenant has occupied an apartment, the more grounds they can claim to stay.

In extreme circumstances, a rental contract can be terminated without notice. If the rent has not been paid for more than two months, if the property is used consistently for non-agreed purposes and finally if the tenant is disturbing the neighbors consistently and repeatedly. This is called Störung des Hausfriedens, disturbance of the calm of the house, and must be proven by neighbors reporting noise and requesting police interventions.

On their side, tenants are able to terminate a lease with 3 months of notice without having to justify their reasons for leaving. However, if they must relocate for work reasons, they could potentially claim a notice period of one month only.

It is common practice for landlords to ask their tenants to redecorate the property when moving out. This involves painting the walls white and leaving it in the same state as it was received.

Selling when there is already a tenant renting the apartment

In Germany, tenants have the right to stay in your flat even if you decide to sell it. If they have an open contract (the most standard contract in Germany, called unbefristet), there are few obligations for them to actually leave if they have not breached the rental contract.

Most people on the Berlin real estate market are likely to buy an empty flat in order to move in themselves, or have their close relatives living in. **Therefore, apartments that are already occupied are seen as less attractive and usually sold at a lower price on the market. Indeed, only an investor who has no intention of reclaiming the apartment would be interested.**

ADEN IMMOBILIEN has observed that occupied flats usually sell for 10-30% less than similar empty apartments.



Please keep in mind that **ADEN IMMOBILIEN** is a real estate broker: check with a tax advisor, for official information specific to your situation.

The rental cap in Berlin:

A note on the Berliner Mietspiegel and the Mietpreisbremse (rental brake)

In most German cities, there exists a rental index called the Mietspiegel (the rent mirror) which determines the appropriate rent per square meter for private housing. Updated every two years, the Mietspiegel shows a detailed calculation of rents, according to the precise location, square footage and state of the building.



As real estate prices have increased sharply in Berlin in the past decade, the government has taken precautionary measures to de-escalate the rental situation. **Since the population of Berlin has been rising, and the construction of new apartments is not following up, there are not enough apartments for rent in Berlin.** According to the Cologne Institute for [Economic Research](#), there is a shortage of 20,000 apartments each year in Berlin! And until 2015, there was no limitation on the rent of a new lease!

Since June 2019, the Berlin Senate also announced a new law that would freeze any rent increase for the next five years. This rent cap, called the Mietendeckel, has been accepted by the Senate, but it remains to be drafted and voted upon at the beginning of 2020. It concerns around 1,5 million apartments in Berlin, but does not touch new housing and furnished apartments. If the Mietendeckel comes into force, a landlord seeking to increase rent by more than 0,5 euro per sqm must ask authorisation from the Senate. But the Mietendeckel is contested heavily by the big landowners in Berlin, as well as by the federal government, including

chancellor Angela Merkel. They argue that such a rental cap can only be implemented by the federal government, and not by the city Senate. The situation should become clearer at the beginning of 2020.

In order to minimise the price boom, in 2015 German federal states were allowed to adopt a rental brake for new leases, called the Mietpreisbremse. The Mietpreisbremse aims to keep rents close to their estimated value in the Mietspiegel and avoid sharp increases in rent prices. According to this law, already existing apartments must be released at **rents no higher than 10% above the local comparative rent index**, the Mietspiegel. This rental brake law (Mietpreisbremse) is only valid for leases passed after 2015 and excludes new apartment buildings. **Some 294 cities across Germany adopted the rental brake.**

However, there are discussions as to the efficiency of the rental brake law, since it has not shown a significant decrease in new lease rents in any of the cities where it is in place.

Even if real estate prices in Berlin are increasing, the municipality seeks to curb the trend in order to avoid financial bubble effects and to guarantee residents' quality of life. There are also many side costs to keep in mind, in addition to the actual purchasing price of the apartment.

Make sure to check recent jurisprudence on the Mietpreisbremse in Germany to have the latest decisions.



ADEN IMMOBILIEN
BERLIN - PARIS

www.aden-immo.com

Our offices

Charlottenburg
Giesebrechtstr. 16
10629 Berlin

Friedrichshain
Grünberger Str. 50
10245 Berlin

Wilmerdorf
Brandenburgische Str. 32
10707 Berlin

Paris
128 Bd de Courcelles
75017 Paris