

RENT INDEXATION OF LEAST ENERGY-EFFICIENT HOMES RESTRICTED

written by Eva Willems | August 30, 2023



In Flanders, the rent indexation was affected by the decree of 3 October 2022 limiting the rent indexation to mitigate the effects of the energy crisis.^[1] The decree applies to lease contracts that came into force before 1 October 2022. By doing so, the Flemish legislator wants to guarantee affordable housing for tenants during the energy crisis on the one hand, and encourage landlords to improve the energy performance of rental properties on the other.^[2]

Rent and indexation

A rent is fixed at the time of signing for the entire duration of the lease. Once the contract is concluded, the landlord cannot in principle unilaterally change the rent, either under strict conditions (e.g. after certain energy-saving measures).

However, the landlord is entitled to annual indexation of the rent, specifically on the anniversary of the starting date of the lease (article 34 Flemish Housing Decree). Rent indexation is neither automatic nor mandatory. However, if the landlord proceeds to indexation, he or she is bound by the following legal formula:

$$(\text{base rent} \times \text{new index figure}) / \text{starting index figure}$$

Landlords (and tenants) can use the Federal Government's [rent calculator](#) for this calculation.

Differentiated system as from 1 October 2022

The intervention on indexation applies to leases for a main residence that entered into force before 1 October 2022. Both contracts entered into before 1 January 2019 (scope of the Housing Tenancy Act) and contracts entered into from 1 January 2019 (scope of the Flemish Housing Tenancy Decree) are affected. Student leases are excluded from the scope.

The Flemish decree limiting indexation introduces a differentiated system of temporary freezing of the rent indexation. For 1 year, the possibility of indexation

is linked to the energy level of the house, represented by the energy performance certificate or EPC for short.^[3]

Energy score	Energy label	Indexation?
0 or less than 0 kWh/m ² per year	A+	Yes
Between 100 and 1 kWh/m ² per year	A	Yes
Between 200 and 101 kWh/m ² per year	B	Yes
Between 300 and 201 kWh/m ² per year	C	Yes
Between 400 and 301 kWh/m ² per year	D	Yes, for 1 year only 50%
Between 500 and 401 kWh/m ² per year	E	No, during 1 year
Higher than 500 kWh/m ² per year F	F	No, during 1 year
	Unknown	No, during 1 year

After the Flemish decree limiting indexation, the Brussels and Walloon governments also followed with an initiative to limit rent indexation. Substantively, the measures of the three regions contain minor differences.

Correction from 1 October 2023

The one-year period of limited indexation is now almost over. From 1 October 2023, a correction will replace the restricted indexation. The legislator wanted to avoid the rent indexation being in full play again after 1 year. So for the least energy-efficient houses, a second measure will apply from 1 October 2023.

For houses with energy label A+, A, B or C, nothing will change. The rent of such dwellings may still be indexed in the usual way. So for these dwellings, nothing will change with the decree.

For houses without a known energy label or with energy label D, E or F, rent indexation is allowed again, but subject to the application of a correction factor.

The correction factor is calculated on the basis of two elements:

- The health index figure that could last be applied in an indexation before 1 October 2022;
- The health index figure that would apply at the next anniversary of the lease.

Of course, both measures – temporary freeze indexation and indexation subject to correction – should be read in conjunction. A request for indexation from 1 October 2023 cannot work backwards by a period of three months, as is in

principle the case for rent indexation. Indeed, during the period from 1 October 2022 to 1 October 2023, indexation is prohibited.^[4]

Monitoring

The government monitors compliance, but it is mainly the tenants themselves who exercise control. A tenant faced with an unlawfully implemented indexation will simply be able to refuse to pay the higher rent and may continue to pay the 'old' rent.

Should a landlord nevertheless persist and bring proceedings before the Justice of the Peace, the Justice of the Peace will dismiss the landlord's claim if it turns out that the rent indexation was not properly applied.^[5]

Landlords wishing to index the rent are therefore advised to add the EPC to the indexation letter.

Impact

In Flanders, some 100.000 rental properties would have an EPC label of E or F and some 90.000 rental properties would have an EPC label of D. In addition, more than 100.000 rental properties do not yet have an EPC label, although this has in principle been mandatory since 2009. These figures show that some 300.000 tenants will benefit from this measure.^[6]

Landlords are thus encouraged invest in the rental property. Once landlords improve the energy level of the home to such an extent, they can re-index. Of course, the higher housing quality also benefits tenants.^[7]

However, a positive trend can already be observed in terms of the energy efficiency of rental properties. For instance, the number of rental properties with an EPC label A has almost quadrupled since 2018, from 6.5% to 23%.^[8]

Do you have any questions or would like more information on this topic? Feel free to contact the Studio Legale team on 03 216 70 70 or at joost.peeters@studio-legale.be

Sources

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