

ICWA LETTERS

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Institute of Current World Affairs

The Crane-Rogers Foundation
Four West Wheelock Street
Hanover, New Hampshire 03755 U.S.A.

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Jean Benoît Nadeau is a Fellow of the Institute studying "the resistance of the French to the trend of economic and cultural globalization."

Suspicious Move

PARIS, France

March 12, 1999

By Jean Benoît Nadeau

In many respects, renting an apartment in France is far more difficult than buying. This occurred to me when my landlord asked that I get a guarantor before signing a lease for a 5900 FF (U.S.\$1,000) rent. The funny thing is that, back in Montreal, I owned a house — which I sold to come to France — and my banker never asked me for a guarantor before granting the hefty mortgage I was asking!

The complexity of renting an apartment in France grows out of law, politics and custom. The root of the problem lies in conflicting prerogatives: the right of ownership is inscribed in the Constitution, but legislators also granted tenants the untranslatable *droit au logement* (right to housed). Because a defaulting tenant cannot be simultaneously evicted and housed, landlords, who have historically been excessive in their requirements, are now very picky about tenants. Profound distrust is now the norm.

The quantity of available apartments surprised both Julie and me, since we had been warned that the market was tough. But the difficulty was elsewhere. It all began with sound advice from the owner of our bed & breakfast: "Prepare a little introduction kit." No French apartment hunter goes hunting without one, and some of those kits are quite elaborate, to make a good impression on the landlord. The kit should minimally include a photocopy of one's ID or passport, a marriage certificate, a bank statement, paycheck stubs — and whatever else can prove our seriousness. "Movement is suspicious in France," warned our landlady. "French society is immobile. Changing bank, changing job is suspicious. Moving is suspicious. Why do you move?" Even landlords think a bit like this.

In all, we looked at 15 apartments before finding a good place — a remarkable performance, assured a friend of mine, who had visited 80-some apartments before finding a house in the suburbs. We knew we had found the right place as soon as we stepped in. It was filled with light, well divided, in a well-kept building with character, in a lively neighborhood, with an elevator, French-style windows and Paris-style balconies. There was a subway station at the end of the street and the proximity of the Butte Montmartre assured us of splendid morning walks in postcard Paris.

One feature was a drag, though: the rental agent that came with it, young Monsieur Guillaume Mugnier, of whose "*bonjour*" advice I talked in the previous newsletter. Rental agents are one of the most visible fixtures in the market, involved in about half of all transactions. All 18,000 of them preside over countless little boutiques on every street corner. You can see them from afar with their window full of signs describing apartments to let in the vicinity. Agents are an obnoxious bunch, and very costly — up to 13 percent of the



Droit au logement. A protest in Marseille for the right to be housed.

annual rent in some cases. No wonder so many of them can make a living.

These leeches are, however, a necessary evil since French rental law is so Byzantine. In fact, they are quite natural, in a way, because of another characteristic of the French market: real-estate companies and financial institutions are virtually absent from the private-renting market (see sidebar 1, page 8). This means that a staggering 93 percent of all apartments to let belong to individuals who have only one or two places to rent, no more. This hyper-fragmentation of ownership means that there are a lot of amateur owners in the market who cut corners. Agents, therefore, bring a touch of professionalism. As a matter of fact, they constitute a profession. All agents must renew their professional cards annually: they must be trained in law, be insured and must keep records for up to 30 years. “Most horror stories you will hear are produced by do-it-yourself landlords,” says Charles Gozlan, Monsieur Mugnier’s boss and owner of Cabinet Théabati, the rental agency Mugnier represents.

The rental process begins as a popularity contest. Rental agents see a lot of people in a day and there are habitually five or six candidates short-listed for each apartment. We were the fifth to show serious interest in the one we liked, and certainly not at the top of the list by virtue of being strangers. But we were lucky: the next visitor on the list was not a candidate, but the contractor who was supposed to freshen up the apartment (which would hike the price by a margin to be negotiated with candidates). Julie and I said that the apartment was fine to us “as is,” and the agent replied: “Really? That would save a lot of hassle. Then you rise to the top of the pile, and the matter will be settled this afternoon. Come and see me at fifteen hundred hours.”

What he meant, though, was that the matter would

begin to be settled that afternoon. First step in the formalities: pay a deposit, which was expected. Except that the deposit, 5,900 FF, equals the value of the rent! But this is normal, since the deposit makes up only a quarter of the 25,000 FF (!) we will have to pay to get a lease. The total will include the first month’s rent, plus the monthly service charge (more on that later), plus a leasing tax of 2.5 percent of the monthly rate, plus the equivalent of one month of rent for the agent’s commission, plus two months’ worth rent as a guarantee deposit. The latter is not meant to cover the first and last months’ rent, but is rather intended to reimburse possible damage to the property. This deposit is returned to the tenant upon leaving, without any interest, naturally, and minus any damage done.

The rental agent then asks for a whole slew of documents and information — more in fact than the French Consulate asked us for our visa request. Some information requests were not even legal, like asking for our Social Security numbers. They want to see everything: your bank account number, your employer name and address, your salary, your driver’s license, your personal ID.

The key question is the salary and for that the agent request proof — ideally at least three paycheck stubs. During their sleep, French landlords dream of filling their buildings with civil servants, who constitute some sort of working-class aristocracy enjoying an armored job security guaranteed for life. Since not all candidate tenants are civil servants, the income-tax return is almost mandatory, as well as a certificate of employment that proves that your job is a job. What landlords are looking for is a ratio: they seek tenants whose annual net income is minimally three times the annual rent. In times of duress, they go up to four and five times. No wonder you find few self-employed people in France: they have trouble housing themselves!

Another document they are absolutely manic about is the RIB, short for *Relevé d'Identité Bancaire* (Bank ID Statement). This document is a stub from the tenant's checkbook. It indicates the tenant's name and bank account number, the tenant's bank's address and the bank's national and international ID numbers. A RIB ensures anyone who requests it that the tenant has a bank account and that the bank exists. French banks are usually enough to vouch for someone's credit because they are so severe. Although we tried, Julie and I could not simply arrive at a bank with a sum of money to deposit and expect to open an account for deposit. The bank asks for a resident's permit — the *permit de séjour* — and proof that we have paid either the phone company or the electric utility. But how does one get that sort of bill when an apartment is required in the first place to get the power! Catch 22! Newcomers avoid the entire hassle by paying cash. Another solution would have been to obtain a letter from our bank in Canada stating the information normally put on a RIB. The third way out is to open a nonresident bank account by placing 50,000 FF in an account, which will then be frozen for a year.

Problem: ICWA fellows don't have a salary, but are under contract, and the contract is written in English, and ICWA doesn't want to invest 50,000 FF in a frozen French bank account. This made us unworthy of a lease, so the rental agent requested a guarantor, a very common practice again.

My father, who agreed to sign, did not know what he was getting into! A guarantor has to supply the same outrageous amount of information as the tenant, although a little bit more doesn't hurt. Landlords particularly like the income-tax report and the family booklet (a French

document that shows your family tree). Since such a thing doesn't exist in Quebec, my father ended up sending the baptistries of all family members (being Catholic doesn't hurt, either). More importantly, the guarantor has to fill out, by hand, a special form whose centerpiece is a 300-word paragraph, in prescribed wording, where the guarantor says and repeats that he knows the total amount to be guaranteed (in letters and numbers) and that he knows what he is doing. The guarantor's signature must be accompanied by the mandatory mention *Lu et approuvé, bon pour caution solidaire* (read and approved, good for guarantee).

The reason for this hangup on handwritten material is both cultural and legal. If you have copied a full document by hand, you can hardly argue that you weren't aware of what you did. Besides, it is the custom here: a hand-written cover letter is often mandatory for job applications since companies often submit the document to graphologists (a recognized profession here), who then analyze the writing to figure out whether the writer is a creep, a misfit or a fly-by-night. Since everyone's handwriting is remarkably uniform in France, a misfit or a North American can be spotted a mile away.

Fortunately, we needed only one guarantor because my wife and I had proven that we were married (with our marriage certificate!). Otherwise, her father would have been needed for reinforcement!

This custom of asking for so many guarantees explains another particularity of the French rental market: Only 110,000 households are occupied by co-tenants, slightly over one percent of the private and public rental market, a surprising rate given the high price of rent in



Paper works. This is I with all the documentation required to sign a lease — about three times more than it takes to obtain a resident permit.

France. Conventional wisdom would attribute this to French individualism. Rather, it has to do with paperwork. If four students rent jointly (and evidently are not married), each has to sign the lease, and each of their parents (or a benevolent relative) has to sign as a guarantor. A new lease has to be created every time one joint-tenant leaves and is replaced. The incentive: departing tenants want their share of the deposit! The system is watertight, from the landlord's perspective, but lacks the fluidity required by joint tenants who don't want the hassle of paperwork when they want to quit.

When this entire circus was over, I visited my agent's boss to get some explanation of rental customs. We talked it over at the

corner café over a *blanquette de veau à l'ancienne* (a veal stew in white sauce). Monsieur Gozlan has seen the snow: he's been doing this job for 20 years and he runs 50 buildings as a property manager in addition to being a rental agent. He knows all the tricks of the trade. He explained to me that in the case of strangers, a rental agent might even ask for a bank guarantee. This involves depositing in a special bank account, in trust, enough money to cover the duration of a standard lease, three years. This money doesn't pay for rent, but is intended as a backup to cover any default in payment!

"And why didn't you require a guarantee from us?" I asked.

"Canadians have a good reputation. So we ask only for a guarantor, because we trust you... *Santé.*"

"Thanks for trusting me. *Santé.*"

I later learned that my landlord had spent last fall in Canada on a 17-day rampage from Niagara Falls to the Gaspé, and felt consequently magnanimous toward anything Canadian. This is how I saved ICWA from freezing some U.S.\$40,000 in trust in a French bank account. No wonder immigrants have a hard time finding an apartment in Paris and end up in ghettos.

Once all possible angles are covered, the rental agent is ready to sign the lease — a three-year contract in France. Naturally, the lease must be signed by the tenant, the agent and the guarantor, all of whom must write that they have read and approved. But no keys, not just yet! Tenants have two more conditions to



Read and approved. This is the handwriting of a credit-worthy man.

meet: proving they have home insurance and filling in a form called *l'État des lieux* (an inventory of fixtures).

The *État des lieux* is a small adventure in itself. It consists of a jointly-agreed-to statement of the content and state of the dwelling. For that purpose, Julie and I showed up with our camera, with intention to shoot the place from all possible angles. But this is not the way things are done in the *République*. An Inventory of Fixtures is a literary exercise, which requires spending two hours going from room to room to elaborately describing defects. How many tiles are cracked? Are they cracked or only chipped? And is the carpet in bad shape, or very bad shape? Is the shower head defective or simply tired? Etc, etc. This summit of bean-counting is all handwritten in two copies, by the tenant and the agent, compared and signed (read and approved). Naturally, all "abnormal degradation" will be charged to the tenant and deducted from the deposit. The criteria for abnormal degradation being subjective, the Inventory of Fixtures is one of the three fundamental bones of contention between landlords and tenants, aside from rental hikes and defaulting on payments. What about improvements made by the tenant during the stay? Those are not compensated for if they are left behind upon leaving. No wonder departing tenants take with them light bulbs, the toilet paper holder, light fixtures and whatever was not on the *État des Lieux*. This explains why the Inventory has to be done in daylight: there are no light bulbs left!

The home insurance is mandatory and fairly standard but it contains a tricky notion for a North American tenant: the word *mobilier* (moveables) applies not only to the furniture but to the carpet, the paint, the plaster, the

wall paper, the water heater. This is all a tenant's responsibility!

Having thus signed *l'État des lieux* and proven that you are insured you are given the keys! This naturally requires another paper signed by both parties where the number and model of the keys is carefully stipulated. Home sweet home.

We discovered the inner workings of the system after we moved in. For instance, the water boiler was defective. It turned out it was our responsibility for fixing it and getting a maintenance contract for 769 FF. A few weeks later, the building manager announced to us that they had to tear down our toilet room ceiling to fix a leak in the apartment above us. *Quel Drag*. The manager told me I would have to hire a painter to fix the torn ceiling, which would be reimbursed by the insurance company, minus a deductible of 750 FF. The catch was, failure to do this would have been interpreted as an abnormal degradation and the cost of repair would have been subtracted from our deposit in guarantee! This time, however, I bitched and whined because the work had been assigned *before* our signing of the lease. The building manager admitted this point and took responsibility for the whole work. This



Necessary evil. Rental agencies can be found on almost every street.

is how I saved 750 FF for the foundation and learned that a Quebec accent gets listened to.

A couple of weeks later, Gaz de France (the gas utility) shows up for a routine safety check and discovers a minor problem. Not only did we have to pay for the safety check and the fixing, but I had to fill out a form to "swear on my honour" that all was done well! "Swear," indeed!

Question: Do French landlords do more than just sit and wait for the cash? Actually, they must maintain common spaces, fix light bulbs in the corridor, patch leaking roofs, fix the elevator, make sure that the apartment's supply of utilities is functioning and pay taxes. The cost of all this work is transferred to the tenant who pays an additional monthly service charge of 1,000 FF. At the end of the year, an actual-cost adjustment is made.

Historically, French landlords have always had the reputation of wanting to have their cake and eat it too, although the French expression is more to the point: *Demander le beurre et l'argent du beurre* (asking for the butter and the money for the butter). Landlord associations, however, are quick to blame the present state of affairs on the law. "*Un foutoir prodigieux!* (a bloody shambles!)" says Bertrand Desjuzeur, head of legal affairs at the *Union Nationale de la Propriété Immobilière*, a federation of 141 local Chambers of Proprietors. In their view, the Golden Age of landlordship dates back to those years before World War II when the rental market was ruled by the Civil Code only. The Civil Code regulates all legal relations outside the penal system, like leases or family relations and the responsibility of the father. During the Golden Age, there was no special regulation, and leases could be whatever the tenant and the landlord wished,



Our agent, Guillaume Mugnier (right), with his boss, Charles Gozlan (left). Says Gozlan: "Our awkward system is particularly advantageous to lawyers who get good business because of it."



Plumme. Good morning, we have to tear down your ceiling. Are you insured?

for whatever price, in whatever form. It could even be verbal.

“It was anarchy,” says Anne-Marie Fribourg, Deputy Director on housing at the Ministry of Equipment, Transport and Housing, and an authority on comparative housing policies in Europe. “Leases were a pure power struggle that naturally gave the advantage to owners, who customarily asked as much as they could.” People still joke about Monsieur Vautour (Mr. Vulture), the archtypical landlord created by 19th-Century illustrator Honoré Daumier. The landlords’ attitude did not endear them to French Legislators.

The Golden Age gave way to the Age of Brass in 1948. The French government then faced a housing shortage due less to the war than to industrialization, which began late in France, and the mechanization of agriculture. The Law of 1948 imposed, retroactively, a standard lease without a limit of time, established a method of pricing and established that leases could be transmitted to inheritors after death. This stringent system, however, had a built-in escape hatch: the Law of 1948 did not apply to anything built after that year, and the old anarchic system could be applied to new apartments in any new building. So builders began to build, and normal attrition over time eroded the number of so-called “1948 leases” to the point that nonregulated leases accounted for 85 percent of the market in 1980.

The Age of Brass gave way to the Age of Iron at the beginning of the Mitterrand era. This was the Law of Quillot of 1982, revised in 1986 and 1989, now known as the Law of July 6, 1989. It dictates, retroactively (but ex-

cluding the 1948 leases), a standard lease and prescribes rules for hiking rents and eviction. Under the *droit au logement* (right to be housed), rules became severe regarding the eviction of tenants or the nonrenewal of leases. For instance, the law forbids the expulsion of any tenant during the winter. A more subtle protection: a landlord can request the departure of a tenant only six months before the end of the standard three-year lease, and only for reasons of selling the apartment, of wanting to occupy it himself, or any other serious and legitimate reason (undefined but debatable and hotly challenged in courts). Meanwhile, tenants can break the lease any time they want on three months’ notice, reduced to one if they find a new job somewhere else or get transferred by their employer.

The law had a traumatic effect on landlords who consequently increased their requirements. “This law was intended to simplify the life of tenants, but it has had the perverse effect of making landlords even more demanding,” says Bertrand Desjuzeur of the *Union Nationale de la Propriété Immobilière*. He points out that the result, 17 years later, is that a lot of jobless people cannot find a decent place to live and the public-housing scheme is notoriously short of space. Public housing is not as developed as one might expect in France (see sidebar 2, page 8). Besides, European public housing schemes have been traditionally geared to low-wage workers, not the unemployed.

Only two percent of tenants default, according to a 1996 study by the National Institute for Economic Study and Statistics (INSEE), but landlords are obsessed by the obstacles that the legislators have created to prevent eviction. The problem is not the law itself, but its applica-



Anne-Marie Fribourg: an authority on comparative housing policy in Europe



Serge Incerti-Formentini: The market for furnished apartments is still fully deregulated.

tion. Indeed, the law has created relatively efficient “commissions of conciliation,” where tenants and landlords can quickly settle rental-rate hikes. But any disagreement over nonpayment of rent or return of the deposit in guarantee has to be brought to the conventional court.

These problems are real. Jackie Imbault, a 66-year-old widow from Montpellier, had trouble with her very first tenant, who wouldn’t pay his 10,000 FF rent on a splendid villa with a pool and a 20,000-sq.-ft garden. It took two years before the tenant was evicted by the court. “The action cost me 25, 000 francs in lawyer fees, in addition to the loss in earnings from the tenant who did not pay. Reclaiming that money required another action, but I had had enough,” she says. And she is not an exception: her daughter Babette was caught in the same web, compounded by the fact that she had a mortgage to pay on the apartment that her defaulting tenant occupied for free.

The problem is procedural: the legislature has dictated a rigid sequence of delays that, in effect, protects the tenant by lengthening the procedures to a minimum of one year. A two-year delay is common, however, and crafty tenants can stretch it to two years and half, and more as we will see.

For starters, the tenant must be given two months to pay after proper summoning by a bailiff. Then the matter is brought to the attention of local social services, which have another two months to mediate. In case of

failure, six months are necessary for the court to produce a judgment in the court. If the landlord wins the case, the tenant has another two months to leave after proper summoning by bailiff. A year has elapsed. If the deadline falls during the terrible French winter, between November 1 and March 15, the tenant is allowed to stay until March 16. The intelligent tenant will appeal the judgment and the whole case is returned to the court, which adds another eight to twelve months depending on the timing. If the tenant loses the appeal but refuses to leave, the bailiff can request an eviction by force to the *Préfet*, the highest local police authority. But the *Préfet* has the right to refuse to execute the judgement on grounds that the action may trouble public order! Even if the *Préfet* agrees and orders the eviction, the owner is still not out of the woods. The police chief can also refuse on the same grounds. Upon which, the owner can launch action against the *Préfecture* who will then be required to cover the cost of the rent because of its refusal! Naturally, the landlord could carry out justice by himself by hiring thugs to raid the apartment with baseball bats, but this scheme constitutes a violation of domicile, a criminal offense. Catch 22.

Jackie Imbault has found her own solution: she buys a special insurance against defaulting tenants. For 3,500 FF per year, the insurance company will cover 100 percent of the rent of the defaulting tenant for two years and will launch legal procedures to expel the tenant and get the money back. One condition for insurance: the tenant’s



Bertrand Desjuzeur: “Liberalism” is the point of view of an invisible minority.

net income, or the guarantor's, must be at least three times the annual rent.

Tenant associations defend the present law on grounds of justice. "An apartment is not a piece of merchandise. It is a right. People have a right to a decent place and a decent dwelling even if they have lost their job and cannot afford it," says Serge Incerti-Formentini, Secrétaire confédéral of *Confédération Nationale du Logement* (Confederal Secretary of the National Confederation for Housing).

Serge Incerti-Formentini insists tooth and nail that the law is balanced. "Take the *Commissions de conciliation* created by the law," he says. "Of course, tenants can defend themselves and fend off a rate hike, but there is no procedure for the re-evaluation of an over-evaluated dwelling." He adds that the law also has a built-in safety valve for landlords: furnished apartments were excluded from the Law of July 6, 1989, which means that this growing segment of the market is fully deregulated.

So the system is at present a patchwork of anarchy and over-regulation. Says Anne-Marie Fribourg: "The root of the problem is not the law, which is fairly balanced, but its application, compounded by custom."

The problem, like everything else in France, is also political. Hélène Tonnellier, a jurist and consultant for the *Chambre des propriétaires de Paris*, decorates her office with Daumier illustrations. "The truth of the matter," she says, "is that landlord associations have been weak politically at the national level compared to tenant associations." Indeed, the *Confédération National du Logement* is related to the Communist Party, whereas the *Confédération Générale du Logement* is linked to the Socialist Party. Land-

lords would naturally be drawn to the right, but right-wing parties do not readily embrace the landlords' longing for the Golden Age. "The French right is a political right, but its economic policy is far from being conservative. In fact, conservatism is a very minority position in France," says Bertrand Desjuzeur of the *Union Nationale de la Propriété Immobilière*. Says Hélène Tonnellier: "Nowadays, a number of left-wingers are owners and a number of right-wingers are tenants. That creates a balance."

"The reason is historical," she says. "Public housing schemes were originally intended for low-wage industrial workers as an indirect subsidy to industry. France began industrialization later than northern countries but earlier than Italy, Spain and Portugal. This accounts for its holding the middle ground." □

SIDEBAR 1

AN OVERVIEW OF THE MARKET

Number of dwellings: 27 million
 Number of privately owned homes: 15 million
 Number of homes within the public-housing scheme: 4 million
 Number of homes within the private market: 4.7 million
 Other types of dwellings, including secondary residences: 1 million
 Proportion of institutional owners in the private market: 7%
 Proportion of individual persons as owners in that market: 93%
 Number of dwelling occupied by joint tenants: 110 000
 Number of eviction rulings per year: 100 000

SIDEBAR 2

PUBLIC-HOUSING SCHEMES NOT THAT GENEROUS

A ground-breaking study by Anne-Marie Fribourg, Deputy Director for research on housing at the Ministry of Equipment, Transport and Housing, shows that although France is often labeled a socialist country, its public housing scheme is far from the most generous or extensive compared to those of other European industrial powers. The proportion of public-housing dwellings is 70 per 1,000 inhabitants, compared to 94 in Denmark, 95 in Germany, 99 in the UK and 151 in the Netherlands. Here are her results, adding up all expenditures in construction and direct aid, minus taxes.

COUNTRY('94)	SPENDING (in FF)	% OF GDP	HOUSEHOLD (in FF)
Denmark	28 billion	3.5	12,100
France	107 billion	1.5	4,800
Germany	196 billion	1.7	5,400
Netherlands	36 billion	2.0	5,600
Un.-Kingdom	211 billion	3.7	8,900

(Source: *Les Politiques du logement en Europe, Centre de Prospective et de Veille Scientifique, Ministère de l'Équipement, des Transports et du Logement, Direction de la recherche et des affaires scientifiques et techniques.*)



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Phone: (603) 643-5548 E-Mail: ICWA@valley.net
 Fax: (603) 643-9599 Web Site: www.icwa.org

Executive Director: Peter Bird Martin
 Program Administrator: Gary L. Hansen
 Publications Manager: Ellen Kozak

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