



## **SURETYSHIPS AND RESIDENTIAL LEASES**

### **What is a suretyship?**

A suretyship is security (i.e., a guarantee). It is an accessory contract that applies to residential leases, among other things. For example, a father can act as surety (i.e., guarantor) for the dwelling leased by his daughter, who is insolvent. For the landlord, the suretyship provides an additional guarantee for the obligations in the lease.

The law specifies that suretyship is not presumed; it is effected only if it is express.<sup>(1)</sup> This means the suretyship clause must be clear and specific.

### **Does my landlord have the right to require a suretyship for my residential lease?**

Yes. A landlord or building manager has the right to require an additional guarantee when the future tenant's ability to pay is uncertain. The request must not be based on a discriminatory reason.<sup>(2)</sup>

### **What happens to the suretyship when my residential lease is renewed?**

The law states that security given by a third person to secure the performance of the obligations of the tenant does not extend to a renewed lease.<sup>(3)</sup> Thus, in principle, suretyship expires when the initial term of the lease ends. However, this is not a rule of public order, which means that the parties can agree otherwise. It is therefore possible to specify in a residential lease that the suretyship will be renewed each time the lease is renewed. Such a clause is valid.

In order to avoid unpleasant surprises, when signing as a surety it is very important to be precise about the extent of the obligations being assumed. For example, you may think you have signed as surety for only one year when, in fact, you have also signed as surety for subsequent renewals of the lease.

It should be noted that a suretyship can be limited to guaranteeing the payment of the rent, without covering any damages the tenant may cause. However, this limitation must be set out in a clause to that effect.

If the residential lease provides that the tenant and the surety are solidarily liable, the landlord will have the option of suing either the surety or the tenant for the entire amount owed.<sup>(4)</sup> However, a solidarity clause must be specifically set out in a residential lease.<sup>(5)</sup>

If you have any doubts, don't hesitate to contact a legal aid lawyer!

<sup>(1)</sup> Article 2335 C.C.Q.

<sup>(2)</sup> Sections 10 and 12 of the *Charter of Human Rights and Freedoms*.

<sup>(3)</sup> Article 1881 C.C.Q.

<sup>(4)</sup> Article 2352 C.C.Q.

<sup>(5)</sup> Article 1525 C.C.Q.

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\* The information set out in this document is not a legal interpretation.

The masculine gender is used to designate persons solely in order to simplify the text.