

The Joint Sections of the Italian Supreme Court rule on compensation for damages resulting from the termination of a lease agreement due to tenant's breach

By judgment no. 4892/2025 dated 26 November 2024, published on 25 February 2025, the Joint Sections of the Italian Supreme Court have ruled on damages that a landlord is entitled to claim when a lease agreement is terminated due to the tenant's breach. The ruling specifically addresses the existence and quantification of damages for the period between the return of the property to the landlord and the time when the terminated lease agreement would have come to its natural end.

Lacking a statutory provision, there were two conflicting case-law opinions on the matter. According to an earlier and prevailing case-law, if a lease agreement was terminated due to the tenant's breach and the property was returned to the landlord, the landlord would have been in any case entitled to additional compensation for damages, to be calculated based upon the leases which the tenant would have had to pay if the lease agreement had not been terminated.

On the other hand, according to a more recent and minority case-law opinion, once the landlord had regained material possession of the property, as a general rule he would have not been entitled to claim additional damages, as leases are the consideration that the landlord receives for not having direct possession of its property.

In judgment no. 4892/2025, the Joint Sections of the Italian Supreme Court ruled in favour of the first and prevailing case-law opinion, thus recognizing to the landlord who has requested and obtained the early termination of the lease agreement and the return of the property, the right to claim additional compensation for damages, to be calculated based upon the leases that the tenant would have had to pay until the natural end date of the lease agreement or until the date a new tenant is found (whichever comes first).

However, the judgement also makes it clear that there can be no automatism aimed at identifying the tenant's damage with the aggregate amount of the rents which were due. On the contrary, although damages are indeed to be quantified based upon the leases due according to the terminated lease agreement, their quantification has to be carried out on a case-by-case basis.

For example, the Supreme Court expressly refers in this respect to the rent that the landlord "could have obtained with the use of ordinary diligence from the property in the period between the early termination and the natural end of the contract", thereby giving importance to any possible wrongful behaviour of the landlord which results in the failure to enter into a new lease agreement, or in the conclusion of a new lease agreement having worse conditions than the previous one.

The Supreme Court's judgment also states that pursuant to Article 2697 of the Italian Civil Code it is on the landlord to prove the existence and amount of damages, it being understood that it will be reasonably sufficient to demonstrate that the landlord has "taken prompt action, as soon as the property was returned, to disclose to the market by ordinary means the availability of the property for a new lease".

In conclusion, while the principles stated by the Italian Supreme Court appear clear, the inevitable generic terms in which they have been stated leads to a wide margin of discretion upon the Judges that will have to apply them on a case-by-case basis.

Furthermore, significant practical difficulties may arise in certain cases, for example, where the quantification of damages is determined (either through a settlement or by a court judgment) before it is known whether the landlord will be able to enter into a new lease agreement replacing the previous one. In such a scenario there might be a risk of unfair enrichment in favour of the landlord, in the event that the landlord (i) receives compensation for an amount equal to the lease due until the natural end date of the contract and (ii) subsequently rents the property to a third party for a period partially corresponding to that already paid by the previous tenant.

Eventually, it should be noted that the Supreme Court's judgement does not deal with damages for delayed delivery of the property to the landlord, which are governed by Article 1591 of the Italian Civil Code ("the tenant in default of returning the property shall be obliged to pay to the landlord the agreed consideration until redelivery, without prejudice to the obligation to pay compensation for any greater damage").

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