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Insecure tenure

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CHAPTER 4

TEMPORARY TENANCIES IN THE NETHERLANDS: FROM PRAGMATIC POLICY INSTRUMENT TO STRUCTURAL HOUSING MARKET REFORM*

Between 1997 and 2012 temporary tenancies emerged and evolved as a pragmatic policy instrument within the Dutch housing sector. In this chapter, based on analyses of policy documents, media content and parliamentary archives, we argue that this was a period of implicit, technocratic erosion of the existing permanent rental norm, creating the political and material foundations for the emergence of a new, more explicit ideological discourse that has been evident since 2013. We then explore these most recent developments, in which temporary tenancies are now championed as a catalyst for structural housing market reform, and comment on the possibility that the recent proposal to introduce time-limited tenancies as a normal form of tenure, will lead to permanent, rather than temporary, contracts becoming marginal in Dutch society.

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It is moreover neither the goal to abandon the principle of the rental contract of unlimited duration nor to leave the system wherein temporary rent is the exception to the rule. [...] The intention is therefore to introduce in housing law a 'time-limited tenancy', analogous to business leases, on which rent ceilings will apply, but security of tenure will not, and the tenancy will thus end 'automatically' after the agreed period.

Minister Blok of Housing proposing the introduction of generic temporary renting contracts in the Netherlands in his letter to the Lower Chamber of Parliament of 11 April 2014; our translation from Dutch.

4.1 Introduction: the Dutch permanent renting norm

In some countries, such as the United Kingdom and the United States, the insecurity that comes with non-permanent residential tenancies has become so normalised that it is hardly worthy of attention. However, when a country like the Netherlands, long renowned for its strong protection of renters, starts to introduce temporary renting contracts as a normal form of tenure, this warrants significant notice. Indeed, traditionally, temporary rent has been forbidden in Dutch law, except in some very limited and restrictive, well-defined circumstances (Donker van Heel, 2004). Nevertheless, the last decade has seen a strong trend towards relaxing these regulations by continually expanding the exceptions (Van de Pest, 2013). These changes have attracted little attention or controversy, partly due to the continuing perception of temporary rent as a marginal and essentially positive phenomenon that can be deployed in those few situations where permanent contracts are deemed untenable (Huisman, 2016). Very recently (2013-2015), however, a sharp shift has occurred. Major stakeholders in Dutch housing have started arguing that temporary contracts are inherently desirable, and the government is introducing policy which, for the first time in modern Dutch political history, elevates the temporary contract to the same legal status as permanent contracts. This is likely to have a profound impact upon the Dutch rental market, especially since in other countries similar policies led to the swift dominance of time-limited tenancies (Kadi, 2015; Morgan, 1996).

Where did this change come from? In order to answer this question, policy documents, media content and parliamentary archives

were analysed. Based on this analysis, this chapter develops the argument that it was exactly the slow sequence of apparently technocratic, uncontroversial developments surrounding temporary rent between 1997 and 2012 which made this shift possible. By allowing more and more exceptions to the rules, the norm of permanent renting contracts was eroded. This paved the way for challenging the standard in a more fundamental way, a development discussed subsequently. The shift fits in with simultaneously occurring changes in views on the desired size of the rental market and the groups it should cater for. In the final part of this chapter we argue that given the speed of recent developments, the introduction of non-permanent tenancies might quickly result in *permanent* tenancies becoming the exception. If this happens, it will have a profound effect on the character of rental housing in the Netherlands, because it will strengthen the desirability of home-ownership as a more secure form of housing, and relegate renting to a temporary solution for the young and upwardly mobile, as well as the only option for those who cannot afford to buy a dwelling. That a similar development thirty years earlier in the UK rapidly resulted in an extremely precarious rental housing market, especially in England and Wales, should be food for thought.

4.2 1997-2012: Introduction, consolidation and expansion of a pragmatic policy instrument

At the beginning of the twentieth century, the Dutch government sought to improve the deplorable and precarious housing conditions of many households (Kraaijestein, 2001). The introduction of the Dutch *Law on Terminating Tenancies* (Huuropzeggingswet) in 1918 (De Gaay Fortman undated, approximately, 1918; Kraaijestein, 2001) essentially forbade landlords to terminate tenancies unless tenants failed to fulfil some fundamental duties. As a result, between 1919 and 1985, temporary rent seems to have been almost non-existent in the Netherlands. All rental contracts were permanent. Unless the tenant fails to meet some minimal basic conditions, such as paying the rent on time or not causing gross nuisance, it is very difficult for a landlord to terminate a renting contract and evict the tenant (*Dutch Civil Law Book* 7:271-274). According to Dutch law, for instance, even when a house is to be demolished, the landlord has to offer the tenant a similar dwelling with a contract on the same terms

as before, as well as compensation for moving costs (*Dutch Civil Law Book* 7:274). Only in 1985 temporary renting contracts were admitted again as part of the *Law on Vacancies* (Leegstandswet), but solely as an exception in very specific cases where permanent contracts were deemed infeasible, and the alternative would be leaving the dwelling empty (with the risk of it being squatted) (Dutch Association of Municipalities; Vereniging Nederlandse Gemeenten; VNG, 2011). They were seen as a solution for short-term vacancies, when normal provisions such as replacement housing were not practical. In such instances it was thought that time-limited tenancies could benefit home-owners, tenants and local residents (Brokx & de Ruiter, 1980). They would supply rent income to owners, increase the available rental stock and prevent feelings of unsafety caused by empty buildings. Stressing the exceptional status of time-limited tenancies, strict conditions applied. The owner could only apply for a permit to rent out the dwelling temporarily in the case of previously owner-occupied or newly built dwellings that were for sale or, in case of previously rented dwellings, if they were to be demolished or rebuilt soon.¹ Furthermore, as with the majority of all Dutch rental housing, then and now (Haffner & Boumeester, 2010; Van der Schaar, 1987), rent ceilings applied. There is no evidence that extensive use was made of temporary renting contracts after their introduction in 1985. According to the Dutch association of owner-occupiers for instance, no private home-owners ever utilised this possibility (Vereniging Eigen Huis, 2015).

To provide some context, throughout almost all of the twentieth century the majority of all Dutch households lived in rented accommodation² (Van der Schaar, 1987, Statistics Netherlands), and consecutive governments stimulated renting as well as owner-occupation. By the late 1980s, however, the policy started to focus exclusively on the expansion of home-ownership, and while still substantial in absolute numbers, over time the ever-shrinking rental sector became more and more discursively projected as a residual form of tenure for those who could not support themselves (yet). It is against this backdrop that in 1997, more than a decade after the introduction of the *Law on Vacancies*, landlords start engaging substantially with renting out dwellings on a non-permanent contract.

One of the first domains where time-limited tenancies emerged was urban renewal. At the end of the 1990s, due to the policy of upgrading dis-

advantaged neighbourhoods through state-led gentrification (Teernstra & Pinkster 2016; Uitermark *et al.*, 2007), many dwellings, predominantly owned by housing corporations,³ were being rebuilt. Traditionally such dwellings were left empty and boarded up if vacated shortly before renovation or demolition. To improve the *liveability* of the neighbourhood, the dwellings were now rented out on temporary contracts instead. The urban renewal plans from the late 1990s and early 2000s were very ambitious, and construction soon stagnated (Priemus, 2004; Vromraad, 2002). This was compounded by the advent of the global financial crisis of 2007–2008 and the ensuing economic recession. Due to the delays, the number of dwellings rented out on temporary contracts, as well as the total time that they were rented out on such tenancies, increased significantly (Dekker, 2003). While many renewal plans were postponed indefinitely, housing corporations did not transform the temporary contracts into permanent ones (Dutch Union of Tenants, 2015). Although this was against the rules, no enforcement by the government took place.

Student housing was the second area where temporary tenancies were introduced. Before 1997, tenancies for dedicated student housing were permanent, just as all other rental contracts in the Netherlands. While it was necessary to fulfil the condition of pursuing academic studies to enter the tenancy, ceasing this education (either through finishing the degree or quitting) could not result in termination of the tenancy (Nieuwenhuijsen, 2006). During the 1990s the number of students enrolled in higher education stabilised, but the supply of housing available to them actually decreased. The focus on larger, higher quality owner-occupied housing resulted in the disappearance of affordable housing through demolition, upgrading and tenure conversion as well as in a lack of new suitable construction (Oskamp & Hoppesteijn, 2003). To maximise efficiency, from 1997 onwards a small local housing corporation specialising in student accommodation (Duwo), attempted to introduce so-called campus contracts. Such agreements contain a stipulation stating the tenancy will be terminated when tenants cease their studies. However, such a clause lacked a basis in Dutch law, as resulting test court cases showed (Nieuwenhuijsen, 2006). Around the year 2000 interest group Kences, uniting most housing corporations specialised in student accommodation in the Netherlands, started lobbying for legalisation of such contracts. When in 2006 the law was indeed changed, it was the

first incidence in the Netherlands of temporary rent conditional on the status of the *tenant* rather than conditional on the status of the house. As the name implies, campus contracts were initially only deployed in designated student housing at university premises. However, quickly already before they were legalised the use of such contracts spread from the campus to normal residential neighbourhoods and all other parts of university cities. Soon, in almost all situations where students rented through housing corporations, campus contracts became the norm (Companen, 2010; Municipality of Amsterdam, 2005).

The third field in which non-permanent rental arrangements emerged in the period 1997–2012 was as a way to prevent vacancies in dwellings for sale. Due to the policy of transferring a large amount of rental stock to the owner-occupied sector (Priemus, 2004), many previously rented dwellings entered the market. Temporary rent in the formal sense (i.e. with a permit) was not allowed (Dekker, 2005) in order to prevent strategic misuse such as symbolically putting a dwelling on the market to circumvent rent protection (Brokx & de Ruiter, 1980; Spies, 2011). Nevertheless, during this period housing corporations often let these dwellings temporarily, using somewhat controversial legal constructions (Blok, 2013; De Zeeuw, 2005). Both ‘use agreements’ and ‘anti-squat’ are explicitly designed to circumvent formal renting law and allow properties to be let out under highly precarious circumstances for the tenant (Martinez-Lopez, 2013; Priemus, 2015; Van Eijck & Naafs, 2014).⁴ For owner-occupied homes temporary rent came into view via a different route. Due to the global financial crisis which began in 2007, dwellings became much more difficult to sell. The average length of time for a dwelling to be on the market increased significantly (Schilder & Conijn, 2013). The growing group of owner-occupiers active on the housing market felt squeezed by this, arguing they often faced a double mortgage burden: the mortgage for their new home, as well as the monthly payments for their as-yet unsold old home. Following this logic, the Dutch association of owner-occupiers successfully launched a lobby to remove all perceived barriers to temporary rent of dwellings for sale, such as rent ceilings (VNG, 2013).

With the possible exception of the growing use of anti-squat (Priemus, 2015), none of the developments described above have been particularly controversial. They all have an ad hoc, pragmatic flavour

and a win-win feel, offering a fix for specific technical problems encountered by landlords and at the same time creating (temporary) living space where there was hitherto only vacancy. Yet the compound effect of all these changes was significant. To start with, there were volume and normalisation effects: temporary contracts became increasingly familiar to both tenants and landlords, with housing corporations and real estate agents gaining bureaucratic experience in administering such tenancies. Also, unlike with permanent contracts, the allocation of temporary contracts is unregulated. Housing corporations can issue contracts to whichever individuals or categories of people they prefer. As such, the growth of temporary rent normalised the distribution of rental housing outside existing distribution regulations. Indeed, sometimes extensive use of temporary rent is now *de facto* supplanting permanent contracts, not augmenting them. In some urban renewal districts, for example, temporary rent has taken on a semi-permanent character as unclear future renovations are pushed back repeatedly. Due to the technocratic character of the debate, the point is rarely made that these houses have been effectively withdrawn from the regulated housing supply for the best part of a decade; such distribution issues are seldom raised (but see Dutch Union of Tenants, 2015).

Furthermore, this institutionalisation of temporary rent has been strengthened by, at the municipal level, patchy or non-existent enforcement of the laws that, in theory, curb misuse by landlords, while the working assumption at national policy level and discursively is that they *are* enforced. This is significant because regulatory relaxation, for instance the introduction of campus contracts, has so far always led to utilisation in a far wider array of situations than originally planned or claimed. Relatedly, at the level of national government a sequence of significant relaxations of laws to make permit-based temporary rent possible in an ever wider array of situations, for ever-longer periods of time has continued the trend towards deregulation. For instance, the window of time during which home-owners are in some cases allowed to rent out their dwellings with temporary tenancies was initially 3 years, but was then extended to 5 years, followed by further extensions to 7 or sometimes even 10 years (see Tables 4.1 and 4.2, Dekker, 2003, 2005, Van de Pest, 2013, VNG, 2013).

Table 4.1
Maximum period a landlord can obtain permission from the government to issue temporary tenancies in the Netherlands

Period	Maximum time period
Pre-2005	3 years
2005–2012	5 years
post-2012	7 years — social housing (demolition/renovation) 10 years — office buildings

Lastly, and not to be understated, the expansion of temporary rent has not occurred in a vacuum. The Dutch housing discourse is increasingly moving towards the benefits of home-ownership (Elsinga & Hoekstra, 2005) and away from (regulated) renting, and tenure transformation

Table 4.2
Extension of exceptions in which home-owners can obtain governmental permission to issue temporary tenancies on their dwellings

Period	Permitted situations
Pre-2006	Shortly before renovation/demolition
	Owner-occupied dwellings for sale — strict conditions apply
2006–2012	Shortly before renovation/ demolition
	Owner-occupied dwellings for sale — strict conditions apply
	Student housing
Post-2012	Shortly before renovation/demolition
	Owner-occupied dwellings for sale — strict conditions lifted
	Student housing

(Priemus, 2004) has been a major driving force behind the expansion of temporary rent. The current meritocratic discourse (Young, 1958), which advocates allocation of living space based on merit, naturally extends to the argument that rental contracts should be temporary rather than permanent (cf. Heijkamp & Griffioen, 2015; Heijkamp & Borstnik, 2016). All these factors contributed to the sharp shift that was witnessed in 2013, which we now describe.

4.3 2013-2015: Structural housing market reform

In July 2013, around the same time the latest relaxation of the regulations on temporary rent came into force, Amsterdam housing corporation Stadgenoot launched a plan for introducing generic temporary contracts:

The idea of the five-year contract builds on the flexibilisation in the rental sector due to the introduction of the campus and youth contracts. In January 2012, the Minister made further flexibilisation possible for dwellings that are for sale; the possibilities for temporary rent based on the Law on Vacancies have already been widened too. Now, we propose the next step, namely a simple, easy and generically applicable device: the five-year contract.

De Langen & Anderiesen, 2013, translation ours.

Stadgenoot's plan constitutes a clear break with the old logic. No longer is the argument that time-limited tenancies will persuade landlords to rent out their transitionally vacant houses. The distinctly new element is that they want to use the timelimited tenancy to change the way housing is distributed. Rather than allocating rental housing through waiting time, as is usual now for most rental housing in the Netherlands, the new goal is to supply specific groups, such as starters, with a chance to enter the housing market earlier. When the five years have finished, they either have made progress in their professional careers, and will be able to afford more expensive free-market housing, or they will have to relocate to less desired, less central city districts (Nolles, 2013). In either case they will have to move, which is evaluated positively by Stadgenoot as 'more dynamism on the housing market'.

By September 2013, Stadgenoot had convinced the four other main Amsterdam housing corporations of the necessity to exert influence. Through the Amsterdam newspaper *Het Parool* they announced a large lobby campaign in The Hague, the seat of the government, in order to 'try to force through a change of the law that will make temporary renting contracts possible in the city' (Nolles, 2013, translation ours). Indeed, in November 2013 the small orthodox Christian political party Christenunie launched a pre-proposal for a bill introducing five-year renting contracts for young people (Schouten, De Snoo, & Visser, 2013). The Dutch Union of Tenants (Woonbond) did not agree: 'The starters' contract will put tenants out on the streets without any rights' (Buiteelaar, 2013, translation ours). They contended that only an increase in new construction will offer a structural solution to the continuing housing shortage in many Dutch cities. In February 2014 the aldermen of major Dutch cities Amsterdam and Utrecht (later joined by their Den Haag and Rotterdam colleagues) joined the lobby for what are by then dubbed 'nomad contracts' by the Union of Tenants (C. Huisman, 2014). In April 2014, Dutch Minister of Housing Stef Blok announced the government's intention to introduce temporary contracts. He did this in a letter to the Lower Chamber of Parliament that like most Dutch housing policy contains a complicated mix of wishes and ideas from different stakeholders. On the one hand, the category of temporary rent conditional on the status of the tenant, introduced in 2006 with campus contracts for students, will be extended with contracts for young people (age 18-28), large families (households consisting of eight or more persons) or any other category government wishes to define. On the other hand, the category of temporary rent conditional on the status of the house will also be extended.

The most important proposal, however, is to introduce generic temporary contracts as a normal form of tenure (Blok, 2014). According to the Minister, it is a simple solution to the many requests for exceptions he received from representatives of home-owners. The proposed contracts will have a maximum duration of two years. They can be concluded not just with specific groups, but with anybody. To protect renters, Minister Blok argues, they cannot be renewed (but can be transformed into permanent tenancies), so tenants cannot have a string of such contracts with the same owner. However, otherwise, there are no

preconditions for their use: they can be used anytime, anyplace. As far as can be gleaned from the letter, landlords will be allowed to engage in a perpetual string of such contracts, only not with the same tenant. Blok asserts that the high transaction costs associated with renting out a dwelling every two years will dissuade landlords from engaging en masse in them. There exists a real danger, however, analogous to earlier developments in Dutch labour law (Dirks, 2000), that tenants will be evicted to be replaced with new tenants on another temporary contract.

In September 2014 the proposal was published online, inviting input from interested parties.⁵ Perhaps predictably, the internet consultation yielded mainly positive appraisals by representatives of house-owners such as the Dutch associations of housing corporations and real estate investors, while spokespersons for renter organisations were mostly negative. In July 2015 Minister Blok announced that the proposal is to be discussed in Parliament in autumn 2015, and if swiftly agreed upon it can come into effect by February 2016. Notwithstanding some internal disagreements, it is backed by the ruling coalition of Dutch Labour party PvdA and the VVD, a right-wing liberal party. While the Socialist Party, the third largest party in the

Table 4.3

Proposed further relaxation of regulations on temporary rent in the Netherlands in 2016

Permitted situations	- All dwellings, all circumstances - Landlord can engage in unlimited number of temporary contracts (with different tenants)
Maximum window	- Unlimited (for the landlord)
Restrictions	- Contract can be between 1 and 24 months, not longer - Contract cannot be renewed with same tenant (but can be transformed into a permanent contract) - Rent ceilings apply in some situations

Lower Chamber, might oppose the proposal, this will likely be offset by endorsement from the almost as large right-wing PVV or the centre-right CDA and other parties.

To summarise, the Netherlands is moving from a situation in which temporary tenancies were only allowed as an exception for a limited, restricted number of reasons, and for which in most cases a permit was required, including a limit on the maximum period of use, to a situation where temporary tenancies will become a normal form of tenure, with no need for a reason, no permit, and no limit on their use (Table 4.3). This constitutes a shift from permanent renting contracts as the norm, with temporary contracts as a marginal exception, to the introduction of temporary contracts as a normal form of tenure. The question is: will this shift be followed by a development where temporary renting contracts become the norm?

4.4 Conclusion: From pragmatic policy instrument to structural housing market reform... and beyond?

This chapter has charted the recent development towards introducing time-limited tenancies in the Netherlands. At first glance, given the Dutch tradition of strong renter protection, this policy switch seems hard to understand. We have attempted to clarify this by looking closely at the emergence of temporary renting contracts in the period 1997-2012. We found that during these years, time-limited tenancies were first presented as solutions to specific, short-term problems, such as vacancies before renovation or demolition of houses. However, over time the emphasis has shifted towards changing the way housing is distributed and promoting dynamism on the housing market. Moreover, the temporary contract became increasingly visible and mainstream. This can be attributed to specific market dynamics (overambitious/ stagnating urban renewal, the impact of the financial crisis on both the private and public housing sector, the continuing transfer of housing from the rental to the owner-occupied sector), the continued relaxation of regulations, and the self-reinforcing effect of the increasing use of temporary rent as a policy instrument for creating temporary housing for selected target groups such as students. At the same time, and closely coupled with the sectoral

shift towards home-ownership, access to housing became increasingly discursively framed as a meritocratic issue, that is, something to be earned. The permanent contract does not sit comfortably within such a discourse.

All these factors accumulated so that by 2013 a tipping point had been reached. Temporary tenancies were no longer viewed as infrequently occurring exceptions for well-defined situations, but as a normal part of the market, and an inherently desirable goal in themselves. Housing corporations and local politicians (predominantly from the major Dutch cities) as well as national political parties started a lobby to make the temporary tenancy a normal alternative to the permanent tenancy. The Dutch government responded by recently (2014) announcing the recognition and legalisation of the temporary tenancy within standard Dutch renting law (as opposed to its current status as at least in theory a carefully circumscribed exception). This is the first time in modern Dutch history that this has happened, and the obvious question is how this regulatory normalisation will impact upon the Dutch housing market in the coming years assuming, as is likely, that the Dutch Parliament ratifies the proposal. This is not such a strange thing to ask, given the earlier, similar development in the United Kingdom, where until the end of the 1970s the permanent renting contract was commonplace.

Indeed, due to a sequence of reforms between 1979 and 1996 the permanent renting contract was practically abolished in the United Kingdom (Kemp & Keoghan, 2001; Kemp, 2009; Morgan, 1996), highlighting how quickly huge changes can occur once the first explicit step has been taken. The rental market in the United Kingdom (comprising 37% of all housing, British Office for National Statistics) is now, especially in England, notoriously precarious. Time-limited tenancies of 6 months have become the standard, and (especially in London) rents are soaring (Bachelor, 2015), with rent control limited to social housing. Where will the Dutch rental sector (currently 44% of the national stock, Statistics Netherlands) be 20 years from now? Especially given the growing scarcity of rental housing, it is likely that many Dutch landlords will henceforth opt for short-term contracts rather than permanent contracts because of the increased flexibility it will offer them. Yet the Dutch mainstream media pays scant attention to these issues.

Will this lack of interest fuel a new phase of deregulation, such as the removal of rent ceilings?

This absence of attention is also significant because, as the UK again demonstrates, it is far more difficult to reverse deregulation than to implement it in the first place, even when there is substantial political support for it. There the emergence of *Generation Rent* traditionally home-owning sections of the population now forced to rely long-term on the precarious rental sector given the unavailability of homes they can afford to buy has bolstered support for stronger protection of renters. However, meaningful reform is unlikely in the foreseeable future. If, as expected, the two-year contract becomes law in the Netherlands, under which circumstances will a future Dutch government be willing and able to re-regulate? As illustrated by the quotation at the beginning of this chapter, Minister Blok has stated that temporary contracts should not displace permanent contracts as the norm, but the actions of his government are establishing the conditions for exactly this to happen.

Post-script

At the end of April 2016, at the time this chapter was accepted as an article, the law, as expected, had been just passed by the Dutch parliament, with only some minor changes. All major political parties backed it, and the law will come into effect as of July 2016.

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Notes

- 1 The Law on Vacancies also introduced temporary tenancies for vacant buildings not previously used for housing such as offices under similar conditions as for housing.
- 2 Between 1920 and 1990 the proportion of households renting gradually decreased from 82% to 55% of all Dutch households (Van der Schaar, 1987, Statistics Netherlands). By 1997, the distribution between renting and home-ownership was exactly 50% 50%. Since then, both the number and the proportion of households renting has continued to shrink slightly, so that by 2014 44% rented and 56% owned their home (DGW/ABF Research, 2015).
- 3 Housing corporations are not-for profit organisations that own the greatest share of the Dutch rental housing stock (C.J. Huisman, 2014).
- 4 Indeed, the period 1997 2012 also saw growing use of these constructions (Priemus, 2015). We do not discuss these further here because, due to their somewhat idiosyncratic character, they are still a long way from obtaining the kind of discursive and regulatory acceptance that temporary rent increasingly enjoys. The same applies to the municipality of Amsterdam's experiments with 'youth contracts'.
- 5 <https://www.internetconsultatie.nl/tijdelijkehuur>