

## EVICTIONS IN THE NETHERLANDS

Michel Vols<sup>1</sup>

### 1. INTRODUCTION

This chapter assesses the number of evictions in the Netherlands as well as the legal protection offered against eviction. Data shows that approximately 20 000 eviction judgments are given in the social rental sector every year. The main reason is rent arrears. The data also shows that approximately one-third of these judgments are actually executed. Evictions do take place in the private rental sector as well, but clear data is lacking. Although private rental tenants enjoyed the same level of tenure security as those in the social rental sector, recent legislation has introduced short-term leases and made the eviction of private rental tenants easier. In the owner-occupied sector, thousands of evictions occur every year, but precise data is lacking. The main reason is mortgage arrears. Another cause of evictions is administrative closures of premises due to drug-related crime. Research has found that local authorities close hundreds of residential properties each year. This chapter shows that Dutch law provides people at risk of eviction with robust legal protection. Under Dutch law, they are entitled to have the proportionality of the eviction assessed by a court. Nonetheless, quantitative analysis of eviction litigation finds that in most cases, proportionality defences do not have a significant impact.

In light of the recent economic and financial crises in various countries throughout the world, it is becoming extremely difficult to ignore the growing numbers of evictions.<sup>2</sup> A considerable literature has grown up around the reasons for evictions, the tense relationship of evictions with human rights such as the right to housing, and the consequences of evictions.<sup>3</sup> However, data about the actual number of evictions and an overview of the legal protection in jurisdictions are often very limited. This lack of data hinders the possibility of comparative (legal) analysis. Therefore, this chapter aims to provide an overview of the number of evictions in the Netherlands in both the owner-occupied sector as well as the rental sector. Furthermore, the chapter assesses the legal protection against eviction offered by Dutch legislation and policy and gives an account of interventions to prevent and address evictions in the Netherlands.

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<sup>1</sup> This work was supported by the Netherlands Organization of Scientific Research NWO (Veni grant 451-15-013).

<sup>2</sup> K Brickell, MF Arrigoitia and A Vasudevan, *Geographies of Forced Evictions* (London, Palgrave 2017).

<sup>3</sup> See S Fick and M Vols, 'Best protection against eviction? A comparative analysis of protection against evictions in the European Convention on Human Rights and the South African Constitution' (2016) 3 *European Journal of Comparative Law and Governance* 40–69; P Kenna, L Benjaminsen, V Busch-Geertsema and S Nassare-Aznar, *Pilot Project – Promoting Protection of the Right to Housing. Homelessness Prevention in the Context of Evictions* (VT 2013/056) (European Union: European Commission, Directorate-General Employment, Social Affairs and Inclusion 2016).

## 2.POLICY BACKGROUND

### 2.1 General Housing Policy Related to Evictions

The Dutch housing stock consisted of 7 641 323 premises in 2016.<sup>4</sup> In the last few decades, it has been official government policy to promote home-ownership and this policy has been successfully implemented. In 1986, a large minority of premises were owner-occupied (43 per cent), whereas in 2016, a majority of all premises are occupied by the owners (56.2 per cent).<sup>5</sup> The vast majority of the owner-occupied premises are encumbered with a mortgage.<sup>6</sup> The total mortgage debt is more than 100 per cent of the Gross Domestic Product.

One of the government's tools to promote home ownership was the establishment of the Homeownership Guarantee Fund (WEW) in the nineties. The WEW introduced the National Mortgage Guarantee Scheme (NHG), which provides a mortgage guarantee for mortgage loans up to € 245 000 from 2015 (in 2014: €260 000). Borrowers pay a fee of 1 per cent of the loan fee of when the mortgage is established. If it is necessary to sell a dwelling and the proceeds are insufficient to redeem the loan, the NHG will, under conditions, take over the remaining debt. In 2015, 78 per cent of the buyers who bought premises of less than €245 000 financed the purchase with a mortgage and an NHG surety.<sup>7</sup>

The other part of the housing market mainly consists of rental premises. Private landlords own 13 per cent of the housing stock, which is roughly 30 per cent of the rental premises. Most of the rental premises in the private rental market are owned by private investors (77 per cent), and the other premises are owned by institutional landlords such as insurance companies.<sup>8</sup> It is estimated that the vast majority of private investors own less than ten premises.<sup>9</sup>

Housing associations rent out the majority of the rental premises: they own 29.5 per cent of the total housing stock, which is nearly 70 per cent of all rental premises. The housing associations are private non-profit organizations that are statutorily obliged to provide affordable housing to the public.<sup>10</sup> According to the Housing Act 2015, the housing

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<sup>4</sup> Centraal Bureau voor de Statistiek (CBS), Statline (2016) <<http://statline.cbs.nl/>>.

<sup>5</sup> I Visser, *De executoriale verkoop van onroerende zaken door de hypotheekhouder* (Boom Juridische uitgevers 2013) 75; CBS 2016 (n 4).

<sup>6</sup> CBS, Statline (2015) 63.

<sup>7</sup> Homeownership Guarantee Fund (WEW), *Jaarverslag 2014* (2015) 10.

<sup>8</sup> M Jonker-Verkaart and F Wassenberg, *Kansen voor particuliere huur in Nederland* (Den Haag, Platform31, 2015) 14.

<sup>9</sup> Ibid 17.

<sup>10</sup> K Hermans, 'The Dutch strategy to combat homelessness: from ambition to window dressing' (2012) 6 (2) *European Journal of Homelessness* 103.

associations must rent the vast majority of their premises to people with a relatively low annual income (approximately €36 165 in 2017).<sup>11</sup>

## **2.2 Structural/Societal Factors Related to Evictions**

Evictions do take place in the Netherlands, mainly due to payment arrears. The economic crisis stemming from 2000 to 2010 is said to have had a significant impact on the number of evictions. In the vast majority of cases, the reason for eviction is related to the occupiers' declining income or unemployment due to the economic recession.<sup>12</sup> Moreover, a growing number of evictions has to do with the recent repressive approach of Dutch housing associations and local authorities towards squatting and housing-related crime such as drug dealing and growing cannabis.<sup>13</sup>

## **2.3 Specific Policies Related to Evictions**

From 2006 to 2014, the Dutch national government and the four biggest cities established and implemented an action plan to address homelessness and to reduce the number of evictions.<sup>14</sup> The evaluation of this action plan showed that the number of evictions in 2014 had been reduced by 22 per cent compared to 2005.<sup>15</sup> At local level, a number of policies are developed to prevent evictions. In the four big cities, but also in other municipalities, local authorities, housing associations and other stakeholders such as Social Services and Municipal Health Services have established inter-agency cooperation. These stakeholders inform one another about problems such as rent arrears and to take action (eg support with debt management) to prevent evictions.<sup>16</sup>

# **3.LEGAL AND CONSTITUTIONAL BACKGROUND TO PROTECTION AGAINST EVICTIONS**

## **3.1 Housing as a Fundamental Right**

Dutch legislation does not contain a fundamental right to housing as such. However, the Dutch Constitution lays down the obligations for authorities to provide sufficient living accommodation, and holds that the state is responsible for adequate housing and its

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<sup>11</sup> Art 46 of the Housing Act 2015.

<sup>12</sup> N Boerebach, 'Prevention of evictions by social housing organisations in the Netherlands' (2013) *Homeless in Europe 2013* 12.

<sup>13</sup> M Vols and S Fick, 'Using eviction to combat housing-related crime and anti-social behaviour in South Africa and the Netherlands' (2017) 134 (2) *South African Law Journal* 327–360.

<sup>14</sup> W de Graaf, L van Doorn, R Kloppenburg and C Akkermans, 'Homeless families in the Netherlands: intervention policies and practices' (2011) 2 (1) *Journal of Social Research & Policy* 8; Hermans (n 10); S Gerull, 'Evictions due to rent arrears: a comparative analysis of evictions in fourteen countries' (2014) 8 (2) *European Journal of Homelessness* 148.

<sup>15</sup> M Tuynman and K Planije, *Het kán dus!* (Utrecht, Trimbos 2014) 6.

<sup>16</sup> RTHMK Kloppenburg, WAW De Graaf, M Wewerinke, C Akkermans and L Van Doorn, *Preventie en aanpak van dakloosheid van gezinnen bij vier centrumgemeenten* (Utrecht, HU 2009) 59; De Graaf et al (n 14) 9–11; K Planije, L Hulsebosch and M Tuynman, *Monitor Stedelijk Kompas 2013* (Utrecht, Trimbos 2014) 53.

distribution.<sup>17</sup> Furthermore, the Constitution gives inhabitants the right to respect for his or her private life<sup>18</sup> and the right to the inviolability of the home.<sup>19</sup> These two rights can only be restricted legitimately if an Act of Parliament provides a legal basis for such a limitation. Under Dutch law, it is not a matter of debate whether eviction can be seen as an interference with these rights. Consequently, various Acts of Parliament contain detailed provisions that stipulate the conditions under which authorities may restrict these rights by, for example, entering someone's home without permission or issuing an eviction order.

Besides that, the Netherlands ratified several international treaties that contain (elements) of the right to housing, such as the International Covenant on Economic Social and Cultural Rights, the European Social Charter and the European Convention on Human Rights (hereafter ECHR). With respect to evictions, Article 8 of the ECHR has the most impact on the eviction practices in the Netherlands.<sup>20</sup> Following the case law of the European Court of Human Rights, the Dutch Supreme Court held that eviction is a very serious interference with the right of the inviolability of the home. According to the Supreme Court, everyone at risk of this interference should in principle be able to have the proportionality of the eviction determined by an independent court before the eviction is carried out.<sup>21</sup>

As a result of these national and international requirements, procedural and substantive safeguards protect evictees. Under Dutch law, all occupiers are entitled to apply to a court to have their right to reside in a property reviewed by the court and request to dismiss an eviction order or to postpone the eviction. A number of tenure-specific eviction procedures and provisions are discussed in detail in the sections following.

### **3.2 Law Relating to Owner-Occupation**

The main ground for eviction in the owner-occupied sector is breach of the terms of the mortgage deed. The most common breach is mortgage arrears. Under Dutch law, the mortgagee has the right to summary execution.<sup>22</sup> This means that the mortgagee does not need to obtain a court's permission to sell the mortgaged property at a public auction.<sup>23</sup> However, Dutch law allows the parties to sell mortgaged properties by private treaty as

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<sup>17</sup> Art 22 of the Dutch Constitution.

<sup>18</sup> Art 10 of the Dutch Constitution.

<sup>19</sup> Art 12 of the Dutch Constitution.

<sup>20</sup> M Vols, 'Artikel 8 EVRM en de gedwongen ontruiming van de huurwoning vanwege overlast' (2015) 2 *WR Tijdschrift voor huurrecht* 55–62; M Vols, M Kiehl and J Sidoli del Ceno, 'Human rights and protection against eviction in anti-social behaviour cases in the Netherlands and Germany' (2015) 2 *European Journal of Comparative Law and Governance* 156–181.

<sup>21</sup> Hoge Raad 28-10-2011, *Nederlandse Jurisprudentie* 2013, 153; M Vols, PG Tassenaar and JPAM Jacobs, 'Dutch courts and housing related anti-social behaviour: a first statistical analysis of legal protection against eviction' (2015) *International Journal of Law in the Built Environment* 148–161.

<sup>22</sup> Art 3:268 (1) of the Civil Code.

<sup>23</sup> Visser (n 5).

well. Both the mortgagee and the mortgagor are entitled to request a court to allow him or her to sell the property by private treaty.<sup>24</sup> If the court allows the private sale, it can also oblige the mortgagor to vacate the property at the moment of the transfer of ownership of the property.<sup>25</sup> However, in the case where the mortgagee and the mortgagor both agree with the private sale of the property, the court's permission is not required.<sup>26</sup>

Since 2016, the mortgagee is not entitled to sell a mortgaged residential property immediately if the mortgagor is in arrears. The Civil Code obliges mortgagees to first contact the mortgagor personally for a consultation concerning the payment problems. The right to summary execution can only be used after such a consultation, and when the mortgagor is in arrears for at least two months, except in cases where these requirements are unreasonable.<sup>27</sup> This provision is the direct result of the implementation of the European Mortgage Credit Directive (2014/17/EU).

### 3.3 Law Relating to Private Renting

The legal requirements that apply to evictions in the private rental sector are practically the same as those that apply to the social rental sector. Most of the relevant provisions can be found in the Dutch Civil Code. The main ground for eviction in the rental market sector of the housing market is rent arrears. Failure to pay rent will qualify as a violation of the tenant's statutory obligation to behave as a good/prudent tenant and a breach of the lease, as will subletting, disruptive behaviour and involvement in drug-related crime. There are some other statutory grounds for landlords to terminate a lease, but in practice they do not play a significant role.<sup>28</sup>

A key characteristic of Dutch landlord-tenant law is that tenants enjoy robust protection against the termination of the lease. For decades, leases in both the private and social rental sectors were open-ended contracts, even if parties concluded a temporary contract.<sup>29</sup> In addition, if the landlord wishes to terminate the lease unilaterally, this can only be done by a court.<sup>30</sup> There are two different court procedures that can be used to terminate a lease; however, landlords prefer to request the court to terminate the lease because of a breach of the lease.<sup>31</sup> The basic rule of this procedure is strict: every breach of the lease allows the court to terminate the lease and, consequently, issue an eviction

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<sup>24</sup> Art 3:268 (2) of the Civil Code.

<sup>25</sup> Art 3:268 (2) of the Civil Code.

<sup>26</sup> PA Stein, *Groene Serie Vermogensrecht* (Deventer, Kluwer 2016) sections 5,3,18.

<sup>27</sup> Art 7:128a of the Civil Code.

<sup>28</sup> Art 7:274 of the Civil Code.

<sup>29</sup> There are a number of statutory exceptions. For example, Dutch law recognizes leases regarding the use of residential premises, which use, by its nature, is of short duration (Art 7:232 of the Civil Code). An example of such a lease is a lease regarding the rental of a holiday home. It is easier to terminate these leases, but the landlord still needs to obtain an eviction order if the tenant refuses to vacate the premises voluntarily.

<sup>30</sup> Arts 7:231 and 7:274 of the Civil Code.

<sup>31</sup> See Vols et al (n 20).

order.<sup>32</sup> Accordingly, in cases where the landlord requests an eviction order, the court will first assess whether a breach of the lease has occurred. Furthermore, if a tenant puts forward a proportionality defence the court will need to take that into account as well. The tenant does not have to be legally represented, although this is recommended.

The National Committee of District Courts has laid down in a written recommendation that, in principle, three months of rent arrears will be a sufficient serious breach of the lease to allow a landlord's eviction claim. A recent analysis of case law concerning rent arrears eviction cases found that courts do follow this recommendation and allow most landlords' claims after three months of arrears.<sup>33</sup>

In 2016, the rules in the private rental sector changed. Parliament established the Act on Movement in the Housing Market 2016, which stipulates that new temporary contracts can be terminated unilaterally by a private landlord if the contract period has expired. Private landlords do not need to go to court to terminate the lease. However, if the tenant refuses to vacate the property, the landlord still has to request a court to issue an eviction order. Given the requirements arising from Article 8 ECHR, it is expected that the court will still assess the proportionality of the eviction. Whether the Act on Movement in the Housing Market 2016 really made it easier for private landlords to evict a tenant will be dependent on how intense this proportionality review will be.

After the court issues an eviction order, the tenant can appeal the judgment and following that, even appeal to the Supreme Court. If the eviction order has immediate effect, the bailiff will serve the occupier a notice of the court judgment and an eviction date. The actual eviction will usually take place two or three weeks after the bailiff gave the notice. Before the actual eviction takes place, the bailiff must inform the local authority.<sup>34</sup>

### **3.4 Law Relating to Social Renting**

The legal requirements that apply to evictions in the social rental sector are practically the same as those that apply to the private rental sector. However, in the social rental sector, open-ended contracts remain standard and leases can only be terminated unilaterally by court order. As in the private rental sector, tenants are allowed to advance a proportionality defence and argue that the landlord's claim should be dismissed. However, several quantitative analyses of eviction litigation concerning rent arrears, nuisance behaviour and drug-related crime have shown that tenants are not very successful in convincing courts.<sup>35</sup>

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<sup>32</sup> Vols (n 20) .

<sup>33</sup> M Vols and N Minkjan, 'Huurachterstand, huisuitzetting en rechterlijke besluitvorming' (2016) 37 (2) *Recht der Werkelijkheid* 9–30.

<sup>34</sup> Art 14 of the Bailiffs Act.

<sup>35</sup> Vols et al (n 21); Vols and Minkjan (n 33).

### 3.5 Law Relating to Unauthorized Occupancy

The Netherlands has a long squatting tradition and squatters used to enjoy robust legal protection against eviction.<sup>36</sup> However, in 2010, the Squatting and Vacancy Act was established. Since then, squatting is a criminal offence under Dutch law.<sup>37</sup> The Criminal Code provides a legal basis for the Public Prosecutor to evict squatters. To prevent an eviction based on criminal law, the squatters are entitled to initiate preliminary relief proceedings and request for a ban on the eviction. Besides that, the property owner is entitled to initiate eviction proceedings to have the squatters evicted.

In 2011, the Supreme Court held that the Squatting and Vacancy Act did not constitute a violation of Article 8 ECHR. However, it found that squatters, as any other occupiers at risk of losing their home, should in principle be able to have the proportionality of the eviction determined by an independent court before the eviction is carried out.<sup>38</sup> Case law shows that squatters regularly try to stop criminal law evictions by advancing proportionality defences. Yet, in most cases the squatters lose their case.<sup>39</sup> Nonetheless, it does happen that courts allow proportionality defences and refuse to issue an eviction order.<sup>40</sup>

There remains a clear incentive for property owners to prevent squatting in their property or the local authorities oblige them to rent out their vacant premises. Dutch law offers a number of options that entitle property owners to protect their property against squatters by allowing so-called property guardians to live in the dwelling, without offering those occupiers the tenure security as provided by Dutch landlord–tenant law.<sup>41</sup> It is estimated that there are more than 50 000 property guardians in the Netherlands.<sup>42</sup> The various contracts between property owners and property guardians all share the same characteristic: they are not considered as a lease, and therefore the strong protection against eviction is not applicable. Nevertheless, Dutch law requires property owners to go to court if a property guardian does not vacate his or her home after the termination of the contract. During the court proceedings, the property guardian is still entitled to advance a proportionality defence and argue that eviction is disproportionate. Case law shows that courts do take into account proportionality issues, but do not always agree with the property guardian.<sup>43</sup>

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<sup>36</sup> T Buchholz, *Struggling for Recognition and Affordable Housing in Amsterdam and Hamburg* (Groningen, University of Groningen 2016).

<sup>37</sup> Arts 138, 139 and 429 sexies of the Criminal Code.

<sup>38</sup> Hoge Raad 28-10-2011, *Nederlandse Jurisprudentie* 2013, 153. BQ9880.

<sup>39</sup> Eg Rechtbank Midden-Nederland 8 April 2015, ECLI:NL:RBMNE:2015:2623 paras 4.13–4.18.

<sup>40</sup> Rechtbank Noord-Holland 11 March 2013, ECLI:NL:RBNHO:2013:BZ5008 para 4.7.

<sup>41</sup> Eg Art 15 of the Squatting and Vacancy Act.

<sup>42</sup> Buchholz (n 36) 94.

<sup>43</sup> Rechtbank Midden-Nederland 9 April 2014, ECLI:NL:RBMNE:2014:1309 para 4.12.

### 3.6 Law Relating to Temporary Dispossession

Another reason for eviction is the temporary administrative closure of a property.<sup>44</sup> There are three reasons for such an administrative closure: violation of building regulations, severe nuisance behaviour or drug-related crime such as the cultivation and dealing of cannabis. In case of these events, local authorities are entitled to close down a property for up to five years.<sup>45</sup> The local authorities have a statutory obligation to take into account the closure order's consequences for the occupiers and must ensure that the order is not disproportionate.<sup>46</sup> After an administrative closure order is issued, nobody is allowed to enter the property anymore. The occupiers are entitled to challenge the closure order at court, and advance, for example, proportionality defences. However, an analysis of over one hundred judgments shows that occupiers are not very successful in convincing courts that the closure and its consequences violates their rights.<sup>47</sup>

After an administrative closure of a rental property, the landlord is allowed to unilaterally terminate the lease, so that the tenants are not allowed to re-enter the property after the administrative closure period.<sup>48</sup> Nevertheless, if the tenants refuse to vacate the premises, the landlord still needs to request the court to issue an eviction order. Several courts have established that in deciding whether to issue an eviction order or not, Article 8 ECHR obliges judges to take into account the tenants' proportionality defences. Consequently, it is doubtful whether the option to unilaterally terminate the lease is really helpful for landlords.<sup>49</sup>

### 3.7 Soft Law/Codes and Their Effectiveness

The four largest municipalities and a large number of smaller municipalities have established action plans such as Stedelijk Kompas (Urban Compass) and Plan van Aanpak maatschappelijke opvang (Plan of Approach to Social Care) to reduce the number of evictions.<sup>50</sup> As a result, local authorities, housing associations and other stakeholders have initiated inter-agency cooperation to inform one another about problems such as rent

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<sup>44</sup> M Vols, *Woonoverlast en het recht op privéleven* (Den Haag, Boom Juridische uitgevers 2013); Vols and Fick (n 13); LM Bruijn, M Vols and JG Brouwer, 'Home closure as a weapon in the Dutch war on drugs: does judicial review function as a safety net?' (2017) *International Journal of Drug Policy* 1–11.

<sup>45</sup> Art 17 of the Housing Act, Art 174a of the Municipalities Act and Art 13b of the Opium Act.

<sup>46</sup> Art 3:4 of the General Administrative Law Act.

<sup>47</sup> M Vols and LM Bruijn, 'De strijd van de burgemeester tegen drugscriminaliteit. Een eerste statistische analyse van de toepassing van artikel 13b Opiumwet' (2015) *Netherlands Administrative Law Library (NALL)* October 2015, 1–23; Bruijn, Vols and Brouwer (n 44).

<sup>48</sup> Art 7:231 (2) of the Civil Code.

<sup>49</sup> Vols (n 20).

<sup>50</sup> Planije et al (n 16).

arrears and to take action to prevent evictions.<sup>51</sup> Evaluations published in 2014 show that these projects have been fairly successful in preventing evictions.<sup>52</sup>

#### 4. EXTENT OF EVICTIONS OVER THE PERIOD 2010–2015

##### 4.1 Definition of Eviction

Kenna et al have distinguished three phases in the eviction process: (i) the pre-court phase, which begins from the moment of issuance of the formal instruction to leave; (ii) the court phase; and (iii) the post-court phases, which refers to the period between the court's eviction judgment and the actual physical eviction. All three phases have a link with homelessness. For example, occupiers may become homeless in the first phase of the eviction process (the pre-court phase) if they decide to vacate their home after receiving a notice to leave the property.<sup>53</sup>

##### 4.2 Evictions from Mortgaged Property

Under Dutch law, the mortgagee does not require the permission of the court to sell the mortgaged property at a public auction.<sup>54</sup> Consequently, most evictions in the mortgaged sector will remain in the pre-court phase, as defined by Kenna et al.<sup>55</sup> There is no central register with systematically collected data concerning evictions in the owner-occupied sector.

Yet, some data concerning mortgage arrears and public auctions are available. As stated above (Section 3.2), mortgage arrears are the main reason for evictions in the owner-occupier sector. Table 7.1 shows the number of consumers in mortgage arrears over the period 2010–2015.<sup>56</sup> The increase is considerable: in 2015, 112 per cent more consumers were in mortgage arrears than in 2010.

<table cap>Table 7.1 Consumers in mortgage arrears for the period 2010–2015

	Number of consumers in mortgage arrears
2010	52 821
2011	62 453

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<sup>51</sup> G Schout, G De Jong and I Van Laere, 'Pathways toward evictions: an exploratory study of the inter-relational dynamics between evictees and service providers in the Netherlands' (2015) 30 (2) *Journal of Housing and the Built Environment* 184.

<sup>52</sup> Tuynman and Planije (n 15); Planije et al (n 16).

<sup>53</sup> Kenna et al (n 3) 21–22.

<sup>54</sup> People are entitled to initiate court proceedings to prevent the public auction. The available case law suggests this does not happen frequently. See for example: *Rechtbank Den Haag* 13 February 2017, ECLI:NL:RBDHA:2017:1632.

<sup>55</sup> Kenna et al (n 3) 67.

<sup>56</sup> Credit registration office BKR, *Maatschappelijk Jaarverslag* (Tiel, BKR 2015) 7.

2012	77 145
2013	94 794
2014	111 284
2015	111 925

Nevertheless, mortgage arrears do not automatically result in eviction from a mortgaged property. According to data collated by the Dutch Land Registry Office, the number of public auctions in recent years averages approximately 2300 per year (see Table 7.2).<sup>57</sup>

<table cap>*Table 7.2 Public auctions with the Land Registry Office*

	Public auctions
2010	2086
2011	2811
2012	2488
2013	1863
2014	2178
2015	2309
2016	2114

However, the figures in Table 7.2 include auctions of non-residential premises. Besides that, it excludes the number of properties sold by private treaty. There is no data available on the number of residential mortgaged properties sold by private treaty. Nonetheless, to gain some insight on the number of privately sold mortgaged properties, it is interesting to analyse the data published concerning the NHG Mortgage Guarantee. The Home Ownership Guarantee Fund (WEW) publishes data on the number of forced sales of mortgaged premises with NHG guarantee that result in a net loss (see Table 7.3).<sup>58</sup>

<table cap>*Table 7.3 Forced sales of mortgaged premises with NHG guarantee*

	Private sale (%)	Public auction (%)	Total
2010	70	30	1335
2011	75	25	2201
2012	87	13	3576
2013	93	7	4580
2014	89	11	4799
2015	86	14	4477

Table 7.3 shows that the number of forced sales in 2015 is considerably higher (335 per cent) than in 2010. It also shows that the vast majority of the forced sales of mortgaged

<sup>57</sup> Dutch Land Registry Office<[www.kadaster.nl/executieveiligen](http://www.kadaster.nl/executieveiligen)>.

<sup>58</sup> WEW, *Jaarverslag 2011* (2012) 22; WEW, *Jaarverslag 2014* (2015) 29; WEW, *Jaarverslag 2015* (2016) 11.

properties with NHG guarantee are completed by private treaty. Therefore, it is safe to assume that the total number of evictions from mortgaged premises each year is considerably higher than the 2000 to 2500 public auctions per year. Given the data in Tables 7.2 and 7.3, a conservative estimate would be that approximately 20 per cent of evictions in the mortgaged sector are the result of public auctions, and 80 per cent the result of forced private sale. This leads to a further conservative estimate of there being 1500 public auctions of residential premises per year,<sup>59</sup> 6000 private forced sales per year and, accordingly, 7500 (pre-court) evictions from mortgaged property per year.

### 4.3 Evictions From Private/Social Rented Housing

No data could be sourced on evictions in the private rented sector.<sup>60</sup> There is data regarding evictions in the social rented sector. Every year, the organization of the housing associations (Aedes) publishes the number of (estimated) eviction judgments and executed eviction judgments as reported by its members. Eviction judgments refer to the number of court judgments that entitled the housing association to evict a tenant. Unfortunately, the data does not show how many eviction claims are lodged with the court, and how many of these claims are dismissed by the court. Therefore, it is unknown how many tenants encounter eviction proceedings in the social rented sector each year.<sup>61</sup>

Still, data on the number of cases won by landlords is available (see Table 7.4). The number of eviction judgments in the social rented sector for the years 2010 to 2016 reached a peak of more than 23 000 during the economic recession years (2012–2014). The figure for 2016, 18 500, represents a 20 per cent drop.<sup>62</sup> The number of executed eviction judgments (in which the tenant remains in the property after the eviction period has expired and the bailiff is required to execute the order of the court) also peaked during the economic crisis years, before declining. In 2016, approximately 30 per cent fewer eviction judgments were executed than in 2013.

<table cap>*Table 7.4 Eviction judgments and executed eviction judgments in the social rented sector*

	Eviction judgments	Executed eviction judgments	Executed judgments (%)
2010	19 650	5900	30
2011	18 800	6000	31.9
2012	21 700	6480	29.9

<sup>59</sup> The number is considerably lower than the number of auctions presented in Table 7.2, because the data in this table includes public auctions of non-residential premises and dwellings.

<sup>60</sup> See I Van Laere, M De Witt and N Klazinga, ‘Preventing evictions as a potential public health intervention: characteristics and social medical risk factors of households at risk in Amsterdam’ (2009) 37 *Scandinavian Journal of Public Health* 700, for some insights on the number of evictions in the private rental sector in Amsterdam. Still, they found that the number of evictions cannot be calculated because of imprecise datasets.

<sup>61</sup> Vols and Minkjan (n 33).

<sup>62</sup> Aedes, *Corporatiemonitor* (Den Haag, Ades 2017).

2013	23 100	6980	30.2
2014	23 500	5900	25.1
2015	22 000	5550	25
2016	18 500	4800	25.9

The data with regard to executed eviction orders is, however, somewhat misleading, since a closer assessment of the definitions used indicates that the actual number of evicted tenants is higher. In 2016, for example, besides the 4800 eviction orders executed by the bailiff, a further 1700 tenants did not wait for the bailiff and left the property voluntarily. This means that in 2016 the actual number of evictions was 6500. Similarly, the actual number of evictions for 2015 and 2014 is, respectively, 7710 and 8700 when the number of tenants leaving voluntarily (2210 in 2015; 2800 in 2014) is taken into account.<sup>63</sup>

This does not automatically mean that the number of actual evictions is on the rise. In the other years, Aedes applied the same definition of executed eviction order and the measurement is, as a result, in all years, the same. Still, until 2013, the ‘hidden number’ of voluntary executed judgments was not published by Aedes. Therefore, it is reasonable to suggest that the number of evicted persons is somewhat higher than as shown in Table 7.4.

Rent arrears is by far the most important cause of eviction over the last few years. Table 7.5 shows that this type of breach of the lease is, in 80 to 85 per cent of all executed eviction judgments, the main reason.<sup>64</sup> Other breaches of the lease such as nuisance behaviour, illegal subletting and drug-related crime play a less important role. Yet, while interpreting these numbers, it should be taken into account that, in many cases, there are combined breaches of the lease (eg rent arrears and nuisance behaviour) that may only be registered as rent arrears.<sup>65</sup>

<table cap> *Table 7.5 Reasons for executed judgments in the social rented sector*

	Arrears (%)	Nuisance (%)	Subletting (%)	Drugs (%)	Other (%)
2010	78.4	8	4.9	4.6	4.2
2011	78.8	7	7.5	6	0.7
2012	79.3	6.5	7.9	5.6	0.7
2013	88.4	2.9	3.1	4.2	1.4
2014	85	3.8	5.6	4.8	0.6
2015	84.2	5.4	5.1	4.9	0.4
2016	85.1	4.1	6.4	3.6	0.8

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> C Akkermans and M Räckers, *Handreiking voorkomen huisuitzettingen* (Eropaf 2013) 26.

Schout et al investigated the decisions housing associations make with regard to which eviction judgments will be executed.<sup>66</sup> Their findings are presented in Table 7.6.

<table cap> *Table 7.6 Percentage of executed judgements for each reason*

	Total (%)	Arrears (%)	Nuisance (%)	Subletting (%)	Drugs (%)	Other (%)
2006	40	35	91	97	92	91
2007	38	33	80	98	85	45
2008	36.1	30.9	81	89.4	79.8	70.1
2009	31.3	28.6	62.8	63.1	94.1	62.3

The table above shows that in specific rent arrears, approximately 32 per cent of all eviction judgments were executed between 2006 and 2009. This was lower than in the cases involving other reasons for eviction. Unfortunately, there is no more recent data available for the percentage of executed eviction orders per reason.

#### 4.4 Evictions from Unauthorized Occupancies

No data has been collected concerning the number of evicted squatters or property guardians. Yet, some data is available regarding squatting in general. The evaluation report of the Squatting and Vacancy Act was published in 2015. It shows that the Public Prosecution Service dealt with a rising number of cases concerning squatting. Table 7.7 shows 2 555 per cent more cases concerning squatting were handled by the Public Prosecution Service in 2014 than in 2010.<sup>67</sup>

<table cap> *Table 7.7 Squatting cases dealt with by the Public Prosecution Service*

	Squatting cases
2010	9
2011	71
2012	77
2013	111
2014	239

<sup>66</sup> Schout et al (n 51) 185.

<sup>67</sup> S Zeelenberg, E van Kessel, I Giesbers and Y Groote, *Van ontruimen naar inruimen* (Amsterdam, RIGO 2015) 16.

The evaluation report does not contain any data on evictions of squatted buildings. However, there are some indications that the number of evictions following the criminal ban on squatting in 2010 have peaked during 2010 and 2015. For example, Amsterdam had approximately one thousand squatted buildings in 1981 and was characterized as the squatting capital of the Netherlands. In 2012, only twenty squatted buildings remained in Amsterdam. According to media reports, 724 evictions of squatted buildings took place in Amsterdam between 1 October 2010 and May 2015.<sup>68</sup> Since the number of squatted buildings has declined so significantly, it can be expected that the number of evicted squatted buildings in the future will not be that high.

#### 4.5 Other Evictions

Until 2015, there was no data systematically collected on the number of administrative closures of premises. Based on an analysis of municipal policy documents and case law, Vols and Bruijn estimated that a few hundred residential premises were closed by local authorities because of drug-related crime between 2008 and 2014.<sup>69</sup> The number of drug closure orders, however, has grown significantly in the last two years. Vols et al surveyed fifty local authorities (including the authorities in the forty largest municipalities) concerning the number of drug closure orders issued in 2015 and 2016.<sup>70</sup> As can be seen from the results shown in Table 7.8, the number of local authorities that responded to the survey was the same for both years (39). However, the number of administrative orders reported was significantly higher in 2016. This increase (approximately 53 per cent) indicates an upward trend in the number of residential premises closed and occupiers evicted.

<table cap>*Table 7.8 Administrative closures of residential premises in fifty Dutch municipalities*

	Number of respondents	Number of administrative orders
2015	39	325
2016	39	498

#### 4.6 Profile of Those Evicted

There is no clear data concerning the characteristics of evictees in the mortgaged sector. Still, the Credit Registration publishes data concerning the age of people in mortgage arrears. As stated above, mortgage arrears is the most significant reason for eviction in the

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<sup>68</sup>AT5, 'Politie steeds sneller over tot ontruiming; kraak duurt gemiddeld twee weken' (2015) <<http://www.at5.nl>>.

<sup>69</sup> Vols and Bruijn (n 47).

<sup>70</sup> M Vols, JP Hof and JG Brouwer, *De handhaving van de Woningwet en de aanpak van malafide pandeigenaren* (Den Haag, Boom Juridische uitgevers 2017).

owner-occupied sector. Data suggests that most of the people in mortgage arrears are between 31 and 50 years old.<sup>71</sup>

With regard to the profile of evictees in the rental sector, there is no data available concerning the private rental market. In the social rental sector, in most cases the housing associations do not record the evictees' type of household or age in the majority of cases (59 per cent in 2016). Table 7.9 shows the available data on the distribution of evictions among several types of households in the social rented sector.<sup>72</sup>

<table cap> *Table 7.9 Types of evicted households in the social rental sector*

	Single 18–30 years old (%)	Single 30–60 years old (%)	Single 60 years and older (%)	Single parent (%)	Couple without children (%)	Couple with children (%)	Others (%)	Unknown (%)
2013	9	15	2	3	4	2	0	65
2014	7	16	2	2	3	2	X	67
2015	8	22	2	4	2	2	1	60
2016	9	19	4	3	2	2	1	59

The table shows that among the single households that were evicted, most evictees were between 30 and 60 years old, followed by singles between 18 and 30 years old. According to Aedes, housing associations evict significantly fewer tenants who live with children.<sup>73</sup>

Other studies give additional insights into the characteristics of tenants facing eviction. Akkermans' study of persons at risk of eviction in the city of Utrecht found that all of them had financial problems with the housing association and other organizations, such as health care insurance companies and utility companies. A majority of the tenants reported problems with regard to their physical or mental health too. Some tenants reported problems concerning criminal activities, addictions and underdeveloped language and mathematical skills.<sup>74</sup> Yet, Wewerinke et al's qualitative study of thirty-two households facing eviction from their rental property found that they displayed different characteristics. Their financial situation and problems varied, some had serious mental health problems and others did not, and some of them had a support network and other

<sup>71</sup>BKR, *Jaaroverzicht* (Tiel, BKR 2013) 18; BKR, *Maatschappelijk Jaarverslag* (Tiel, BKR 2014) 6.

<sup>72</sup>Aedes (n 62).

<sup>73</sup>Ibid 2.

<sup>74</sup>C Akkermans, *Schuldhelpverlening en dreigende huisuitzetting* (Utrecht, HU 2011) 42–43.

persons did not. As a result, the researchers concluded that only tailor-made approaches to prevent evictions will be effective.<sup>75</sup>

## 5. RISK FACTORS IDENTIFIED LEADING TO EVICTIONS

Research into the risk factors associated with evictions found that evictions are linked to problems concerning unemployment, divorce, neighbour disputes, mental and physical health, addiction, literacy problems and other insufficient skills necessitated for independent living and building/maintaining a social network.<sup>76</sup> The absence of assistance and care, a history of unstable housing and the lack of (sufficient) social support also increase the risk of eviction.<sup>77</sup>

Research on evictions in the Dutch context shows that most of the risk factors apply to the Netherlands as well. For example, Van Laere et al's study of homeless adults in Amsterdam, gives some insights into the risk factors in a Dutch context. This research found that for 38 per cent of the adults surveyed, their homelessness was the result of eviction.<sup>78</sup> More often, they belonged to a major migrant group and were generally single and slightly older and had more alcohol and financial problems than the groups of homeless adults that were homeless due to other reasons. In addition, the eviction group reported financial problems (81 per cent) and domestic conflicts (44 per cent). Moreover, the vast majority of the group (78 per cent) reported medical problems such as addiction (59 per cent), mental health problems (63 per cent) and physical problems (17 per cent). Significantly, the eviction group of homeless adults had financial problems more often than adults who had become homeless for other reasons. The main reason for debts, among all recently homeless adults, was the loss of a job or a chronic shortage of income (49 per cent), buying drugs (18 per cent), gambling (10 per cent) and other reasons such as fines or health costs (23 per cent). The main creditors are banks (35 per cent) and landlords (34 per cent).<sup>79</sup>

Another study of Van Laere and his team also assessed characteristics of people living in Amsterdam that had been evicted and people at risk of eviction. This study found that evictees were more likely to be single, of Dutch origin and addicted to drugs than non-evicted people. Financial mismanagement was found to be a risk factor for eviction.<sup>80</sup>

In its analysis of evictions in the social rental sector, Aedes found that tenants in a weak financial position (eg those on social benefits) are at greater risk of being confronted with

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<sup>75</sup> D Wewerinke, W De Graaf, L van Doorn and J Wolf, *Huurders over een dreigende huisuitzetting* (Nijmegen RUMC 2014) 54.

<sup>76</sup> Schout et al (n 51) 184; M Holl, L van den Dries and JRLM Wolf, 'Interventions to prevent tenant evictions: a systematic review' (2016) 24 (5) *Health and Social Care in the Community* 533.

<sup>77</sup> Holl et al (n 76) 533.

<sup>78</sup> I Van Laere, M De Witt and N Klazinga, 'Pathways into homelessness: recently homeless adults problems and service use before and after becoming homeless in Amsterdam' (2009) 9 (3) *BMC Public Health* 3.

<sup>79</sup> *Ibid* 7.

<sup>80</sup> Van Laere et al (n 59) 701–702.

an eviction. Moreover, the data also shows that tenants with mental health problems are at a greater risk of eviction too.<sup>81</sup> No data is available with regard to evictees in the mortgaged sector of the housing market. Yet, the NHG Mortgage Guarantee Organisation publishes data concerning the reasons for the forced sale of mortgaged premises with such a guarantee that results in a net loss. Table 7.10 shows that the end of a relationship, unemployment or the involuntary loss of income are the main reasons for forced sale(s) with a net loss.<sup>82</sup>

<table cap>*Table 7.10 Reason for forced sale of mortgaged property with guarantee that ended in a net loss*

	End of relationship (%)	Unemployment/ involuntary loss of income (%)	Incapacity for work (%)	Other reason (such as non-payment) (%)
2010	43	19	1	37
2011	50	21	2	27
2012	61	16	2	21
2013	77	18	X	X
2014	68	21	X	X
2015	59	29	5	7

According to the NHG Mortgage Guarantee Organisation, the number of forced sales with a net loss can be strongly linked to the credit crisis. The decline of housing prices means that if couples split up, they have to sell their property at a loss. Furthermore, more people lost their jobs and were unable to pay their excessively high monthly mortgage repayments anymore.<sup>83</sup> Consequently, this data suggests that risk factors identified in the owner-occupied sector of the housing market include financial instability, job insecurity and properties with high and risky mortgages.

## 6.LINKS BETWEEN EVICTIONS AND HOMELESSNESS

A number of studies identify eviction as a significant pathway into homelessness.<sup>84</sup> Research clearly suggests that eviction is a major pathway into homelessness in the Netherlands as well.<sup>85</sup> Van Laere and his research team for example, sampled 120 adults in Amsterdam who had recently become homeless.<sup>86</sup> Before homelessness, two-thirds of the adults were living in a rented property. The three main pathways to losing their home

<sup>81</sup> Aedes (n 62) 3.

<sup>82</sup> WEW, *Jaarverslag 2015* (2016).

<sup>83</sup> WEW, *Jaarverslag 2013* (2014) 39; WEW, *Jaarverslag 2015* (2016) 28.

<sup>84</sup> Holl et al (n 76) 532.

<sup>85</sup> Schout et al (n 51).

<sup>86</sup> Van Laere et al (n 78).

were evictions (38 per cent), relationship problems (35 per cent) and other reasons (28 per cent).

## 7.BEST PRACTICE MODELS FOR PREVENTING, TACKLING AND REACTING TO EVICTIONS

There is a relatively small, but growing body of knowledge concerning ways to address and prevent evictions.<sup>87</sup> A number of studies have been conducted on how evictions are prevented and addressed in the Netherlands. Van Laere et al found that outreach networks should respond quickly to persistent rent arrears and nuisance. Landlords need to share information with social services. During a home visit by social workers, the underlying problems and unmet support should be assessed. They suggest specifically that low-income single men, with financial, addiction and other health problems should be targeted.<sup>88</sup> Another study concludes that housing associations should report households at risk of eviction to a central organization that handles these reports. The research suggests (i) that a purely administrative, non-personal relationship between tenants and housing association should be avoided (ii) that an active approach should be adopted regarding the provision of assistance and (iii) that outreach support should coordinate the efforts of landlords, social workers and medical workers.<sup>89</sup>

A study of Schout et al. gives an overview of promising interventions that aim to prevent and combat evictions in the Dutch context.<sup>90</sup> This study cites debt advice, the monitoring of evictions on municipal level, agreements between housing associations and debt support organizations, and the establishment of community public mental health care networks that respond to signals of vulnerability of households as interventions worth pursuing. Furthermore, conflict escalation between housing association staff and tenants should be avoided and the capability of confronting conflicts constructively should be institutionalized. Housing association staff need to be trained in detecting signs of conflict escalation and develop negotiating skills. In addition, the researchers suggest a reduction of the concentration of people with a combination of social and medical problems in one neighbourhood. Lastly, housing associations and other professional support services involved need to recognize that prevention of eviction is an ‘integral assignment that provides opportunities to learn for all actors’.<sup>91</sup>

A number of other studies regarding evictions in the Dutch context produced interesting results too. De Graaf and his research team found that evicted families are offered support in assertive, but also somewhat coercive outreach programmes. The evictees are offered

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<sup>87</sup> See for a systematic literature review: Holl et al (n 76).

<sup>88</sup> Van Laere et al (n 78).

<sup>89</sup> Van Laere et al (n 60) 703–704.

<sup>90</sup> Schout et al (n 51) 184

<sup>91</sup> Ibid 196.

support, but under the threat of losing their home. The researchers found that evicted families managed to keep their home, but that it is very difficult to ascertain the general success rate of the outreach programme with regard to the long-term effects.<sup>92</sup> Akkermans assessed an eviction prevention programme in the city of Utrecht that consisted of two years of housing supervision and debt support. She found that the success factors of the programme were the multidisciplinary cooperation of stakeholders, the active approach in addressing the financial and non-financial problems of the tenants, and clear rules in addition to the obligatory character of participation in the project.<sup>93</sup>

In another recent study in the Dutch context, De Vet et al considered how a relapse into homelessness can be prevented when rehousing people from shelters to community living. They found evidence that the Critical Time Intervention model seems to be suitable for vulnerable people who are going through a transition in their lives. This model aims to facilitate continuity of care and community integration and to ensure that the person has enduring ties to support systems and their community during critical periods.<sup>94</sup>

Housing associations and municipalities are using this academic knowledge to address and prevent evictions in daily life.<sup>95</sup> The data published by Aedes concerning the social rental sector indicates that 97 per cent of housing associations reach out to the tenant by telephone, 90 per cent visit the tenant at home, 85 per cent work together with health care or debt help organizations and 71 per cent collaborate with the local authorities, and that 63 per cent of housing associations have intensified their rent collection policy to prevent high rent arrears. According to the housing associations, home visits and a strict rent collection policy are the most effective strategies to prevent arrears and evictions.<sup>96</sup> Other research found that municipalities are also active in preventing and addressing evictions and that the number of evictions has declined in recent years because of these interventions.<sup>97</sup>

## 8.CONCLUSION

The research findings presented in this chapter show that evictions take place in the Netherlands, in both the rental and owner-occupied sectors. Although data on evictions and homelessness is not systematically collected and the total number of evictions is not known, it is evident that in the Netherlands, several thousand people lose their home on an annual basis. The main reason for eviction in both the rental and the owner-occupied

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<sup>92</sup> De Graaf et al (n 14) 12–13.

<sup>93</sup> Akkermans (n 74) 50.

<sup>94</sup> R De Vet, DAM Lako, MD Beijersbergen, L Van den Dries, S Conover, AM Van Hemert, DB Herman and JRLM Wolf, 'Critical Time Intervention for people leaving shelters in the Netherlands: assessing fidelity and exploring facilitators and barriers' (2017) 44 (1) *Administration and Policy in Mental Health* 67–80.

<sup>95</sup> C Akkermans and M Räkera *Handreiking voorkomen huisuitzettingen* (Eropaf 2013); Wewerinke et al (n 75).

<sup>96</sup> Aedes (n 62).

<sup>97</sup> Planije et al (n 16) 53.

sector is payment arrears. Under Dutch law, people at risk of eviction seem to enjoy robust legal protection against eviction: the Supreme Court has acknowledged the ECHR requirement to entitle residents to have the proportionality of the loss of their home determined by a court. However, several studies found that although courts do assess proportionality issues and balance the parties' interests, proportionality does not result in a large number of refusals of eviction orders. Regarding interventions to prevent and address evictions, the studies presented here suggest that early intervention, a focus on financial and non-financial problems, inter-agency cooperation and outreach programmes are effective in tackling the problem of evictions. Encouragingly, it was found that these methods and techniques are now more frequently used by local authorities and housing associations in the Netherlands.