

Operational Cost in Germany

Jessica Nowek, 2010-12-15

Introduction

The term operational cost is defined in Germany in legal terms. It is the technical term for all costs which are generated to the owner from the designated regular use of the building. These costs have to be paid by the owner, the same applies even if the property is rented.

The legal basis for the regulation of the operational cost has been fixed since the 1/1/2004 in the "Betriebskostenverordnung" the rule of operating expenses (BetrKV).

The re-allocation of the operational cost onto the tenant assumes an effective contractual arrangement (rental contract) between renter and tenant. In this contract the operational cost must be stated in particular cases or a clear reference to the arrangement of the BetrKV has to be given. Furthermore, the total amount of all costs to be paid has to be stated.

If these points are not contained in the rental contract, the operational costs are paid in proportion to the stated amount of rent. This kind of contract is called a Gross-Contract or Inclusive-Contract.

Allocatable operational costs

Operational costs are general costs which occur at regular intervals to the owner of a land and the property.

Provided that they are expressly stated in the rental contract, the renter can distribute different cost categories among the tenants according to the 17 different kinds of the operational cost (BetrKV):

1. Running public charges - Property tax
2. Cost for water supply
3. Cost for drainage
4. Cost for the heating system
5. Cost for the warm water supply system
6. Cost for the combined heating and warm water supply system

7. Cost for the elevator
8. Cost for the street cleaning and waste disposal
9. Cost for the property cleaning and vermin removal
10. Cost for the garden upkeep
11. Cost for the lighting
12. Cost for chimney sweeping
13. Cost for indemnity and property insurance
14. Cost for property caretaker
15. Cost for cable-TV or an antenna
16. Cost for a collective laundry
17. Other operational costs

Other operational costs are the costs that are not included in the numbers 1 to 16, these are standing costs, and the allocation is arranged with the tenant. For example costs for communally used swimming-pool, service fees for fire extinguishers or costs for the cleaning of the gutters.

No operational costs are uniquely arising expenses, such as for example administrative costs, maintenance costs and repair costs or capital and postage costs.

Index of Operational Cost (Betriebskostenspiegel) 2008
(values per sqm per month)

Cost Category	West Germany	East Germany	Deviation
Property Tax	0,21 €	0,12 €	0,09 €
Water incl. Sewage	0,41 €	0,32 €	0,09 €
Heating Costs	0,90 €	0,87 €	0,03 €
Warm Water	0,28 €	0,24 €	0,04 €
Elevator	0,11 €	0,12 €	-0,01 €
Road Cleaning	0,05 €	0,03 €	0,02 €
Garbage Disposal	0,21 €	0,13 €	0,08 €
Cleaning Agency	0,15 €	0,12 €	0,03 €
Garden Care Service	0,09 €	0,07 €	0,02 €
Lighting	0,05 €	0,07 €	-0,02 €
Chimney Cleaning	0,05 €	0,02 €	0,03 €
Assurance	0,13 €	0,09 €	0,04 €
Caretaker	0,19 €	0,18 €	0,01 €
Cable TV	0,11 €	0,12 €	-0,01 €
Others	0,06 €	0,03 €	0,03 €
Sum Total	3,00 €	2,53 €	0,47 €

Correct billing

As a rule it is generally agreed that the tenant makes an advanced payment on the operational costs, subsequently the renter has to provide correct billing.

Sometimes the payment of a monthly operational cost "all-

inclusive” is agreed, in that case the operational costs are covered and the renter is not obliged to prove the costs towards the tenant. An increase in the ”all-inclusive” on the basis of rising costs is only possible if this was stated in the rental contract and the increase is explained. The heating costs are excluded from these all-inclusive terms, these have to be billed correctly according to the heating costs rule (HeizKVO), with no exception.

Bill of costs

The operational costs account must be presented to the tenant within 12 months after the end of the accounting period. The renter must separate exactly the accounting period, on this occasion, it is not important whether it covers a calendar year or another period of exactly 12 months. A wrong demarcation period founds a formal mistake in the account.

Presentation of the bill will be regularly given in text form, on this occasion, it is to be noted that every tenant signing the rental contract gets a copy of the bill so that a possible request for payment can be claimed from every tenant.

Every single account must be developed clearly. It must show a regular build-up of the income and the issues, so the tenant is able to check the accounting of the renter.

The following information must be provided:

- the accounting period concerned
- an arrangement of the entire costs of the house or the economic unity
- information about which distribution key was used
- the calculation of the portion of operational cost referring to the tenant
- the operational cost-advance payments made by the tenant
- debit or credit resulting from the bill

The account must also show which house/unit is concerned. The operational costs must be basically ascertained for a single house or an economic unity of the same owner. An economic unit must be locally collected and administered uniformly. The buildings of an economic unit may not show essential differences in the residential value, they must be established in the same or comparable constructional manner or have been equally remodelled, and they must show the same standard of equipment and the same kind of use.

Allocation of costs

The total expenses arisen as per statement of cost must be distributed according to a certain key to the various flats. There are different factors to fix the keys of this distribution:

- sqm living space
- number of the people in the respective household
- number of the flats in the house
- actual consumption portion of the single household

The distribution key shown, can be agreed between tenant and renter for every operational cost category in the rental contract. If the distribution key has not been fixed in the rental contract, the operational costs must be billed according to the living space.

There are two exceptions which have to be distributed differently:

1. The costs arising from a proven consumption of the tenant, e.g., water meters must be billed according to the actual consumption
2. The costs depending on the heating and the hot-water supply must be distributed as per the heating costs rule (HeizKVO) from 50 to 70% according to consumption, and from 30 to 50% according to the sqm.

Deadline

The bill of operating costs must have reached the tenant within the latest 12 months after the end of the accounting period. After this date, the renter cannot file any payment claims. This term is mandatory and cannot be changed by contract.

Within 12 months after receipt of the bill, the tenant can raise objections against the bill. This does not mean that they can delay payment for 12 months. The sum of the bill must be paid within 2-6 weeks after delivery, the tenant can pay their debt under reservation and check the account later. Tenants must be able to check the documents on which the bill was based in the offices of the renter. At the end of the 12 month period, the tenant can no longer raise objections against the bill.

Change of tenant

With a change of tenant during the billing year, the renter must create a short fiscal year, in this case the period of utilisation is shorter than the accounting period.

Example:

A tenant of several years gives notice to 30th of April, 2009, following this the flat remains empty for one month. As from 1st June, 2009 tenant B takes over the flat. The bill of operational costs is provided in autumn, 2010 for 2009. This means tenant A receives a bill stating the time for from January to April, 2009, and tenant B receives a bill stating the time from June to December, 2009.

The costs occurring as a result of empty flats must also be billed. These costs are the responsibility of the renter and cannot be distributed among the flats/tenants.

Key Example – Bill of operational costs

Operating expenses account (pattern)
Family Pumpelhuber, pattern lane 21, 98765 pattern villages, No. WE 7001, 3. OG on the left
Accounting period 1/1/2009 - 12/31/2009
Period of utilisation 1/1/2009 - 12/31/2009

Singles-reallocation key	whole reallocation key
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Living space	91,35 m ²	living space Whole	2.809,29 m ²
Water consumption in accordance with. Water clock	123,60 m ³	water consumption Whole	3.794,40 m ³
Residential unity	1	residential unities	31

Cost category	Total expenses	Reallocation key	Direct costs
Property Tax	5.379,30	m ² living space	174,92
Road cleaning	613,27	m ² living space	19,94
Garbage disposal	9.693,90	m ² living space	315,22
Heating costs in accordance with separater account	14.721,20	70/30 alt HeizKVO	441,60
Drainage	1.922,05	m ² living space	62,50
Water / dirty water	10.961,65	Consumption	357,07
Lighting	3.541,58	m ² living space	115,16
Garden care	7.167,02	m ² living space	233,05
Insurance	2.641,14	m ² living space	85,88
Caretaker proportionately	4.419,22	m ² living space	143,70
Cleaning agency	7.252,64	m ² living space	235,83
Cable TV	2.170,00	Residential unity	70,00
Whole	70.482,97		2.254,87
./. BeKo-Pre-payment / account year			1.944,00
Additional payment			310,87

These operating cost accounts expel an additional payment. Please, transfer the additional payment until XXX to the rent account known to you; if you have given to us a direct-debit authorisation, we will not draw the stated amount before XXX.

According to the height of your additional payment we raise your monthly operating cost pre-payment from up to now € 162,00 by from € 28,00 to € 190,00 as from 1.1.XX

Documents are available according the telephone appointment until XXX in our offices.

Operational Cost in Germany - Group work

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1. In a 3 flat house, the heating costs for the last bill period (1 year) amount to 8,460 €. The heating costs amounts have to be distributed to the following tenants.

Tenant	Living space sqm	Consumption units	Pre payment monthly
A	105	210	250
B	100	190	245
C	95	160	220

30% should be calculated based on sqm living space (basic portion) and 70% based on consumption units.

Basic component			Consumption		Sum Total	Pre payment	Additional payment	Credit
Tenant	sqm	€ x ?	Units	€ x ?	€	€ x 12	Pre payment ./ Sum Total	Pre payment ./ Sum Total
A	105		210					
B	100		190					
C	95		160					
Total								

2. A total amount of 4,400 € of water consumption during the last year has to be distributed between three tenant parties according to the living space.

Tenant	Living space sqm	Additional consumption in €	Pre payment monthly
A	79	200	115
B	72	248,8	115
C	69	0	115

Basic component		Consumption	Additional Consumption	Total Consumption (basic+additional)	Pre payment	Additional payment	Credit
Tenant	sqm	€ x ?	€	€	€ x12	Pre payment ./ Sum Total	Pre payment ./ Sum Total
A	79		200				
B	72		248,8				
C	69						
Total							

3. The monthly operating expenses-pre-payment for a flat were raised in 2001 by 10%, were lowered in 2002 by 5%, were raised again in 2003 by 15%, were raised in 2004 by another 12%; now the amount is 145,20 € Please calculate the amount of the monthly pre-payment in 2000.

4. Decide whether the following actions are Operational Costs

Costs	Operational Cost?	
	yes	no
To change the sand from the sand pit		
To change the bulb in the corridor		
The defence insurance from the owner		
Cleaning one contaminated apartment		
Service of the fire extinguisher		
Removal of a drain blockage		
Cropper new bushes		
The electricity from the general lighting		
Monthly basic fee for cable-TV		
Property Tax		