

## How to solve landlord-tenant disputes<sup>1, 2</sup>

Elsa Munsch

### Abstract

The past few years, landlord-tenant disputes increased significantly. Therefore, the goal of this paper is to analyze the alternatives that allow landlords and tenants to save time and money. Moreover, most of conflicts don't require to go to Court so it is relevant to look at the alternatives to avoid such a loose of time and money. We found out several alternatives: prevention, mediation, negotiation, expert determination, arbitration... Then, we compared them using a Multi-Attribute Decision Making and ranked them from best to worst. The findings of this paper are that prevention through appropriate clauses and mediation are the best alternatives to solve landlord-tenant disputes. Indeed, those both alternatives suit both stakeholders' expectations and prevent most conflicts.

**Key words:** Controversies, liability insurance, host protection, property damage, sublease agreement, clauses, rentals, hotel industry, safety, injury, process, tenant, amount, legal troubles, dispute

### Introduction

Have you ever dreamt to turn your free space into a real investment opportunity? Have you ever dreamt to earn money while you are on holidays with your family?

A lot of people felt this trend coming in 2008 and have rented their extra room or their second house. Basically, the concept is quite simple: the platform connects travelers with local hosts in over 180 countries all around the world. Incredible. People just need to post some pictures of their place, give some details about the location, the availability, the price and even their house rules to

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be able to rent out their space so people can then book online if the rental fits with what they are looking for. Besides the creation of social links, hosts are pleased to earn extra money only by providing their free space into the platform<sup>3</sup>.

The Airbnb company, the leader of the new sharing economy is indisputably one of the greatest hyper-growth start-ups of these past few years. They succeeded in persuading “strangers to sleep in one another’s homes” and then the company “became a \$25 billion company” in less than 10 years<sup>4</sup>. This is such an impressive story.

Besides people who are making real money opportunities with Airbnb, Airbnb is facing some controversies<sup>5</sup>... Indeed, the hotel industry sees Airbnb as “Illegal hotels” that steal their clients because hosts are providing cheap accommodation in the heart of cities<sup>6</sup>. Therefore, they have more difficulty to rent their rooms. Moreover, hotels have to apply for a hotel permit while Airbnb do not comply with the same rules and do not pay as much taxes as the hotel industry do. If travelers are worrying about the existence of fire safety in the place they are renting, hosts are worried about the real value of the Airbnb liability insurance. In most cases, travelers respect the place and do not break any rules but it can happen that some of them are not really cautious and don’t take care of the space they rent as they do. To avoid those kind of problem, Airbnb provides them a Free Host Protection Insurance for every booking<sup>7</sup>.

To have a better understanding of what hosts are struggling with, it is relevant to use the 5 Whys:<sup>8</sup>

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<sup>3</sup> Airbnb - *Destinations locales pour une communauté mondiale*

Retrieved from: <https://www.airbnb.fr/how-it-works>

<sup>4</sup> Biz carson (02/23/16) - Business Insider - *How 3 guys turned renting an air mattress in their apartment into a \$25 billion company*

Retrieved from: <https://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2?IR=T>

<sup>5</sup> Thomas Richman (06/22/16) - Legal Vision - *Dispute Resolution in the Sharing Economy*

Retrieved from: <https://legalvision.com.au/dispute-resolution-in-the-sharing-economy/>

<sup>6</sup> Will Coldwell (07/08/14) - The Guardian - *Airbnb's legal troubles: what are the issues?*

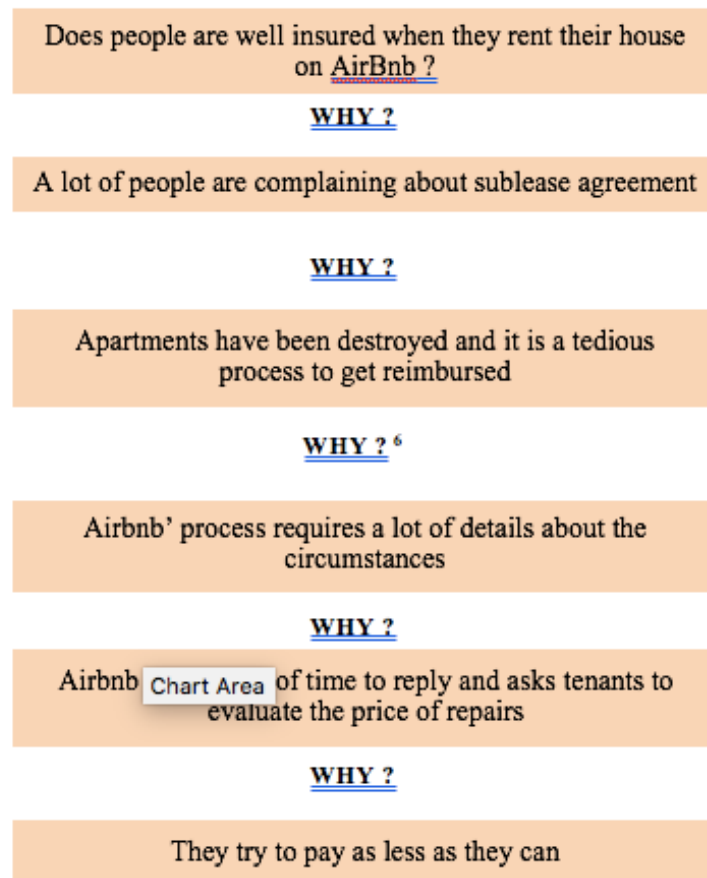
Retrieved from: <https://www.theguardian.com/travel/2014/jul/08/airbnb-legal-troubles-what-are-the-issues>

<sup>7</sup> Airbnb - *Airbnb Liability Insurance*

Retrieved from: <https://learnairbnb.com/airbnb-liability-insurance/>

<sup>8</sup> Airbnb - *What is the resolution Center?*

Retrieved from: <https://www.airbnb.com/help/article/767/what-is-the-resolution-center?ibbe=0>



**Figure 1: 5 Whys Analysis: Are people well insured when they rent their house on AirBnb?<sup>9</sup>**

This analysis shows that a lot of stakeholders are playing a role in the dispute and lead to a strong landlord dissatisfaction.

According to the definition of the Max Wideman's Comparative Glossary (MWCG), “In project management, that part of an organization responsible for managing a project from inception to closure as evidenced by successful delivery and transfer of the project's product into the care, custody and control of the Client or Customer”<sup>10</sup>, therefore it is important to work on contracts during the project management process to avoid any misunderstandings and damages.

To avoid those kind of problems, Airbnb claims that an “*Host Protection Insurance program provides primary liability coverage of up to \$1 million USD per occurrence, in the event of third-*

<sup>9</sup> By Author

<sup>10</sup> Max Wideman - Wideman Comparative Glossary of Project Management Terms v5.5. (n.d.) - *Project Life Cycle (Span) Cost - to - Project Manager*; Retrieved from:  
[http://www.maxwideman.com/pmglossary/PMG\\_P16.htm#Project%20Manager](http://www.maxwideman.com/pmglossary/PMG_P16.htm#Project%20Manager)

*party claims of bodily injury or property damage<sup>11</sup>*". Nevertheless the reality is quite the opposite and the Host Protection Insurance can be a long tedious process...

Throughout this paper, the objective will be to show why residential agreements are so important and the importance of exploring the different alternatives to solve disputes between landlord and tenant. To do so, we will focus on clauses and contracts in order to know which one is the best. This topic is directly linked with portfolio management as we need to analyze contracts in order to avoid misunderstandings.

We will go further in our researches by wondering:

- Are hosts enough covered?
- Do they need to pay for extra insurance?
- Does Airbnb give them all the money back if some things are destroyed?

## **Methodology**

**Step 1.** As mentioned previously, there is a big problematic with landlords struggling with their insurance when tenants destroy something in their apartment/house.

Therefore, we need to answer those questions:

- What is the best alternative when a dispute arises?
- Are they well insured?
- How to secure residential agreement?

The objective is to find the best alternatives for the landlord when some stuffs have been destroyed by tenants.

## **Step 2. Identification of feasible alternative solutions to the problem**

Court litigations are not always the best solution when a dispute does arise; therefore new ways of Alternative Dispute Solutions are increasing: *"In recent years there has been an increased effort to encourage parties to engage in ADR, which is a very effective mechanism for settling disputes. ADR comprises methods where parties seek to attempt to resolve matters out of Court by way of arbitration or mediation or general Without Prejudice discussions."*<sup>12</sup>

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<sup>11</sup> Airbnb - Host Protection Insurance; Retrieved from: <https://www.airbnb.com/host-protection-insurance>

<sup>12</sup> Francis Wilk & Jones – What are the alternatives to litigation? Retrieved from: [https://www.franciswilkandjones.co.uk/site/our\\_services/litigation-funding/fa-what-are-the-alternatives-to-litigation.html](https://www.franciswilkandjones.co.uk/site/our_services/litigation-funding/fa-what-are-the-alternatives-to-litigation.html)

According to the **National Alternative Dispute Resolution Advisory Council**<sup>13</sup> the possible feasible alternatives are the following :

1. **Prevention**
2. **Negotiation**
3. **Mediation**
4. **Arbitration**
5. **Expert determination**
6. **Litigation**



ESCALATING  
HOSTILITY

Let's now consider all of them.

### **Step 3. Development of the outcomes for each alternative**

#### **1. Prevention through appropriate clauses**

Basically, a residential agreement must contain clauses. Some clauses are required by the law and some other are chosen by the landlord depending on the situation. It is essential that every owner look at clauses carefully in order to be well insured in case of damages.

Therefore, clauses and the content of the residential agreement are the key to avoid disputes and a key element to consider if a dispute arises.

With the help of several residential agreements, we can now define some clauses that a contract must contain to avoid disputes.

First of all, owners have to comply with the law. They must be very specific about rental terms. Therefore, they must define the amount of the security deposit and the condition to give it back to the tenant. One of the clauses should also contain the resident's name and the person financially responsible for the rent payment. This rent clause must contain a lot of details: the rent amount, the due date and the late fee rules.

Finally, the contract must precise the utilities and the maintenance protocol<sup>14</sup> : is the apartment furnished, what are the furniture, what cannot be repaired, who is responsible for repairing the damages and who have to pay for the damages.

<sup>13</sup> Australian Government, Attorney General's Department - Alternative Dispute Resolution; Retrieved from: <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/default.aspx>

<sup>14</sup> Kasia Manolas (05/03/16) – Rentalutions - 5 Tips to Make a Good Rental Lease Even Better

Secondly, it is highly recommended to do not use a pre-made template but to customize it in order to be more specific. By adding specific requirements, the contract will be stronger and the landlord will be better insured. The customization has to be based on federal and local laws as well as the requirements of the landlord<sup>15</sup>.

For instance, in California, a man rented his house on Airbnb and mentioned all the furniture of the apartment and the price for repairing every single item if there is one broken. Therefore, on Airbnb, an owner should write down all the furniture on the contract and the price of the repair in case something is broken.

It is an efficient way to avoid dispute since both parties are aware of their responsibilities.

## **2. Negotiation**

This alternative allow landlords and tenants to find a middle ground for both. This is also known as BATNA: “best alternative to a negotiation agreement”.

## **3. Mediation**

*“The most common process is mediation, where an independently appointed experienced lawyer (for instance a solicitor or barrister) will commonly supervise initial meetings and ongoing discussions as to different aspects of the case between the parties over a day long (or more) meeting.”<sup>16</sup>*

Mediation is known as a cooperative procedure used by both the tenant and the landlord when they strongly disagree. This method is considered to be the most efficient method in Ireland.<sup>17</sup>

Basically, a third person, the mediator, do his best to find a mutual compromise by encouraging both parties to consider each other point of view<sup>18</sup>.

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Retrieved from: <https://www.rentalutions.com/education/articles/5-ways-to-improve-your-rental-lease>

<sup>15</sup> Kasia Manolas (05/03/16) – Rentalutions - 5 Tips to Make a Good Rental Lease Even Better; Retrieved from: <https://www.rentalutions.com/education/articles/5-ways-to-improve-your-rental-lease>

<sup>16</sup> Francis Wilk & Jones – What are the alternatives to litigation? Retrieved from: [https://www.franciswilkandjones.co.uk/site/our\\_services/litigation-funding/fa-what-are-the-alternatives-to-litigation.html](https://www.franciswilkandjones.co.uk/site/our_services/litigation-funding/fa-what-are-the-alternatives-to-litigation.html)

<sup>17</sup> Residential Tenancy Board – Dispute Resolution Process FAQs; Retrieved from: <https://www.rtb.ie/dispute-resolution/dispute-resolution/dispute-resolution-process-faqs>

<sup>18</sup> Benson (01/16) – Tollers - *Adjudication, Arbitration and Mediation – What’s the difference?* Retrieved from: <https://www.tollers.co.uk/news/2016/adjudication-arbitration-and-mediation/>

The outcome of mediation is a Resolution Agreement, in which both parties reaffirms their responsibilities by signing the Agreement. Another benefit of the mediation is the persisting good relationship between landlord and tenant.

#### **4. Arbitration**

The fourth alternative is the arbitration. This alternative arises when both parties cannot reach an agreement or a compromise. This method requires a third person able to impose his decision. Both parties are sure a decision will be taken but this is a binding-decision. One of the best advantage in using arbitration is the private aspect of the procedure<sup>19</sup>.

The difference with a lawsuit is that the process is less formal, less expensive and takes less time.

#### **5. Expert determination**

*“This process is where a dispute resolution practitioner evaluates the dispute and makes a determination.”*<sup>20</sup>

Expert determination is an informal process of dispute resolution. Experts are mainly hired when there is a valuation at stake.

Landlord and tenants have to agree on the conflict and agree the report will be binding. One of the best advantages is the informality of the process and the possible fast implementation. The drawback is the difficulty to challenge the expert’s choice.

#### **6. Litigation**

When the security deposit does not cover damages, landlord has the choice to pursue legal action to solve the problem. Indeed, *“Thousands in expenses may lead to litigation with a lawyer”*.<sup>21</sup> To do so, landlord have to present evidence against the tenant through pictures and police report.

Nevertheless, it can be expensive to hire a lawyer and the process to win your case can be long.

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<sup>19</sup> Edmonds (01/10/17) – Griffin Law - *Arbitration. Adjudication. Mediation. Alternative Dispute Resolution: does it work?* Retrieved from: <https://www.griffin.law/arbitration-adjudication-mediation-alternative-dispute-resolution-work/>

<sup>20</sup> Edmonds (01/10/17) – Griffin Law - *Arbitration. Adjudication. Mediation. Alternative Dispute Resolution: does it work?* Retrieved from: <https://www.griffin.law/arbitration-adjudication-mediation-alternative-dispute-resolution-work/>

<sup>21</sup> Australian Government, Attorney General’s Department - *Alternative Dispute Resolution*; Retrieved from: <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Pages/default.aspx>

#### **Step 4. Selection of Criteria**

In order to rank well all the alternatives, we need to establish a list of criteria adapted to rental problems. Based on the criteria from the **chapter 19 of the book “Managing, Resolving, and Avoiding Cross-Border Business or Regulatory Disputes”<sup>22</sup>**, I decided to focus on the following main criteria:

First of all, when furniture is destroyed, landlords have to repair quickly, that is why **the length of the procedure** is highly important. They can’t wait for many months to get their money back.

We know that the price of repairs can be expensive for landlords so they are looking for an effective and efficient process whose is not too expensive. Thereby, **cost** is the second criteria to focus on.

The third criteria to look in more details is **flexibility**. For most landlords, processes shouldn’t be too complicated, too procedural and too heavy. The more flexible a process is, the better.

Moreover, disagreements and conflicts can be deep and thereby hard to solve. That is why, we have to consider how much **complexity** a process can **handle**.

Also, it is crucial to determine if a process can enforce a solution easily. Indeed, landlords need to know if judgments are **enforceable** to make their choice.

In some situation, it is impossible to solve landlords-tenants dispute so it is important to consider the possible **need for Court intervention**.

**The Ability to Consolidate Actions or Join Third Parties** has to be considered because of the importance to give a new point of view from a neutral person.

Another criteria to focus on is the **right to appeal**. Are landlords allowed to ask for higher authority is they think the judgment is biased? Most of landlords need to be sure they are not stuck with a decision.

It is also interesting to look at the degree of **formality** because some formal processes can be long and tedious.

**Privacy** should be considered as some landlords and online rental platforms such as Airbnb are looking for confidentiality.

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<sup>22</sup> Proskauer Guide - Proskauer on International Litigation and Arbitration: Managing, Resolving, and Avoiding Cross-Border Business or Regulatory Disputes; Retrieved from: <https://www.proskauerguide.com/arbitration/19>



Sometimes landlords and tenants do not come from the same countries or do not speak the same language. Thereby, we can consider the **ability to select place and language** as one of our criteria.

Finally, it is relevant to deal with **Limited discovery**, in order to know if a party “*through the law of civil procedure, can obtain evidence from the other party or parties by means of discovery devices such as a request for answers to interrogatories, request for production of documents, request for admissions and depositions.*”<sup>23</sup>

**TABLE 1: Multiple Attribute Decision Making tool**

ATTRIBUTES	Prevention (Appropriate clauses)	Mediation	Arbitration	Negotiation	Expert determination	Litigation
Time	1	1	1	0,6	0,5	0
Cost	1	1	0	1	1	0
Flexibility	1	1	0	0,5	0	0
Privacy	1	1	0,5	1	1	0
Right to appeal	1	1	0	0,5	0	0
Non formal procedures	1	1	0	1	0	0
Complexity handling	0,5	0,5	1	0	1	1
Ability to Select Place and Language	0,5	0,5	1	1	1	0,5
Limited discovery	0	0	1	0	0,5	1
Enforceability	1	1	1	0,5	1	0
Potential need for Court Intervention	1	0,5	0	0,5	0	0

<sup>23</sup> Wikipedia – Discovery ; Retrieved from: [https://en.wikipedia.org/wiki/Discovery\\_\(law\)](https://en.wikipedia.org/wiki/Discovery_(law))

<b>Ability to Consolidate Actions or Join Third Parties</b>	1	1	0	1	1	0
<b>TOTAL SCORE</b>	10	9,5	5,5	7,6	7	2,5

<b>GOOD</b>	<b>NEUTRAL</b>	<b>NEGATIVE</b>
1	0,5	0

## Conclusion

We figure out arbitration and litigation do not offer a lot of benefit to landlords. Therefore, we are rejecting those alternatives and we will focus on the other resolution processes as they seem to offer greater benefits to landlords.

## Findings

### ⇒ Step 5

We now need to weigh and compare the different variables by using an additive weighting technique. To do so, we have to rank the alternatives by comparing the weight of the attributes with the weight of the alternatives.

The following chart is focusing on 4 different alternatives: prevention, mediation, negotiation and expert determination.

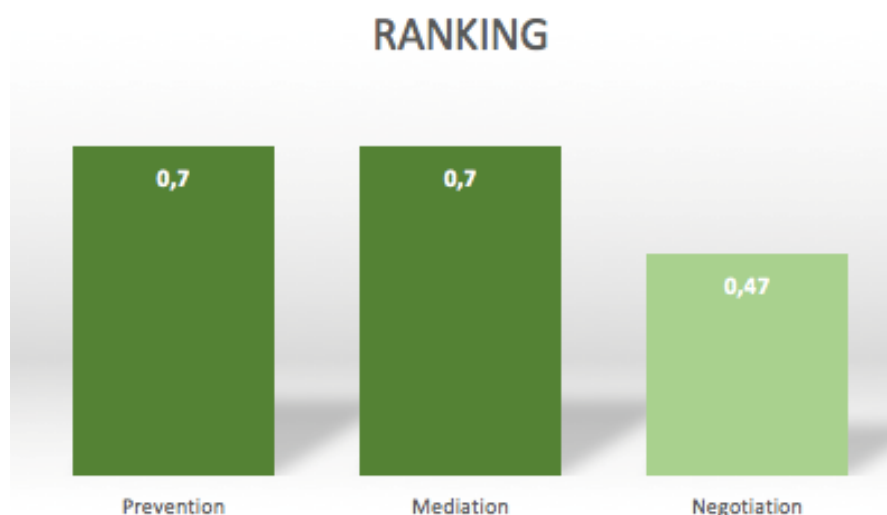
Attributes	Step 1	Step 2	Prevention		Mediation		Negotiation		Expert determination	
	Relative Ranking	Normalize weight (A)	(B)	(A)*(B)	(C)	(A)*(C)	(D)	(A)*(D)	(E)	(A)*(E)
Time	8	0,2	1	0,2	1	0,2	0,6	0,12	0,5	0,1
Cost	7	0,175	1	0,175	1	0,175	1	0,175	1	0,175
Flexibility	6	0,15	1	0,15	1	0,15	0,5	0,075	0	0
Privacy	1	0,025	1	0,025	1	0,025	1	0,025	1	0,025
Right to appeal	2	0,05	1	0,05	1	0,05	0,5	0,025	0	0
Non formal procedures	2	0,05	1	0,05	1	0,05	1	0,05	0	0
Complexity handling	4	0,1	0,5	0,05	0,5	0,05	0	0	1	0,1
Ability to Select Place and Language	1	0,025	0,5	0,0125	0,5	0,0125	1	0,025	1	0,025
Limited discovery	1	0,025	0	0	0	0	0	0	0,5	0,0125
Enforceability	4	0,1	1	0,1	1	0,1	0,5	0,05	1	0,1
Potential need for Court Intervention	2	0,05	1	0,05	0,5	0,025	0,5	0,025	0	0
Ability to Consolidate Actions or Join Third Parties	2	0,05	1	0,05	1	0,05	1	0,05	1	0,05
<b>Total</b>	<b>40</b>	<b>1</b>	<b>0,7</b>		<b>0,7</b>		<b>0,47</b>		<b>0,4</b>	

Therefore, we can see prevention and mediation are the best alternatives to solve dispute, followed by negotiation and finally expert determination.

We can also see that negotiation and expert determination score low compared to prevention and mediation.

⇒ **Step 6 Ranking order of the alternatives from “best” to “worst”**

We are now able to rank our alternatives from best to worst:



Thanks to the “**Additive Weighting Technique**”, we can say how much each alternative is better compared to each other. We can see prevention IS by 181,9% a better choice than arbitration  $((10/5,5)*100)$ , it is also by 400% more efficient than litigation  $((10/2,5)*100)$ .

After the result in the step 5, we decided not to continue with arbitration even if the alternatives had some benefits: “*when the subject matter of the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed (as you cannot “choose the judge” in litigation), arbitration is often faster than litigation in court*”.<sup>24</sup> Nevertheless, arbitration can cost a lot of money because “*parties are required to pay for the arbitrators, which adds an additional layer of legal cost that can be prohibitive, especially in small consumer disputes*”.<sup>25</sup>

Thereby, the most appropriate ranking is prevention > mediation > expert determination. Those three alternatives do not require the landlord to pursue the tenant, they are also cost and time saving.

To summarize, when a dispute arises, the best processes are prevention and mediation. Indeed, as shown previously in this paper, both alternatives have a high rate of compliance because “*Parties who have reached their own “customized” agreement are generally more likely to follow through and abide and comply with its terms than those whose agreement has been imposed by a third-party decision-maker*”.<sup>26</sup> Moreover, it is important to highlight that mediation is time and cost saving since this alternative “*can be scheduled and held in a matter of days, not weeks or months*”.<sup>27</sup> Moreover, appropriate clauses are also time saving since tenants know in advance what they cannot do. Finally, both alternatives are efficient because they “*are much better able to preserve present and future working relationships than win/lose procedures*”.<sup>28</sup>

#### ⇒ **Step 7 Performance monitoring and post evaluation of results**

As we know what the best alternatives are to solve dispute between landlords and tenants, we are now going to do a Pareto analysis in order to look at the effects of each alternatives.

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<sup>24</sup> Humphreys - Advantages and disadvantages of arbitration over court proceedings; Retrieved from: <http://www.humphreys.co.uk/articles/advantages-and-disadvantages-of-arbitration-over-court-proceedings/>

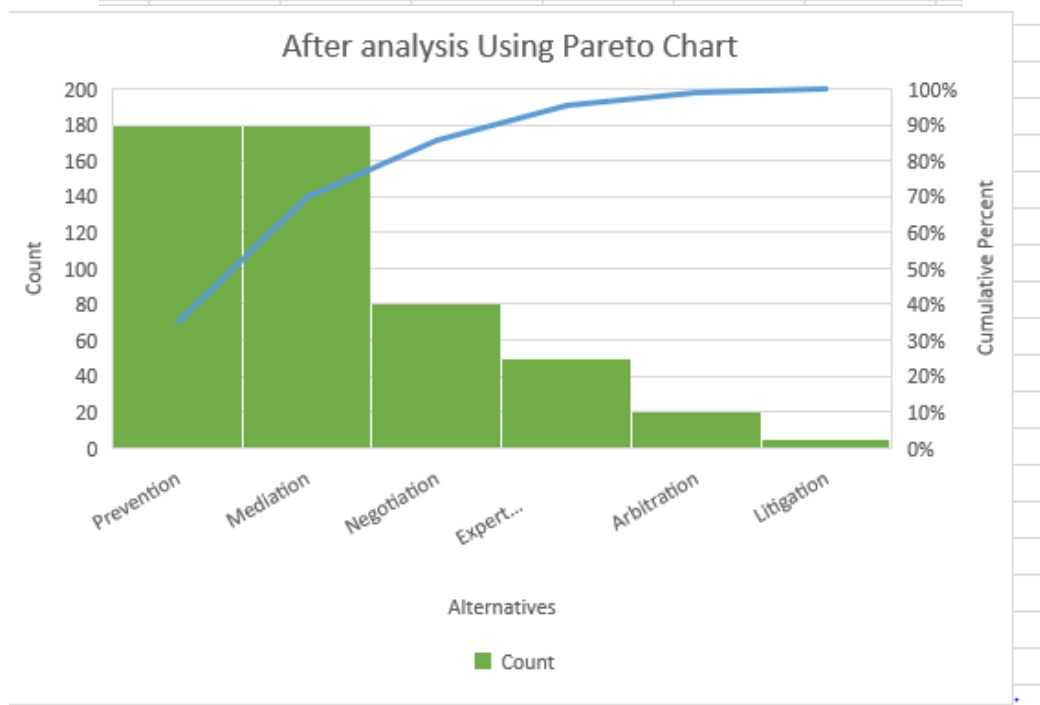
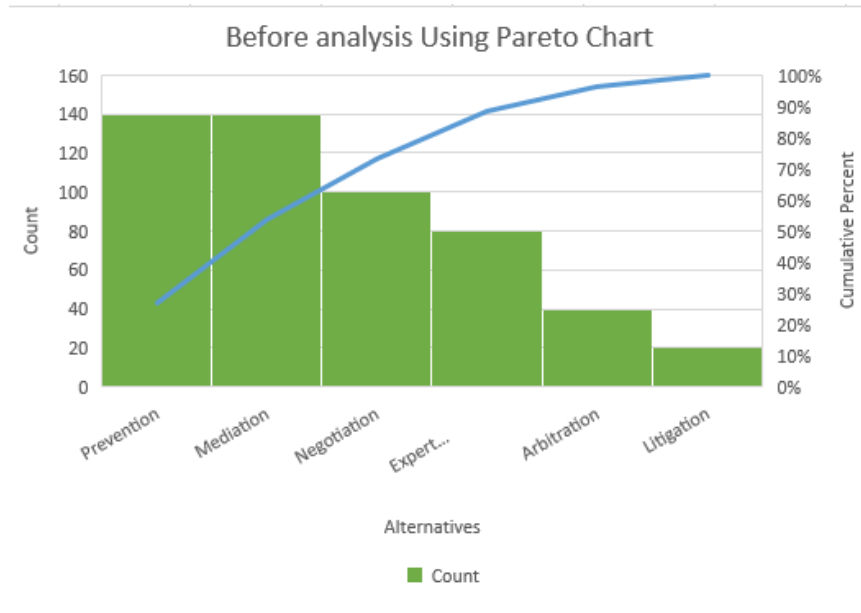
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<sup>26</sup> Kansas State University – What are the advantages of Mediation? Retrieved from: <https://www.k-state.edu/hcs/work-life/employee-relations/dispute-resolution/mediation/advantages.html>

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The following chart shows the performance of prevention and mediation. After analysis, both can solve almost 80% of disputes.



## Conclusion

Through this paper, we tried to answer: What is the best alternative when a dispute arises between landlord and tenant? To do so, we highlighted all possible alternatives such as: prevention,

mediation, negotiation, arbitration, litigation and expert determination. After the explanation of all alternatives, we weighted them using an additive weighting technique in order to assess their impacts on a landlord-tenant conflict. We drew the conclusion that the best ADR are appropriate clauses and mediation as the others have many drawbacks. Indeed, the customization of clauses help prevent landlords from disputes because tenants are fully aware of the landlord's expectations. Therefore, landlords cannot only use a standard agreement template, they need to work on it and to write down their expectations and needs.

Moreover, mediation is also an effective alternative as the cooperation and understanding is possible on the long-run.

Finally, court litigation has to be considered as the ultimate choice to solve landlord-tenant disputes as the process can be long and tedious.

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## About the Author



**Elsa Munsch**

Lille, France



**Elsa Munsch** is a PGE student from SKEMA Business School with extensive international experience. She lived during one year in Raleigh, North Carolina, USA. Now, she is willing to work in sales and that is why she is doing the Msc “Project and Programme Management & Business Development”. During her education, she had done several internships in companies such as Maison Martin Margiela as sales assistant and Bellota-Bellota as purchaser assistant and she will be starting a 6-months internship as business developer at L’Oréal in January. Passionate about new cultures, she went to Nepal for a humanitarian trip. She is able to speak French, English, Spanish and basic Chinese. Finally, she is currently working on PRINCE2 and AGILE PM certifications.

Elsa can be contacted at [elsa.munsch@skema.edu](mailto:elsa.munsch@skema.edu) or via her LinkedIn profile: <https://www.linkedin.com/in/elsamunsch/>