

**DESIGNING AN ONLINE DISPUTE
RESOLUTION (ODR) SYSTEM FOR
LANDLORD-TENANT DISPUTES IN
SWITZERLAND**

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. OVERVIEW OF THE DIFFERENT STAGES IN THE ODR PROCESS	3
III. DESIGNING AN ODR PLATFORM FOR LANDLORD-TENANT DISPUTES IN SWITZERLAND	4
A. Diagnosis	4
B. Negotiation	5
C. Conciliation	6
D. Potential Issues and Solutions	7
IV. EVALUATING THE ODR SYSTEM.....	8
A. Key Performance Indicators (KPI's)	8
B. Advantages of the ODR system.....	9
C. Ethical Concerns	10
V. SOME THOUGHTS ABOUT THE FUTURE	10
APPENDIX 1	11
APPENDIX 2	12

I. INTRODUCTION

With only 38% of the population owning residential property in 2017, Switzerland has one of the lowest home ownership rates in the world¹. By contrast, the U.S. Census Bureau recently reported a home ownership rate of 67.9 % in the second quarter of 2020². Hence, it is not surprising that disputes between tenants and landlords occur frequently in Switzerland.

Pre- and extrajudicial settlement of disputes is one of the central pillars of the Swiss Civil Procedure Code (CPC)³. The federal law, which entered into force in 2011 and harmonized the proceedings for civil matters in all 26 Swiss cantons, establishes the principle that litigation must be preceded by an attempt at conciliation⁴. These mandatory conciliation proceedings take place before a cantonal conciliation authority, of which each canton has at least one⁵.

In landlord and tenant disputes, the conciliation authority is composed of a chair and one representative of each a landlord's and a tenant's organization to ensure sufficient specific knowledge of tenancy law and awareness of the characteristics of such disputes⁶. The Federal Office for Housing (FOH), to whom these joint conciliation authorities must report their data to, registers around 30'000 applications for conciliation on average per year⁷. Most landlord-tenant disputes arise in cantons with major cities such as Zurich, Geneva, or Lausanne⁸. The characteristics of this type of disputes can vary, depending on whether the rent of residential or commercial premises is concerned. While the general scale of the dispute (and the amount of

¹ Swiss Federal Statistical Office, *Tenants/ owners* (Feb. 21, 2019), <https://www.bfs.admin.ch/bfs/en/home/statistics/construction-housing/dwellings/housing-conditions/tenants-owners.html>; Robert J. Schiller, *Owning a Home Isn't Always a Virtue*, N.Y. Times (July 13, 2013), <https://www.nytimes.com/2013/07/14/business/owning-a-home-isnt-always-a-virtue.html>.

² United States Census Bureau, *Quarterly Residential Vacancies and Homeownership, Second Quarter 2020* (July 28, 2020), <https://www.census.gov/housing/hvs/files/current/hvspread.pdf>.

³ BUNDESLATT [BBL] [FEDERAL GAZETTE] 7221 (2006), 7223 (where the Federal Council states that “a high priority is given to the pre- and extrajudicial settlement of disputes”).

⁴ Swiss Civil Procedure Code [CPC], Dec. 19, 2008, SR 210, art. 197. For an official English translation see <https://www.admin.ch/opc/en/classified-compilation/20061121/index.html>.

⁵ André Brunschweiler, Sandrine Giroud & Catherine A. Kunz, *International Civil Procedure: Switzerland*, in INTERNATIONAL CIVIL PROCEDURE 6 (2nd ed. Juris Publishing, Inc. 2011).

⁶ Cf. Bundesgericht [BGer] [Federal Supreme Court] Nov. 5, 2019, 146 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] III 47, 49 (holding that “due to its particular composition and specialization, the joint conciliation authority is particularly capable of advising and reconciling the parties in disputes concerning the rent or lease of residential and business premises”).

⁷ Swiss Federal Office for Housing, *Statistik der Schlichtungsverfahren*, <https://www.bwo.admin.ch/bwo/de/home/mietrecht/schlichtungsbehoerden/statistik-der-schlichtungsverfahren.html>.

⁸ For instance, Zurich reported 1868 new entries in the second half of 2019; see *Id.*

rent to be paid) may be low in the former⁹, the value in dispute is likely to be much higher when the property in question is the office of a large corporation. Because of the social and economic importance of housing for the individual, disputes about residential properties tend to be very emotional (*e.g.*, in the most extreme case of an eviction, the tenant may be essentially left without a roof over his head)¹⁰, though rental conflicts between businesses can certainly reach an emotional dimension as well (*e.g.*, when a lot of employees are affected)¹¹. In either case, the relationship between landlord and tenant is contractual in nature, and its intensity can range from strictly transactional to very intimate.

The current dispute resolution approach of mandatory, pre-judicial conciliation before conciliation authorities is said to contribute to a low-threshold access to justice and to a relief of the courts¹². Although the application for conciliation may be filed electronically¹³, the law expressly provides that the parties must show up at the hearing before the conciliation authority *in person*¹⁴. Thus, the conciliation generally takes place in the offline world. This is contrary to the demands of today's technology-driven society, which expects access to similar tools for resolving their disputes as they use for other matters of everyday life¹⁵. This paper aims to move the conciliation process and its preceding stages online and proposes a national platform designed to help the parties and the cantonal conciliation authorities resolve landlord-tenant disputes by providing them with adequate information and communications technology. This web-based online dispute resolution (ODR)¹⁶ system shall be named '*mietstreit.ch*'¹⁷.

⁹ The average monthly housing rent in Switzerland is 1329 Swiss Francs [CHF] (1450 USD), *see* Swiss Federal Statistical Office, *Rented Dwellings* (Feb. 27, 2020), <https://www.bfs.admin.ch/bfs/en/home/statistics/construction-housing/dwellings/rented-dwellings.html>.

¹⁰ Cf. Scott E. Mollen, *Alternate Dispute Resolution of Condominium and Cooperative Conflicts*, 73 ST. JOHN'S L. REV. 75 (1999) (stating that "many experienced practitioners and jurists believe that after relationships involving love and/or sex, the next most passionate relationship in our society is that of landlord-tenant . . .").

¹¹ For instance, a long lasting dispute regarding a property in Zurich occupied by the Swiss warehouse Manor and owned by the life insurance company Swiss Life gained a lot of media attention, ultimately ended up at the Federal Supreme Court and led to Manor having to abandon the location and lay off its employees; *see generally* Michael von Ledebur, Lena Schenkel & André Müller, *Manor verlässt die Zürcher Bahnhofstrasse im offenen Streit mit Swiss Life*, Neue Zürcher Zeitung, <https://www.nzz.ch/zuerich/manor-schliesst-den-standort-ander-bahnhofstrasse-ld.1510609>.

¹² BBL, *supra* note 3, at 7223; *See also* Anette Dolge & Dominik Infanger, *Schlichtungsverfahren nach Schweizerischer Zivilprozessordnung* 6 (2012).

¹³ CPC art. 201, para. 1 and art. 130.

¹⁴ CPC art. 204 para. 1.

¹⁵ Colin Rule, *Online Dispute Resolution and the Future of Justice*, 16 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE (forthcoming Oct. 2020).

¹⁶ Cf. Colin Rule, *Technology and the Future of Dispute Resolution*, DISP. RESOL. MAG., Winter 2015, at 4, 5 (defining ODR as "the application of information and communications technology to the practice of dispute resolution").

¹⁷ Which is German for "rent dispute".

II. OVERVIEW OF THE DIFFERENT STAGES IN THE ODR PROCESS

Appendix 1 demonstrates the stages of the envisioned ODR process for landlord-tenant disputes in Switzerland. Highlighted in green are the phases which will be moved online and thus encompassed by the system. In contrast, the ones highlighted in red will not take place on ‘mietstreit.ch’ and go beyond its scope.

Upon encountering a problem, seeking information about its nature and potential available solutions is usually the first step (e.g., by doing research on the Internet, reading books, asking friends, etc.). In this early diagnosis phase, it is possible that the problem and any potential dispute arising out of it are resolved right away. Generally, the earlier a dispute is resolved, the better¹⁸.

If simply framing the problem is not sufficient, it becomes necessary to approach the other party with the aim of reaching an agreement. This happens through informal negotiation, which is the most common dispute resolution method we encounter in our daily lives¹⁹.

However, negotiation does not always lead to an agreement between the parties. As a result, an escalation of the conflict is needed by calling upon a neutral third-party to assist. In tenant-landlord disputes arising in Switzerland, the joint conciliation authorities take up this role and have the legal mandate to try and reconcile the parties. This process is governed by the rules set forth in the CPC²⁰, which will have to be respected in the online context as well. Conciliation proceedings are initiated by an application for conciliation, whereby a hearing is held within two months²¹. This hearing can produce different outcomes. If the parties agree on a settlement or the dispute is resolved for other reasons (e.g., withdrawal of the application), the case can be closed. The same is true if the conciliation authority issues a so-called proposed judgment and it is not rejected by either party within 20 days (this option is always available to the authority in landlord-tenant disputes or in disputes less than CHF 5000 in value²²). The conciliation authority also has the power to act as a small claims court when the value in dispute does not exceed CHF 2000 and render a decision based on the merits²³. If the parties are not able to reach a settlement and the authority does not or cannot make use of its decision-making

¹⁸ Colin Rule & Amy Schmitz, *The New Handshake: Online Dispute Resolution and the Future of Consumer Protection* (2018), 94.

¹⁹ See, e.g. Rule, *supra* note 16.

²⁰ Most importantly CPC art. 197-212.

²¹ CPC art. 202, 203.

²² CPC art. 210.

²³ CPC art. 212.

powers, it issues an authorization to proceed to court²⁴. It is important to note that the parties can opt-out of conciliation if the value in dispute is at least CHF 100'000 or if the defendant's location is in a foreign country or unknown²⁵.

Instead of seeking conciliation, Swiss law provides the parties with the option to pursue mediation *instead* (this can be requested in the application or even during the hearing)²⁶. While conciliation takes place before a state authority and is described as more informal, mediation is a private, more structured process that must be organized and paid for entirely by the parties themselves²⁷. However, in landlord-tenant disputes, mediation is almost never requested²⁸. For this reason, and to ensure the independence and confidentiality of any private mediation proceedings²⁹, the envisioned website will not offer any mediation services.

Arbitrability of disputes regarding the lease of *residential* property is very limited, in the sense that the parties may only appoint the conciliation authority as the arbitral tribunal³⁰. Just like court proceedings are not the subject of this paper, arbitration too goes beyond the scope of the suggested design.

III. DESIGNING AN ODR PLATFORM FOR LANDLORD-TENANT DISPUTES IN SWITZERLAND

Appendix 2 shows a possible, simplified design for the ODR process from a user-flow perspective. The participants in the process are the disputants, the competent conciliation authority, and, possibly, the administrators of the website.

For the purposes of this design, the residential tenant T., who is freezing due to the heating not functioning properly during winter, shall serve as an exemplary illustration.

A. Diagnosis

As demonstrated by the special composition of the conciliation authorities in landlord-tenant matters, Swiss tenancy law is deemed to be quite complex and comprehensive. Thus, providing the parties with enough (legal) information is essential. Technology can prove itself helpful in achieving a thorough, early diagnosis of any problem encountered.

²⁴ CPC art. 209.

²⁵ CPC art. 199.

²⁶ CPC art. 213.

²⁷ BBL, *supra* note 3, at 7335.

²⁸ E.g. in 2019, no mediations at all took place; *see* Swiss Federal Office for Housing, *supra* note 7.

²⁹ *Cf.* CPC art. 216 para. 1 (which states that «mediation proceedings are confidential and kept separate from the conciliation authority and the court.»).

³⁰ CPC art. 361 para. 4.

Assuming T. wonders whether he must pay for the repair of the heating out of his own pocket and if not, what he could do if his landlord L. refuses to bear the costs. To find an answer, he visits the homepage of ‘*mietstreit.ch*’, where he is presented with information about the ODR process and its different stages. On the same page he is asked to indicate whether he is a tenant or landlord and whether the issue involves a residential or commercial lease. Afterwards, the user is taken to a page designed to provide him not only with legal information about the most common types of landlord-tenant disputes, but also with sets of data about past resolutions (*i.e.*, T. would go under the rubric ‘defects of the lease object’, learn about his rights granted by tenancy law in this regard and see what percentage of those disputes ultimately end up in court or how long it usually takes to resolve the dispute). This allows the user to form reasonable expectations for the further dispute resolution process. After the user has educated himself and believes he has a case, he can file one in the respective rubric. By doing so, a questionnaire-like information gathering process begins. The claimant must describe the issue more accurately (*i.e.*, heating affected) and may also upload evidence (*e.g.*, pictures or videos proving the heating does not work as intended). Furthermore, the user must also set out his claims (*e.g.*, T. could try to seek a full repair of the heating and damages for a missed day at work due to a cold he caught after a freezing night in the apartment). Most importantly, the input of contact information of both the tenant and landlord as well as the address of the premise is required.

B. Negotiation

After the claimant has finished filing the case, the system automatically sends an e-mail to both the claimant’s and respondent’s e-mail address, containing login information for ‘*mietstreit.ch*’ and a notice that a case has been opened. After the respondent has logged in, he is immediately presented with the details of the problem and especially the claims of the other party. The respondent could just agree to all of them without changing anything, and the system would automatically draft a settlement agreement between the parties and close the case. However, he can also make a counteroffer by simply editing the terms and adding comments or evidence of his own (*e.g.*, L. could agree to the repair at his expense, but refuse to pay for the damages). If the terms of the claimant are not fully accepted, the parties are both able to enter an online room (the “negotiation room”) where they can continue their negotiation (*e.g.*, by engaging in asynchronous chat discussion, setting up a video call, setting an in-person appointment, uploading further files, and drafting the settlement agreement together). If the parties find common ground and manage to settle, they can both simply accept the final draft of the agreement and the case will thereby be closed, as the agreement is binding *inter partes* as a matter of contract law. However, if the negotiation is not fruitful, the interface always

provides either party with the option to escalate the dispute further and proceed to the next phase by submitting an application for conciliation. Since the claims and all relevant information about the case are now already incorporated into the system, this will be possible by simply pressing a button, whereafter a formal application is automatically sent to the competent local conciliation authority.

C. Conciliation

The competent conciliation authority will find the application in their respective case management system and will be able to create a new room (the “conciliation room”) on ‘*mietstreit.ch*’ simply by clicking a link within the application document. The conciliation room will look very similar to the negotiation room but will now include a total of five users (the parties and the three members of the conciliation authority). Because a hearing must take place within 2 months by virtue of law, the conciliation authority shall, in understanding with the parties (*e.g.*, by using the video call or asynchronous chat functions), set a hearing date which will be fixed in the online calendar visible for all. After the date has been set, usually the parties and the authority would not see or hear from each other until the hearing. However, due to the online setting, the conciliation authority could continue to hold conversations with the parties via the conciliation room and help them prepare for the hearing (*e.g.*, T. could engage in caucus conversations with the representative of the tenant’s organization, or all users could just hold a joint conversation). Furthermore, the parties could even continue to negotiate between themselves, upload additional files or ask any questions they might have about the upcoming hearing. This time period could also be used for any inspections of the property, if necessary (*e.g.*, the members of the conciliation authority could go to T.’s apartment and check whether the heating is in fact not working).

The hearing itself will be held virtually through the built-in video call function of the platform to best imitate a physical hearing. By conducting it via video, it permits the disputants and the neutral to read each other’s body language, which could not be done in a phone call or a merely text-based venue. Through screen-sharing the parties can edit the draft agreement together, but this time with the help and advice of the specialized conciliation authority. Both parties can always request the invitation of their legal agent to the meeting, and the video call may be paused or split into separate calls for any private discussions. With the approval of both disputants, multiple hearings like this could be held³¹. If the parties have finally drafted a

³¹ CPC art. 203 para. 4 explicitly allows this, if the conciliation proceedings do not exceed 12 months in total.

satisfying settlement agreement and accepted it through an affirmative click, the case will be closed by the web system. However, if the parties still cannot agree and the conciliation authority moves forward to issue or propose a binding decision based on the merits, the authority will independently draft a judgment on her own, upload it in a dedicated “authority files” tab of the conciliation room and inform the parties about the actions taken. In the scenario of a proposed judgment, the tool will provide a ‘reject’ button beneath the file. If either party clicks it, the conciliation authority will be notified by the system, after which the authority will replace the file with an authorization to proceed to court. However, if there is no response within 20 days, the case will automatically close. If the authority renders a binding decision, the case will instead already close after a few days (*i.e.*, after enough time has passed to assume the parties have taken notice), because such a decision would have to be appealed in court anyways. Additionally, all files uploaded by the conciliation authority will be automatically e-mailed to the parties to make sure they are given appropriate notice.

D. Potential Issues and Solutions

Anything that can go wrong will go wrong. Murphy’s law applies in the ODR context as well. Thus, any prudent ODR system designer must identify any problematic factors which could impede the flow of the envisioned resolution process and discourage the parties from proceeding any further.

Landlord-tenant relationships are often characterized by a power imbalance in favor of the landlord³². Asymmetries in the ODR process could give further credibility to this widespread assumption and deter tenants from using it. First, there may be a *volume asymmetry*, especially if the landlord owns several premises and goes through the dispute resolution process many times a year and is therefore much more familiar with it. The platform can balance this advantage by making the resolution process as easy as possible for the tenant to navigate. Second, an experienced landlord knows much more about Swiss tenancy law and civil proceedings and thus is aware of the rules governing the ODR process. The system can reduce this *information asymmetry* by providing the tenant with enough background knowledge, starting with the diagnosis phase. Additionally, the special composition of the conciliation authority in landlord-tenant matters already contributes to alleviating any informational disadvantages (*e.g.*, the representative of the tenant’s organization can inform the tenant about his rights). Last, a landlord may have more resources available (*e.g.*, the money to hire a

³² See, *e.g.*, Susan Etta Keller, *Does the Roof Have to Cave In: The Landlord/Tenant Power Relationship and the Intentional Infliction of Emotional Distress*, 9 CARDOZO L. REV. 1663 (1988).

lawyer). However, this *resource asymmetry* is reduced by the fact that the conciliation procedure in landlord-tenant disputes is completely free of charge under Swiss civil procedure law³³. The designers of an ODR system should always be aware of and combat any potential asymmetries between the parties to create a level playing field³⁴. Nevertheless, if the disputants are both businesses of a certain size, such asymmetries are less likely to exist.

Furthermore, technical problems can be very discouraging and frustrating for all involved. In case any participant requires technical assistance, it should therefore always be possible to contact an administrator team of ‘*mietrecht.ch*’ (e.g., by providing a 24/7 live chat option). Since conciliation proceedings are generally mandatory in Switzerland, the website operator must furthermore expect a large number of cases on the platform. It is therefore essential to ensure the resilience of the system and to prevent potential overloads (e.g., by providing enough storage capacity). Last but not least, the conciliation authorities play a crucial role in the ODR process. Entrusting them with these new responsibilities can be overwhelming at first, since they are used to operate mainly in the offline world and may be reluctant to move to an entirely online platform. It is therefore all the more important to familiarize the authorities with the ODR platform by providing them with sufficient training and resources.

Another issue that deserves utmost attention is the interaction of the ODR system with the formal legal system³⁵. As soon as the parties enter the conciliation phase, the procedure is no longer a private one but instead takes place with a state authority. This stage is governed by the Swiss CPC and the authority must follow constitutional due process, thus limiting design choices. The flexibility of the ODR process is further restrained by the fact that Swiss tenancy law also serves public interests and thus includes many mandatory provisions the parties cannot opt-out of when drafting an agreement. Consequently, it is crucial that the conciliation authority makes the rules abundantly clear or that the parties are assisted by a legal professional (e.g., when drafting their agreement).

IV. EVALUATING THE ODR SYSTEM

A. Key Performance Indicators (KPI's)

To measure the effectiveness, the improvement over time and users' understanding of the ‘*mietstreit.ch*’ ODR process, the design should provide for continuous evaluation and

³³ Cf. CPC art. 113.

³⁴ Rule & Schmitz, *supra* note 19, at 84.

³⁵ See, e.g., Lisa Blomgren Amsler, Janet K. Martinez & Stephanie E. Smith, *Dispute System Design* (Stanford Univ. press 2020), 126.

monitoring of the system³⁶. A possible metric could be user satisfaction. After a case has been closed by the system, a short survey will pop up and ask the landlord and tenant to specify whether they would recommend the ‘*mietstreit.ch*’ platform to other potential disputants, including a text box for any further comments. The conciliation authority will be able to leave comments as well for the administrators to review. Because a lot of users on the internet tend to misreport their satisfaction and their behavior can often be unpredictable³⁷, additional evaluation methods are necessary. As mentioned in the beginning, the joint conciliation authorities are already required to report to the FOH, who compiles and publishes data about all the types of landlord-tenant disputes (rent increase, defects of the lease object, etc.) and their outcomes (percentage of settlements, proposed judgements, decisions, authorizations to proceed, and others)³⁸. Instead of imposing reporting obligations on the conciliation authorities, this task could be executed by the website administrators of ‘*mietstreit.ch*’ in the future, because they are able to extract the data directly from the platform. The datasets could also be expanded, *e.g.* by including settlement rates during the negotiation phase, average time elapsed from filing the case to resolution and frequency of disputes between the same parties (the latter could be used as an indicator to evaluate whether the ODR system contributes to an improvement of the relationships between landlords and tenants).

B. Advantages of the ODR system

Advantages the ‘*mietstreit.ch*’ ODR system has to offer include time and cost savings (*e.g.*, by not having to show up in person at the conciliation hearing, which would entail travel costs and time), easier access to justice (*e.g.*, for young students living in an apartment who are used to managing problems through technology or by simply being able to resolve disputes remotely), time efficiency (*e.g.*, by using the otherwise wasted period of time between the application for conciliation and the hearing for additional communication between the participants), earlier resolution of disputes (*e.g.*, by providing an extensive diagnosis and a more structured negotiation phase), harmonization of the dispute resolution process (*e.g.*, by using the same platform for all landlord-tenant disputes occurring in Switzerland), transparency (*e.g.*, by making the different stages of a dispute more visible and publishing comprehensive data about landlord-tenant dispute outcomes), a further relief of the courts (*i.e.*, if the ODR system manages to lead to more cases closed extra-judicially), and, more generally, communication

³⁶ Janet Martinez, Colin Rule & Susan M. Yates, *Designing a System for the Online Resolution of Cross-Border Custody Disputes*, 12 WORLD ARB. & MEDIATION REV. 45, 56 (2018).

³⁷ Rule & Schmitz, *supra* note 19, at 42.

³⁸ Cf. Swiss Federal Office for Housing, *supra* note 7.

options which do not exist in the offline world and which could improve the overall quality of dispute resolution (*e.g.*, asynchronous chat provides for a “cooling distance”, caucusing).

C. Ethical Concerns

There are several ethical considerations to be made with regards to the launch of an ODR system like ‘*mietstreit.ch*’³⁹. First, the CPC explicitly mandates that the conciliation proceedings must be kept confidential⁴⁰. However, *confidentiality* should be the norm for the whole ODR process. Especially because the conciliation authority may in some cases act as a judge, it is essential for a fair procedure that the authority cannot follow the conversations of the parties during the negotiation phase. Most importantly, all the data processed by the website must be stored securely and confidentially (*e.g.*, protection against hacking, encryption). Second, *impartiality* (in appearance and in fact) of the third-party neutral must be guaranteed. While the CPC does not expressly forbid it, it could, *e.g.*, be deemed unethical for the conciliation authority to engage in caucus conversations with a party, because it could raise doubts about its impartiality due to the lack of transparency. Last, *accessibility* of the ODR system to all demographics of Switzerland should be ensured. While the ODR process will be free of charge and publicly funded, some tenants may still not have access due to a lack of technological resources (*e.g.*, a computer with a video camera). Furthermore, some citizens just do not feel comfortable using technology to resolve their disputes (*e.g.*, older people). To avoid restricting access to justice for these citizens, the still prevailing approach to resolve landlord-tenant disputes in person should remain a viable alternative to ODR.

V. SOME THOUGHTS ABOUT THE FUTURE

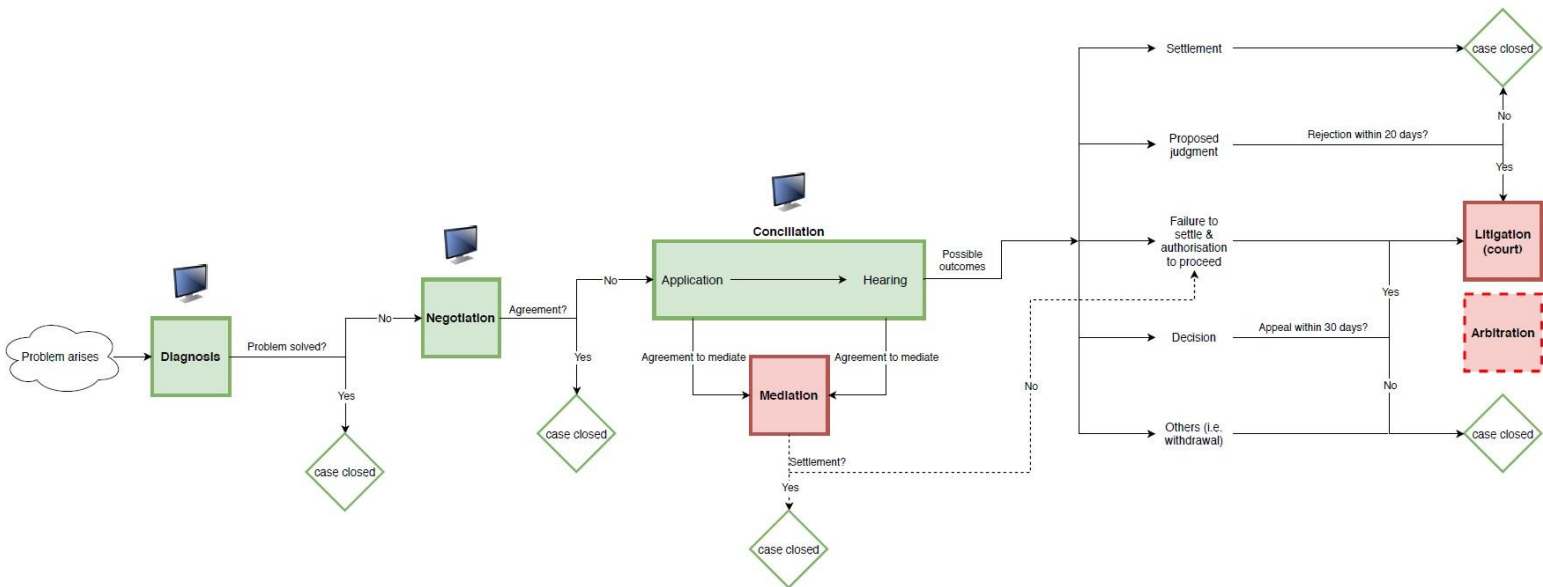
Current Swiss civil procedure law is not tailored to online proceedings (as shown, *e.g.*, by the obligatory personal appearance at the conciliation hearing). Considering the slow (but direct-democratic) legislative processes in Switzerland, any ODR-friendly amendments to the law are not likely to happen soon. If any cases were to move online, then landlord-tenant disputes probably would not be among the first ones, considering their complexity and the public interests at stake. In addition, other forces are likely to impede the implementation of an ODR system like ‘*mietstreit.ch*’, such as public funding issues or privacy concerns. Finally, the website provider would have to be in very good standing with the Swiss government for it to entrust them with such an experiment.

³⁹ See, *e.g.*, Jo DeMars et al., *Virtual Virtues, Ethical Considerations for an Online Dispute Resolution (ODR) Practice*, DISP. RESOL. MAG., Fall 2010, at 6.

⁴⁰ CPC art. 205.

APPENDIX 1

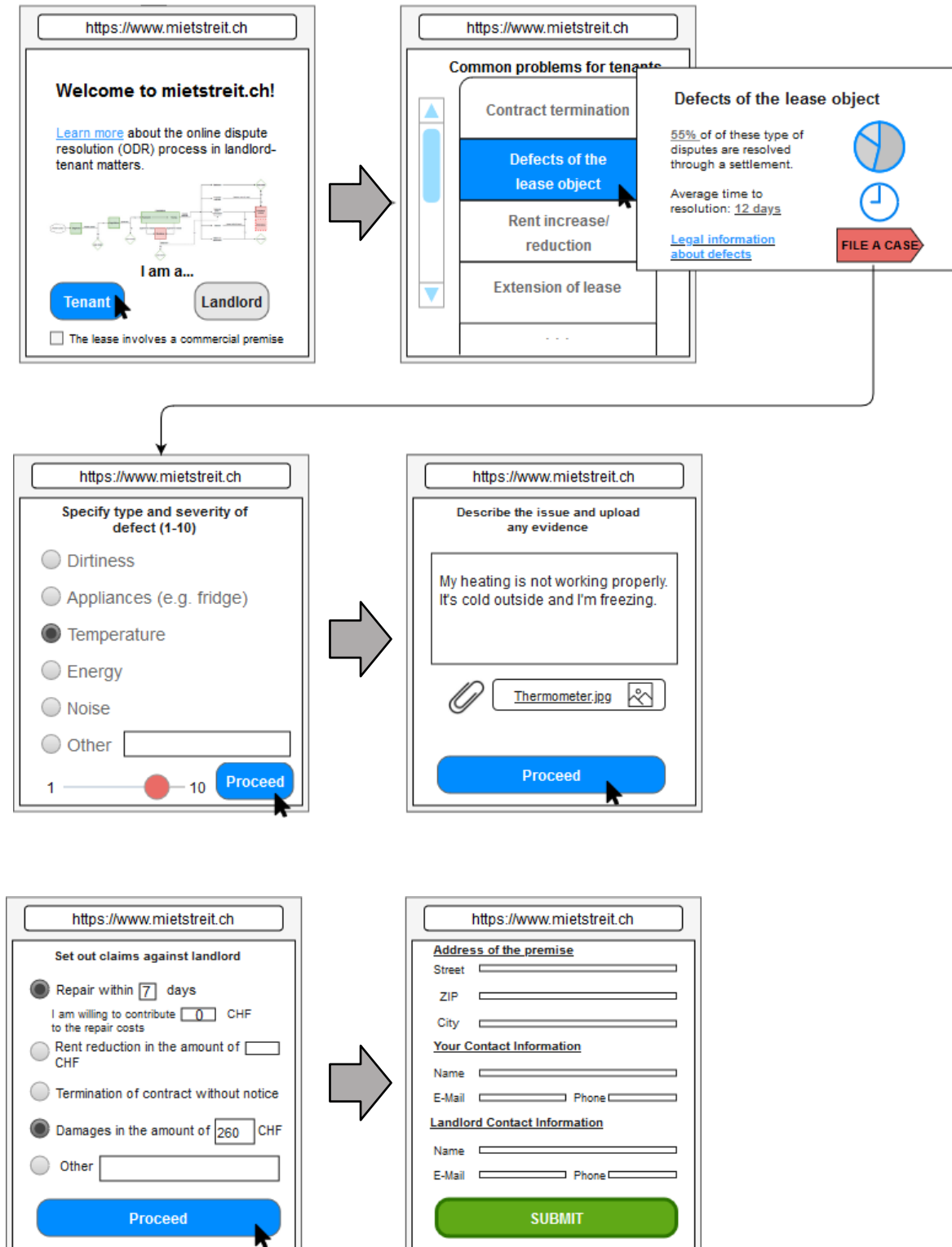
Flowchart representing the different stages and outcomes of the ODR process.



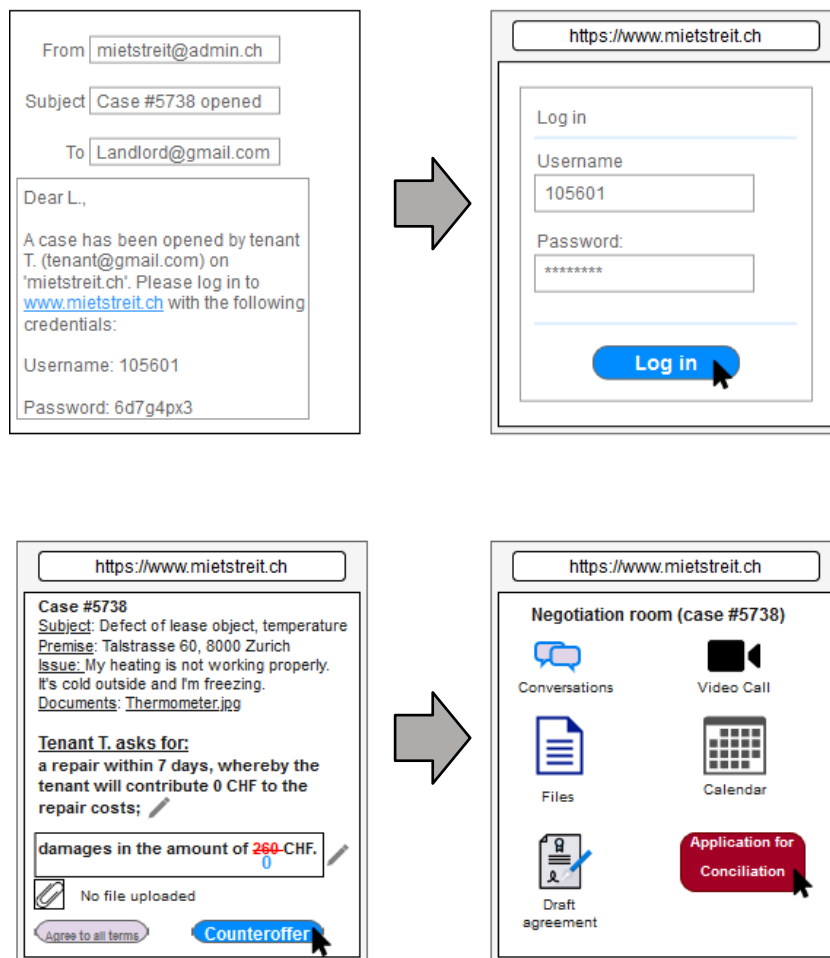
APPENDIX 2

Simplified user-flow of the different stages.

Diagnosis and filing a case



Negotiation



Conciliation

