



New law protects tenants during eviction procedures

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Litigation, Spain

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🕒 Rental proceedings are processed based on amount

🕒 Lessee must be informed of exact date and time of eviction

🕒 Eviction procedure may be suspended if lessee is in a vulnerable situation

🕒 Comment

The Law on Urgent Measures Relating to Housing and Rental Matters (Royal Decree-Law 7/2019) has entered into force, bringing significant amendments to the Civil Procedure Act (1/2000) and providing greater protection for tenants.

Background

On 2 March 2019 Royal Decree-Law 7/2019 came into force. It adapts the Spanish regulatory framework to "increase the supply of rental housing and balance the legal position of the lessor and lessee" in order to "ensure [that] the constitutional right to housing can be exercised".

To this end, the government has introduced significant reforms to the applicable regulations on housing – especially to the Urban Leases Act (29/1994) and the Civil Procedure Act.

Title III, Article 3 of Royal Decree-Law 7/2019 amends eviction procedures. Previously, eviction procedures were covered by the Measures for Making the Housing Rental Market More Flexible Law (4/2013), which Royal Decree-Law 7/2019 seeks to neutralise with the following amendments.

Rental proceedings are processed based on amount

Royal Decree-Law 7/2019 primarily amends Article 249 of the SPCA, and particularly Section 6 thereof, specifying that:

- matters relating to leases where the claim can be quantified will be excluded from the scope of ordinary proceedings; and
- summary proceedings can be initiated for certain amounts in accordance with the corresponding procedural rules.

Lessees are therefore entitled to protect their interests relating to lease contracts by means of summary proceedings, provided that they can quantify that the amount and the corresponding procedural rules allow such summary proceedings. Prior to Royal Decree-Law 7/2019, the lessee was obliged to turn to ordinary proceedings for claims for any amount arising from their lease contract (eg, for a deposit claim),

even if it was for an amount less than €6,000 (which is the reference amount for turning to ordinary proceedings). In contrast, the lessor always enjoys the benefit of summary proceedings relating to lease contracts.

Lessee must be informed of exact date and time of eviction

Similarly, the wording of Paragraphs 3 and 4 of Article 440 of the Civil Procedure Act have been modified, although these provisions remain essentially unchanged, aside from stating that the lessee must know exactly which day and time any eviction will be carried out. This change further strengthens the lessee's protection and means open-term evictions are avoided.

Eviction procedure may be suspended if lessee is in a vulnerable situation

The most important amendment is introduced in Paragraph 5 of Article 441 of the Civil Procedure Act, which is referred to in both the amended Paragraph 4 of Article 549 relating to the claim of enforcement, and the amended Paragraph 1 of Article 686 relating to orders for payment in foreclosure proceedings.

Paragraph 5 states that the court must communicate the possibility of contacting social services to the defendant/lessee in the writ of summoning, identifying the specific entity which is applicable. The court must also inform social services *ex officio* that the eviction procedure has commenced, so that they can indicate whether the occupants of the property are socially or economically vulnerable.

If social services confirm that a situation of vulnerability exists, the court clerk will suspend the proceedings until the necessary measures are put in place. The maximum suspension period is one month from when the court receives the communication from social services if the complainant/lessor is a natural person, and three months if they are a legal person.

Comment

One question that remains regarding the amended eviction procedures is what happens if social services do not inform the court that the lessee is in a vulnerable situation and, specifically, how long should the court wait to continue with the proceedings if it does not receive confirmation from social services. It is also unclear how the provisions of the new Paragraph 5 will be incorporated into the traditional instruction of eviction proceedings as provided in Article 440.3 of the Civil Procedure Act.

These questions will be answered when the new provisions are applied in practice, in the new evictions which begin after the law's entry into force.

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