

Novedad

Note on Royal Decree-Law 21/2018 of 14 December on urgent measures in the field of housing and renting

27 de diciembre 2018

The Spanish government, with the intention of addressing the tension created in Spanish society around housing, and in order to respond to certain proposals put forward by some parliamentary groups, has decided to regulate urgent measures, through the instrument of Royal Decree-Law, in an attempt to create a regulatory environment (i) that favours an increase in the supply of rented housing, and also to readjust the legal positions of landlord and tenant; and (ii) also favour the demand for rented housing by means of a series of economic and fiscal incentives that make the rental system more attractive than the purchase system.

The Spanish government has justified the wording of Royal Decree-Law 21/2018, of 14 December, on urgent measures in the field of housing and rent (hereinafter, the "RDL 21/2018"), in the following reasons:

- The situation of economic and social vulnerability of many families and households to pay the rent or mortgage of their primary residence.
- The rapid increase in housing market prices.
- The increase of tourist rental platforms (consumer-consumer).
- The scarcity of social housing stock (2.5% compared to the average of 15% in other European countries), and even more specifically on a rental basis.
- The increase in evictions linked to rental housing generated in the post-financial crisis stage.
- Address accessibility deficiencies for disabled persons, persons with reduced mobility and persons over 65 years of age.

As a consequence of the above, RDL 21/2018 has focused on implementing certain modifications to the current regulation in 5 very specific areas:

I.- Measures to reform the regulation of housing lease contracts

In this respect, the latest version of Law 29/1994, of 24 November, on Urban Leases (the "LAU") is modified. This measure focuses specifically on favouring the increase in the demand for rental housing through the readjustment of the legal positions of landlord and tenants, giving greater stability to the relationship between the two through the extension of the term of the lease and its extensions, as well as greater financial stability of the rental position through the limitation of the annual increase in rent.

In particular, the following changes have been made:

- a) Elimination of the mandatory application of the LAU for housing leases that do not comply to guarantee the constitutional right to decent housing, i.e. for housing whose characteristics exceed the norm: (i) housing of more than 300 m²; or (ii) housing whose rent is established above 5.5 times the minimum interprofessional wage, i.e. by 2019: 4,950€ (Modification of



article 4.2 of the LAU).

The legislator interprets that for such housing that exceeds the norm and departs from the minimum decent housing, the Parties may freely establish the terms and conditions of their lease at their will and may have Title II of the LAU (obligatory for all other urban housing leases).

- b) It is specified with respect to the leases excluded from the LAU, and in particular with respect to the temporary assignments of use of furnished and equipped housing for tourist uses, i.e. tourist housing, that these dwellings must in any case have been promoted or marketed through tourist offer channels and that the tourist sector regulations will be applicable (Modification of article 5.e. of the LAU).
- c) One of the most important measures of this RDL21/2018 is to confer greater stability to those who decide to access the rental housing, and this through the extension of the period of mandatory compliance for the lessor.

As a consequence of the modification of article 9.1 of the LAU, once the year of obligatory compliance for the lessee has expired, the lessee may extend the term of the lease at his will, and with the obligation for the lessor, for annual terms up to 5 years (when the lessor is a natural person) and up to 7 years (when the lessor is a legal person). As a consequence of this modification, the legislator grants greater guarantees to the tenant who, once he decides to have access to the dwelling on a rental basis, will not be seen outside the dwelling in the "short" period of three years.

The following Articles 9(3), 16(4), 20(2), 36(2) and 36(3) are amended accordingly to adapt the deadline.

The legislator expressly states that this increase in the term of the lease will also take place for non-registered land registers, either because they are not registered in the Land Registry, or why they are not independent land registers (i.e. several rooms of a larger space, a floor of a building without a horizontal property regime, etc.).

- d) In order to favour the same purpose of the previous section, i.e. to provide greater stability to the tenant, the Spanish Government has modified article 10 of the LAU in order to extend the term of one year of the first extension of the lease to three years, in the event that, once the initial term has expired, it is not the will of either of the parties to terminate the lease. In this way, the legislator intends to limit the fear of the tenants created by the situation of uncertainty once the first legal extension has elapsed and at the mercy of the successive tacit extensions (Modification of article 10 of the LAU).
- e) In order to enhance the financial stability of vulnerable tenants (i.e. in cases where the rent for the main residence is equal to or lower than the limit established by the State Housing Plan for 2018-2021 in relation to the possibility of receiving rental aid, the rent being limited to €600 (or €900 in the case that specific Autonomous Communities so consider and specify)), the legislator has decided to limit the annual rent increases to the percentage change in the CPI (Modification of article 18.1 of the LAU).
- f) It is also established that in the event that, once the initial term has expired and improvement work has been carried out on the dwelling, if agreed between the parties in this respect, the lessor may decide to increase the rent or carry out further improvement work without this interrupting the period for calculating the legal extension or, where appropriate, tacit extensions (all without prejudice to the right to compensation that the lessee has in this respect, as a proportional reduction of the rent for the days the work lasts) (Introduction to Article 19.4 of the LAU).

- g) Likewise, and in order to balance the leasing positions, it is established that the expenses of real estate management and the formalization of the contract, will be charged to the lessor in the case that this is a legal person (contrary to what was happening in common today) (Amendment of Article 20.1 of the LAU).
- h) In addition, it establishes that the competent housing agency may provide more possibilities to the tenant with respect to the right of first refusal and retract rent, in cases of sale of the entire property or building in which the rented housing is located. This trial and error would be configured for the whole of the property or building, but not with respect to the specific dwelling (Modification of article 25.7 of the LAU).
- i) Finally, it is established that in the case of renting a home, the additional guarantees to the legal deposit may only be a maximum of an amount equal to two months' rent.

By virtue of the First Transitory Provision of RDL 21/2018, it is established that the application of the provisions of this section I shall only be considered for rental contracts entered into after 19 December 2018. Likewise, when the lessor and the lessee agree to it, it may be applicable to the previous contracts.

II.- Measures to reform the horizontal property regime

To this end, in order to respond to deficiencies in accessibility for disabled persons, persons with reduced mobility and persons over 65, the legislation introduces two amendments to Law 49/1960, of 21 July, on Horizontal Property (hereinafter, the "LPH"):

- a) By means of the modification of article 9.1.f of the LPH it is established the obligation of the owners of each entity of the system of Horizontal Property to carry out, or contribute correspondingly to the community of owners, to certain works of accessibility, and for it the amount endowed to the reserve fund of the community budget is increased from a 5% to a 10%.

By virtue of the Second Transitory Provision of RDL 21/2018 the adaptation of the working capital may be carried out by the communities of owners in three years.

- b) It also introduces the obligatory nature of those works and actions that are necessary for reasons of universal accessibility when public aid amounting to 75% of their amount has been granted (Modification of article 10.1.b. of the LPH).

In another sense, in order to respond to the increase in platforms (consumer-consumer) tourist rental and consequently the number of tourist apartments is established:

- a) The introduction of paragraph 12 in Article 17 of LPH to the effect that the agreement of the board of owners limiting or conditioning the exercise of the tourist apartment activity (whether it entails the amendment of the statutes of the community) will require the favourable vote of three fifths of the total number of owners, representing three fifths of the ownership shares. Before this introduction, this limitation required unanimity, therefore, the legislator grants arms to the community of neighbours to eliminate from its building the tourist apartments that could be considered annoying. In case of not wanting to limit this activity, but of taxing it, it introduces the possibility that most votes indicated, can decide that these tourist apartments should contribute to the expenses of the community in a percentage greater than its quota, in no case being able to suppose an increase greater than 20%. It is expressly stated that such Community agreements will not have retroactive effects and, therefore, the payment of further expenses already incurred cannot be claimed.

III.- Measures to reform the housing eviction procedure

The purpose of these measures is to reduce the growing rate of eviction due to non-payment of rent and to prevent persons involved in an eviction procedure from remaining in a precarious situation by introducing certain amendments to Law 1/2000 of 7 January on Civil Proceedings (the "LEC"):

- a) Introduction of article 441.1.ter of the LEC: during the process of the verbal eviction trial and together with the request for payment of what is due (for the modification of article 686.1 of the LEC), the defendant will be informed that he has the possibility of contacting social services to assess his situation of vulnerability and in his case, the judicial authority can be informed to suspend the eviction procedure and adopt the measures that social services deem appropriate. The suspension of the procedure may last for a maximum of one month, or two if the petitioner is a legal entity. This procedure is established as obligatory in the case of habitual residence (through the Modification of article 549.4 of the LEC).

On the one hand, this measure allows people in eviction processes, in situations of housing vulnerability, to be granted a place where they can stay for a short period of time, being able to look for something else, and, in addition, it enables voluntary surrenders of possession avoiding illegal occupations on the part of the former debtor.

IV.- Economic and fiscal measures in the field of housing and renting

- a) Modification of article 63 of the Law Regulating Local Treasuries, approved by Royal Legislative Decree 2/2004, of 5 March (the "LRHL"): by virtue of which the obligation to pass on the IBI to the lessee is exempted when the lessor is a public entity in the cases of properties for residential use with a limited rent. The purpose of this amendment is to make the rental of housing with some form of protection more attractive.
- b) Modification of article 72 of the LRHL by virtue of which the regulation of Ibi's surcharge is modified in cases of unoccupied housing, by which the situation of empty properties is taxed in order to achieve an increase in the supply of rented housing stock.
- c) Modification of article 72 of the Law of Regulation of Local Treasuries (LRHL) by which an optional bonus of 95% is created (at the decision of each Local Treasury) in the payment of IBI for properties destined to rent and which are in an official protection regime.
- d) Modification of Additional Provision 16 of the LRHL by which the scope of financially sustainable investments is broadened so that town councils can carry out actions in the area of housing and thereby strengthen the housing deficit under official protection.
- e) Introduction of article 45.I.B.26 in the Revised Text of the Law on Transfer Tax and Documented Legal Acts, approved by Royal Legislative Decree 1/1993, of 24 September (the "**LITP** and **AJD**"), by which the taxation of housing leases is improved for the purposes of increasing rental demand, through the exemption of stable and permanent housing leases from this tax.

V.- Measures to promote the supply of rented housing

Finally, the First Additional Provision of RDL 21/2018 includes a mandate to the Ministry of Development in order to enhance the supply of rental housing.

All the measures mentioned in this note, although ambitious and relevant, are far removed from the proposals made by certain parliamentary groups that proposed much more structural modifications to housing, both in terms

of ownership and rent (i.e. Proposal for a Housing Emergency Law for vulnerable families in the housing sphere and energy poverty, dated 7th May 2018).

Para más información, puede contactar con:

[José Luis Aguilar](#)

jose Luis.aguilar@AndersenTaxLegal.es

[Manel Puig](#)

manel.puig@AndersenTaxLegal.es