

Spanish Lease Act Amendments: What Landlords Need to Know

The government's Royal Decree of 6 March 2019 makes significant changes to the rules governing landlord-tenant relations under the Spanish Lease Act.

Background

Lease agreements in Spain are subject to the *Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos* (the Spanish Lease Act), which regulates the lease of urban properties¹. The Spanish Lease Act has been amended numerous times in the past. Recently, the Spanish Parliament has approved significant changes pursuant to Royal-Decree 7/2019 (RD 7/2019).

The Spanish Parliament made the first relevant amendment on 23 May 2013, when it approved the *Ley 4/2013, de 4 de junio, de medidas de flexibilización y fomento del Mercado de alquiler y viviendas* (Law 4/2013). Law 4/2013's purpose was to implement measures to achieve greater flexibility for leasing terms while promoting the housing lease market in Spain. Such measures included, inter alia, reducing the minimum mandatory term from five years to three, and enshrined the principle of freedom of contract between parties.

Most recently, the Spanish government's cabinet sought to undo such liberal reforms and on 14 December 2018, passed the *Real Decreto-ley 21/2018, de 14 de diciembre, de medidas urgentes en materia de vivienda y alquiler* (the Original Royal Decree) which introduced several amendments to the Spanish Lease Act aiming to tilt back the scale in favor of tenants.

The Original Law Decree was repealed by the Lower House of the Spanish Parliament on 22 January 2019, when it declined to ratify the decree (*convalidacion*). Although left wing parties initially praised the government's proposed measures, the government failed to secure the vote of the parliamentary group Unidos Podemos, which was adamant to vote in favor only if a mandatory limitation on rental prices was included.

Notably, the Parliament's repeal has an ex nunc effect, meaning that any contracts entered into between the entry into force of the Original Royal Decree (19 December 2018) and the non-ratification (22 January 2019) will be subject to the Original Royal Decree's provisions. Following the repeal of the Original Royal Decree, the government cabinet promptly passed RD 7/2019, which reproduced substantially the Original

Royal Decree's content, albeit with certain new measures such as the amendments to the Local Taxes Act, as further explained below.

The main amendments introduced by RD 7/2019 are summarized below. This *Client Alert* does not purport to be a comprehensive analysis, but rather provides guidance for review of RD 7/2019.

Amendments to the Spanish Lease Act

Entry Into Force

Lease agreements subject to the Spanish Lease Act entered into prior to 6 of March 2019 will continue to be governed by the provisions of the Spanish Lease Act that were previously applicable (*i.e.* no retroactivity).

Scope of Application

The amendments introduced by RD 7/2019 apply to rental housing (*arrendamientos de vivienda*), which is governed by the contractual provisions agreed between the parties, provided that the contract provisions comply with the mandatory provisions of the Spanish Lease Act.

Notwithstanding, the rules for rental housing will not be mandatory for lease agreements in which either of the following is true:

- The area of the leased property is greater than 300 square meters
- The initial annual rent payable by the tenant exceeds five and a half times the annual national minimum wage (*salario mínimo interprofesional*)

Such lease agreements will be governed by the contractual provisions agreed between the parties and, failing such agreement, by the rules foreseen for rental housing in the Spanish Lease Act.

Minimum Mandatory Lease Term

The minimum mandatory lease term applicable to rental housing is extended from three years to:

- Five years if the landlord is an individual
- Seven years if the landlord is a legal entity

This term is mandatory for the landlord but may be waived by the tenant. The term is also taken as the minimum reference term for several rights and obligations of the parties, as explained below.

Notwithstanding the above, if the landlord is an individual, that person must expressly state in the lease agreement if he or she foresees needing the house as his or her other main residence (or as the main residence of any first-degree relative or spouse) before the minimum mandatory five-year term. Otherwise the lease agreement cannot be terminated for this reason until the minimum mandatory five-year term expires.

Automatic Renewal

Once the minimum mandatory lease term elapses, the lease agreement automatically renews for a period that has been extended from one to three years, unless a non-renewal notice is served by any of the

parties. The amendments extend the minimum period to serve the non-renewal notice from one to four months if it is sent by the landlord and from one to two months if it is sent by the tenant.

Survival of Leases

The new regime favors the continuation of leases in certain events which, under the previous regime, used to entail their termination in accordance with general principles of Spanish law.

In particular, RD 7/2019 introduces the following amendments:

- If the landlord's ownership right is lost by operation of law (e.g., pursuant to a mortgage foreclosure, the exercise of a pre-emptive or call option right, etc.), the lease agreement that was in force over the property cannot be terminated until the minimum mandatory lease term has elapsed.
- The purchaser of a house will step into the lease as landlord if an existing lease was in force (irrespective of whether the lease agreement was registered with the Land Registry and whether the purchaser was aware of the lease). The purchaser must abide by the terms and conditions of the lease agreement, including the minimum mandatory lease term.
- A lease agreement will be considered valid and in force for the minimum mandatory lease term if the tenant has entered into the lease in good faith with the person that is registered as owner of the house with the Land Registry, or with the person that appears to be the legal owner of the house, provided that such appearance has been created by the actual owner of the house.

Subrogation Upon the Death of the Tenant

As a general rule, if the tenant dies, the parties may either agree that:

- If the death occurs once the minimum mandatory lease term has elapsed, the subrogation right in favor of the relatives set out in Article 16 of the Spanish Lease Act (*i.e.*, spouse, domestic partner, descendants, predecessors, siblings or other relatives with a 65% disability that fulfill the requirements set out therein) will not be applicable.
- If the death occurs prior to the expiry of the minimum mandatory lease term, the lease will be terminated upon the expiry of such term.

However, the RD 7/2019 has introduced that this subrogation right cannot be waived by the parties if the deceased tenant is considered to be in a special vulnerability situation and if the lease agreement affects minor children, people with disabilities, or people 65 years old or older.

Annual Rent Review

Annual rent increases cannot exceed the annual increase of the Consumer Price Index (CPI).

Management and Formalization Expenses

Property management and formalization fees and expenses in connection with the lease agreement will mandatorily be borne by the landlord if it is a legal entity.

Pre-emption Right and Right of First Refusal

RD 7/2019 leaves the door open for autonomous regions to establish a pre-emption right and a right of first refusal (*derecho de tanteo y de retracto*), in favor of the relevant public authorities, with respect to the whole property in the following situations:

- If a leased house is sold jointly with the other dwellings or premises owned by the landlord that are part of the same property
- If all the apartments and premises that are part of the same property are sold jointly by different owners to the same purchaser

Caps to Additional Guarantees

Guarantees delivered by the tenant to the landlord in addition to the legal deposit are capped to an amount equivalent to two month's rent, except in the case of a long-term lease agreement (*i.e.*, agreements entered into for a term exceeding the minimum mandatory lease term).

Amendments to Other Laws

In addition to the amendments to the Spanish Lease Act, RD 7/2019 introduces certain changes to the following regulations:

- The *Ley 49/1960, de 21 de julio, sobre propiedad horizontal* (Horizontal Property Act), to give greater flexibility to communities of owners to restrict or veto tourist rentals and facilitate accessibility to buildings (as further explained below)
- The *Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil* (Civil Procedure Act), by introducing changes regarding evictions involving vulnerable households (as further explained below)
- The *Real Decreto Legislativo 2/2004, de 5 de marzo, por el que se aprueba el texto refundido de la Ley Reguladora de las Haciendas Locales* (Local Taxes Act) and the *Real Decreto Legislativo 1/1993, de 24 de septiembre, por el que se aprueba el Texto refundido de la Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados* (Transfer Tax and Stamp Duty Act), by introducing certain tax benefits (as further explained below).

Amendments to the Horizontal Property Act

Reserve Fund

RD 7/2019 increases from 5% to 10% the amount of the budget that owners must set aside in a reserve fund, in accordance with each owner's respective share in the community. The amendment provides a three year transition period to for owners to increase the reserve fund accordingly.

The reserve fund must be used to pay expenses derived from conservation, repair, and rehabilitation work, and now pursuant to the Royal Decree, it can also be used to carry out works to facilitate accessibility for the disabled.

Touristic rental housing

RD 7/2019 provides that a community of owners can decide, by a qualified majority of at least three fifths of the owners (*mayoría de cabezas*) representing three fifths of the ownership shares (*mayoría de cuotas*) to both:

- Limit or restrict touristic rental housing in the building

- Introduce new special expenses or increase up to 20% the common charges payable by owners of property used for touristic rental housing

Amendments to the Civil Procedure Act

In the context of verbal proceedings in which the owner of a house attempts to recover possession of the property due to a breach of the lease contract by the tenant, the tenant will have the right to request that social services analyze if there is a potential vulnerability situation.

If social services consider that the evicted household is in a situation of economic and/or social vulnerability², they must immediately notify the court. Once the court receives this notice, it will suspend the proceeding until the measures deemed appropriate by social services are adopted, during a maximum suspension period of (i) one month if the claimant is an individual or (ii) three months if the claimant is a legal entity. Once this period has elapsed or the relevant measures are adopted, the proceeding will continue.

The same protections in favor of vulnerable tenants will apply in the context of mortgage foreclosure proceedings over the leased house.

Amendments to the Local Taxes Act and the Transfer Tax and Stamp Duty Act

Real Estate Tax (IBI) Discount

City councils may establish a tax discount of up to 95% of the real estate tax (IBI) for houses which, according to applicable laws, are leased with a limited rent (e.g., social housing).

Real Estate Tax (IBI) Surcharge on Vacant Houses

City councils may levy a surcharge of up to 50% of the net real estate tax (IBI) rate (*cuota líquida*) on properties of residential use that remain vacant on a permanent basis. The concept of vacant house is not addressed in RD 7/2019 and likely will be developed in future regulations.

National Reference Index System for Rental Prices

The Spanish State Administration will prepare, within an eight-month period, a national reference index system for rental prices. For this purpose, the Spanish State Administration will use the data available from different public entities (such as the Spanish Tax Authorities, Land Registry, cadastral information, information of lease legal deposits, etc.) to obtain the average monthly rent per square meter, aggregated by neighborhood, district, council, province, and autonomous region. Relevant authorities will use this index to implement public policies to increase the supply of affordable rental housing and adapt future tax measures. Autonomous regions can also define their own reference index to adapt their own tax planning.

Next Steps

Although RD 7/2019 entered into force 6 March 2019, the Spanish Parliament, represented by the *Diputación Permanente* must either expressly vote to approve it or repeal it in the next thirty days. If approved, RD 7/2019 could thereafter be processed as a bill (*Proyecto-Ley*), however most scholars believe that the *Diputación Permanente* cannot approve bills nor introduce amendments (*enmiendas*).

On the other hand, many observers believe that using the Royal Decree-law (*Real Decreto-Ley*) as a legislative instrument to carry out the above-mentioned amendments may be unconstitutional, because

there are no clear circumstances of extraordinary and urgent need that justify the need for such amendments to the Spanish Lease Act³.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Rafael Molina](#)

rafael.molina@lw.com
+34.91.791.5075
Madrid

[Javier Colino](#)

javier.colino@lw.com
+34.91.791.5116
Madrid

[Ramón Moraleda](#)

ramon.moraleda@lw.com
T+34.91.791.5114
Madrid

You Might Also Be Interested In

[Spain's Stamp Duty Saga Settles With New Reform](#)

[Spanish PE and Infrastructure Set For Large-Cap Deals](#)

[The Spanish Government Launches Public Consultation on the Circular Economy Strategy](#)

Client Alert is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's *Client Alerts* can be found at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, visit <https://www.sites.lwcommunicate.com/5/178/forms-english/subscribe.asp> to subscribe to the firm's global client mailings program.

Endnotes

-
- ¹ However, it must be noted that over the past years there has been in force contemporaneously to the Spanish Lease Act two other regulations on lease agreements (i) the former lease act dated 24 December 1964, which has been in force since January 1, 1965 until 1 January 1995, but was substantially amended in 1985; and (ii) Royal Decree 2/1985, dated 30 April, which came into force on 9 May 1985, which amended substantially the former lease act of 1964.
 - ² RD 7/2019 does not set out a clear-cut definition of "vulnerable households", adding uncertainty to how the social services and the courts will interpret this concept. It may be understood that the definition of "households in a situation of special vulnerability" established in the "Real Decreto-ley 5/2017, de 17 de marzo" (Royal Decree 5/2017) will be applicable, which includes the following situations: (a') Numerous families; (b') Single-parent family units; (c') family units with minor children; (d') family units with members with at least 33% of disability, in dependency situation or disabling illnesses; (e') family units with an unemployed

mortgage debtor; (f') family units in which one or several of the persons listed above live together with their relatives; (g') family units with a gender-based violence victim and (h') debtors above 60 years old.

- ³ The Spanish Constitution of 1978 stipulates “In case of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws (...)”