

Rental Evictions: Prior Requirements

By Juan Luis Gámez - Lawyer

In the current economic crisis, the situation of leases (for both residential property and others) has varied considerably.

A few years ago, it was really hard to find a rental property or commercial premises in which to run a business and now the issue has resulted in the lack of housing for rent and extreme changes to the eviction process.

I mention this problem only on a legal level, as in theory there are no doubts on how the process should be established, nevertheless you have to take into account the various aspects that can take course according to art. 250.1.1 of the Spanish Civil Code (LEC) and that they can vary significantly. Today we will focus on the requirements to be done prior to filing your claim before the courts.

The first requirement is a burofax sent with a certificate of content or a notarized letter to be sent via the notary's office. The preparation, drafting and submission of this letter must be done properly; and I therefore strongly recommend that for this part you

take on a legal representative. (This is recommended without bias; we recommend that a lawyer draws up the rental contract as though there are many versions freely available online, they are known to be doubtful at best.)

In the same way, we must take into account that this notification is established in art. 22.4.2º LEC, and even though the first paragraph of this article states that the process finalizes if the lessee proceeds to pay the outstanding amount, this is what we would call "destruction of action".

We must take into account that although sometimes this is not done, what the second paragraph of the said articles states is that paragraph 1 is not applicable when "the lessee has weakened the eviction in a previous process, except in the case where the payment is not cleared at the fault of the lessor, or when the lessor has requested payment to the lessee via official notification of at least 30 days or payment has not been received prior to the filing of the law suit. Meaning that it is very important to proceed with the prior

requirements in order to avoid the possibility of them being denied by a weakened action of payment.

Following the drafting of the actual law suit, a matter that now belongs to the lawyer; they should also be dealing with the preparation and sending of the 30 day official notification prior to filing the law suit, as art. 439.3 LEC states that "eviction for lack of payment or claims for amounts owed will not be accepted if the lessor does not indicate the circumstances that may or may not allow the weakening of the eviction". At this moment the lessee cannot proceed to pay and therefore interrupt the process in accordance with paragraph 2 of art. 22.4 LEC.

Conclusion: The correct drafting of the initial rental contract, the drafting and sending of the prior requirements to the tenant and the content of the lawsuit are all issues of high importance from a legal point of view, and that as we have established from the beginning of this article, can make the process vary significantly if not done correctly, even causing negative results for the client (where the client is understood to be the owner of the property).



Juan Luis Gámez provides comprehensive services to both Resident and Non-Resident Clients in relation to the transfer of properties and the coordination with civil, commercial and fiscal aspects, as well as with the rest of the services involved. He also provides advice about the constitution of commercial entities as well as any necessary proceedings concerning corporate law. Juan Luis has been a practicing Lawyer since 2007 and acts as president to several non-profit firms he has founded.

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