

Remark

On the suspension of eviction procedures

23rd December 2020

On Tuesday 22nd December 2020, the Council of Ministers of the Spanish Government approved *Royal Decree Law 37/2020, of 22nd December, on urgent measures to deal with situations of social and economic vulnerability in the field of housing and transport (hereinafter RD-law 37/2020)*, by virtue of which *Royal Decree Law 11/2020, of 31st March, which adopts urgent complementary measures in the social and economic field to deal with COVID-19 (hereinafter RD-law 11/2020)*, was amended.

We now turn to an analysis of the most relevant issues in the field of housing and their impact on eviction procedures due to non-payment or expiry of the contractual period and due to precariousness.

1. Eviction procedures due to non-payment or expiry of the contractual period

Firstly, we must start by remembering that RD-law 11/2020, established in its first article that, once the suspension of the procedural deadlines had been lifted - that is, from June 5th - in eviction procedures with rental contracts subject to Law 29/1994, of November 24th, on Urban Rentals (henceforth, LAU), the tenant could request the suspension of the course of the legal proceedings or of the launching act if it had been agreed, with effect until January 31st 2021.

Thus, the Learned Judge of the Justice Administration could agree to such a suspension if the tenant complied with the requirements of Article 5 of that rule, relating to the definition of the situation of economic vulnerability.

Well, the state executive has taken a further step and on 22nd December 2020 agreed to extend the period of suspension of eviction procedures or launches until the end of the state of alarm, that is, on 9th May 2021.

In this sense, Article 1 of RD-Law 37/2020 provides that both eviction procedures due to non-payment and expiry of the term, with rental contracts subject to the LAU, the tenant can request an extraordinary suspension of the eviction or launch because they are in a situation of economic vulnerability that does not allow them "*to find alternative housing for themselves and for the people with whom they live*".



For the purposes of proving economic vulnerability, Article 2 of RD-Law 37/2020 refers us to the circumstances described in Article 5(a) and (b) of RD-Law 11/2020:

- That the person is obliged to pay the rental income becomes unemployed, furloughed, or has reduced his or her working hours due to care, if he or she is an employer, or other similar circumstances involving a substantial loss of income.
- That the rental income, plus expenses and supplies, is greater than or equal to 35% of the net income received by all the members of the family unit.

Once the economic vulnerability of the tenant has been established, whether it is due to the pandemic caused by Covid-19 or not, the judge will agree to suspend eviction proceedings and the public authorities must take the appropriate measures to provide a housing alternative before the end of the maximum period of suspension. If the situation of economic vulnerability is not proven, it will be agreed to continue the procedure and, if necessary, the eviction proceeding.

2. Illegally occupied properties: eviction procedures due unlawful detainer suit for non-payment of rental or for occupancy without a lease.

Article 2 of RD-Law 37/2020 adds another precept to RD-Law 11/2020, Article 1 bis, which provides that in eviction procedures due to precariousness, that is, in the case of occupation of untitled housing, the judge has the power to agree ex officio to suspend the launch until the end of the state of alert.

The judge, before agreeing to suspend the proceedings, must assess the following circumstances:

- If the entry or stay in the dwelling is motivated by reasons of extreme necessity.
- The cooperation of the housing occupants with the authorities "*competent to find solutions for alternative housing that will guarantee their right to decent housing*".

In addition, it is essential that the occupants are in a situation of economic vulnerability according to the requirements set out in section (a) of Article 5 of RD-Law 11/2020 and that the occupied dwellings belong to individuals or legal entities with more than ten dwellings.

Once the situation of economic vulnerability of the untitled occupant has been accredited, the judge will agree to the suspension of legal proceedings and the public administrations must adopt the appropriate measures to satisfy a housing alternative before the end of the maximum period of suspension. If the situation of economic vulnerability is not accredited, it will be agreed to continue with the procedure.



The suspension of eviction proceedings is not active in the following cases:

- When the occupation has taken place in the habitual residence or second home of a private individual, notwithstanding the number of dwellings of which he is the owner.
- When the occupation has taken place in the habitual residence or second home of a legal person who has ceded it to a private individual by any valid title.
- When the entry into or stay in the home occurs because of the commission of a crime.
- When there are rational indications that illegal activities are taking place in the occupied property.
- When the occupation has taken place in properties intended for social housing and the home has already been assigned to an applicant.
- When the occupation has taken place after the entry into force of RD-Law 37/2020.

Finally, it should be noted that the Second Additional Provision of RD-Law 37/2020 recognises the right of landlords and property owners to request compensation when the measures proposed to address the situation of vulnerability have not been adopted within three months of the issuance of the social services report.

If there is a rental contract, the compensation consists of the average value that would correspond to the rent of a dwelling according to its characteristics, plus the current expenses of the dwelling that the lessor has assumed and that he must justify to benefit from this right to compensation.

However, in the case of illegal occupations, this compensation is conditioned on the owner accrediting that the suspension of the launch has caused him/her economic damage "*when the dwelling offered for sale or rent was found before the entry into the property*".

3. Prohibition on suspending supplies

The Fourth Additional Provision, in its first section, establishes that during the validity of the state of alarm, the supplies of electrical energy, natural gas and water to vulnerable consumers or those at risk of social exclusion cannot be suspended, as provided for in Articles 3 and 4 of Royal Decree 897/2017, of 6th October, which regulates the figure of the vulnerable consumer, the social bond and other protection measures for domestic consumers.

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