



REAL ESTATE & CONSTRUCTION

THE RECENT LEGISLATIVE CHANGES APPLICABLE TO URBAN LETTING

The changes introduced by Law no. 13/2019 to various legal instruments governing the relationship between landlord and tenant have changed the framework of urban letting in Portugal in several respects.

On 12 February 2019, two new laws were published in the official gazette, *Diário da República*. First, Law no. 12/2019 of 12 February is intended to prohibit and punish harassment in letting, and it introduces the fifth amendment to the New Urban Letting Rules (Novo Regime do Arrendamento Urbano or NRAU). Second, Law no. 13/2019 of 12 February approves measures to correct situations of imbalance between tenants and landlords, to enhance the security and stability in urban letting and to protect tenants in a particularly vulnerable situation. The new laws came into force on 13 February 2019.

Law no. 13/2019 of 12 February has substantially altered the legal rules on urban letting. It targets and changes the Civil Code, the New Urban Letting Rules and the Legal Rules on the Execution of Works in Rented Properties (among others). The changes come in fundamental and crucial areas, ranging from the formation of the lease agreement up to its termination, and including various aspects of the period the agreement is in force.

The changes introduced by Law no. 13/2019 to various legal instruments governing the relationship between landlord and tenant have changed the framework of urban letting in Portugal in several respects. Accordingly, without seeking to provide an exhaustive list of amendments adopted, the new law amends the provisions of the Civil Code in areas as important as:

- The form of the agreement: The failure to put the lease agreement into writing will no longer render it void. The tenant can prove the existence of the agreement in any way permitted in law, provided the lack of form is not attributable to the tenant and the tenant can demonstrate the use of the rented property without opposition and the payment of rent for a period of 6 months;
- Duration: Until the approval of Law no. 13/2019 of 12 February, there was no minimum duration period for lease agreements. With the approval of this new law and the subsequent amendment of Article 1095(2) of the Civil Code, lease agreements will have a compulsory minimum duration of one year. The only exception to this minimum period are agreements for non-permanent housing or for a temporary special purpose (particularly for professional, educational and training or tourism reasons);
- Compensation in the case of rent arrears: Article 1041(1) of the Civil Code has also been amended to reduce the compensation the tenant must pay the landlord in the case of arrears in payment of the rent due. This is reduced from the previous 50% of the outstanding amount to only 20% of that amount;

- **Period of renewal of the agreement:** Until the approval of Law no. 13/2019 of 12 February, article 1096(I) of the Civil Code provided that, in the absence of any indication to the contrary, any lease agreement made for a fixed term is automatically renewed when it expires, for successive periods of the same duration. The amendment made by the new law provides that, in the absence of a provision to the contrary, the agreement is deemed to be renewed for a minimum period of three years (except in the case of lease agreements for non-permanent housing or for a temporary special purpose);
- **Opposition to renewal by the landlord:** Law no. 13/2019 of 12 February has amended Article 1097 of the Civil Code. This article now provides, as a general rule, that any opposition to the renewal of the agreement by the landlord will only take effect three years after the execution of the agreement, and the agreement remains in force until that date.
- **Termination of agreements of indefinite duration:** several limitations are also placed on the landlord's ability to terminate the agreement, particularly based on works when these will result in a property with identical characteristics to the property that was rented out.
- **Agreements for non-residential purposes:** Law no. 13/2019 of 12 February also limits the contractual freedom conferred on these agreements in previous versions of the law. In particular, it makes it impossible for the landlord to oppose the renewal of the agreement in its first five years. The new law also limits the cases in which the landlord may terminate the agreement (and, even in permitted situations, the landlord is now required to pay compensation).

The highlights among the changes made to the New Urban Letting Rules are:

- the creation of the Injunção em Matéria de Arrendamento (IMA). The IMA is a special procedure that allows the tenant to require the landlord, among other things, to repay any amounts spent by the tenant to carry out works in the rented property that, under the law, should have been carried out by the landlord.

- the broadening of the situations of transfer upon death of the lease agreement. These situations now include any children or stepchildren (aged 65 or over) who have lived with the tenant for more than 5 years, provided that the household 'corrected gross annual income' (RABC) is less than 5 times the 'guaranteed minimum monthly pay' (RMNA).
- the limitation on the landlord's ability to oppose the renewal or to terminate limited term residential lease agreements made while the RAU was in force (i.e., after 15 November 1990) when the tenant is over the age of 65 or has a proven or degree of disability exceeding 60% and has lived for at least 20 years in the rented property.

Law no. 13/2019, of 12 February has also changed and added provisions to two Decree-Laws. The first is Decree-law no. 157/2006 of 8 of August, which establishes the Legal Rules on the Execution of Works in Rented Properties. The second is Decree Law 156/2015 of 10 of August, which establishes the Legal Rules on Rent Subsidies for Tenants with Residential Lease Agreements made before 18 November 1990, who are subject to the rent updating process, and the rules for determining the corrected gross annual income. The Decree-Laws introduce important changes intended to safeguard the position of tenants in situations covered by this legislation, including an increase in the amount of compensation and the right to re-housing.

The highlights among the changes made to the New Urban Letting Rules are the creation of the IMA. The IMA is a special procedure that allows the tenant to require the landlord, among other things, to repay any amounts spent by the tenant to carry out works in the rented property that, under the law, should have been carried out by the landlord.

Law no. 12/2019 of 12 February sets out a general principle prohibiting harassment in letting or subletting. This covers unlawful conduct of the landlord or their representative or, indeed, any third party interested in acquiring or marketing the rented property. These persons may not disturb, constrain or affect the dignity of the tenant, sub-tenant or any person who resides with them legally. There is also a prohibition on subjecting them to an intimidating, hostile, degrading, dangerous, humiliating, destabilising or offensive environment, or one that prevents or seriously impedes access to and enjoyment of the rented property.

This law also establishes a mechanism through which the tenant may serve notice on the landlord to (i) cease making noise outside the legally established limits, or cease other acts committed by the landlord or by an intermediary that could harm the health of the tenant or that of and people legally residing with the tenant in the rented property (ii) correct deficiencies in the rented property or the common parts of the building that constitute a serious risk to the health or safety of persons and property, and (iii) correct other situations that prevent the enjoyment of the rented property, access to it or to essential services such as connections to the water, electricity, gas or sewer networks.

In conclusion, the amendments introduced by Law no. 12/2019 of 12 February and by Law no. 13/2019 of 12 February aim to respond to the growing demands to increase the protection of the legal position of the tenant in the landlord/tenant relationship. This represents a reversal of the move towards greater liberalisation of the rental market introduced mainly by Law 31/2012 of 14 August. The main aim is to reintroduce greater stability in existing lease agreements.

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