

Understanding the Tenancy Act can Prevent Headaches

In Costa Rica there is a law ruling the relationships between Landlords and Tenants in two specific situations: a) when renting dwelling houses, apartments or condos and: b) when renting places with commercial, industrial or professional purposes. This Rental Law, known in Spanish as Ley General de Arrendamientos Urbanos y Suburbanos, has been in effect since 1995, replacing a law from the early part of 20th Century. It has a number of different rules for similar situations, so knowing the details can be of big help for those expats being on either side of the relationship –Landlord or Tenant.

In general terms we can mention that the following general rules are applied to all kinds of property leasing contracts:

- The contract can be either verbal or written. For obvious reasons, a written agreement is always better to clarify the specific obligations of each party.
- The law establishes a minimum term of 3 years, meaning a renter who duly accomplishes his obligations can legally stay for that minimum period of time, no matter what the contract says. If the contract has a term beyond three years, the higher term rules.
- Public services and utilities have to be paid by Tenant. The Landlord is responsible to cover the local territorial taxes as well as the Luxury Home Tax, if applicable. Having a rental contract where those services are included on the Rental Payment is also legal.
- If the property title gets transferred into a new proprietor's name, the Tenant has the right to stay until the term of his contract finishes. Eviction can't be requested based on change of owner.
- Necessary improvements due to the normal use and passage of time are to be covered by the Landlord. Improvements required due to damage caused, or abuse of the premises, are to be covered by the Tenant.
- Tenants need to ask permission from Landlord in order to make changes to the structure, or perform permanent improvements. Any permanent improvements made by Tenants automatically become part of the property without right to claim refund.
- At the end of term, if the Landlords want the Tenants to vacate the property, the Landlord will have to provide a written notice at least 3 months prior to the term expiration. Otherwise the contract gets automatically renewed for another three years or higher term if agreed on the contract.
- Tenants cannot sub-lease the property or assign the rights of the contract to any third party. The only exception is in case of transferring an operating business. There is a special procedure named Purchase of Mercantile and Industrial Establishments ruled by article 478 of Code of Commerce. Landlords have to respect the change in this case.
- The Landlord is entitled to request a refundable security deposit from Tenant in order to cover eventual damages or unpaid invoices. When renting homes such a deposit is normally equivalent to 1 month's rent, while commercial rentals have no limit.
- Landlords have the right to perform an external/internal inspection of the property once per month.
- Tenants cannot change the originally agreed use of the property. This means a home cannot be turned into a restaurant, and a restaurant cannot be turned into a night club, without further authorization. However, in home rentals, installing a small professional office to provide professional services, or starting a small craft or domestic business without disturbing others does not breach this rule.
- Tenants can legally pay rent up to 7 days after the agreed payment date. This means if the payment date is the first of each month, the Tenant can still pay legally any time before the eighth day of each month. In case the tenant makes late payments, meaning later than the mentioned extension, and such situation is not corrected immediately by the Landlord, it opens the right for Tenant to continue paying late.
- When a property is rented to be used as a home, the rental price will automatically be adjusted fifteen percent every year if the contract is made in colons, but without any adjustment if agreed in any other currency. Regarding commercial locations the currency and price adjustments can be freely negotiated by the parties.

Regarding places to be rented as homes, the law also creates a difference between what are considered Normal Homes and Social Interest Homes. These latter are those with a value up to \$64,000.00 more

or less (the amount changes annually). Basically those Tenants renting a Social Interest Home can't be evicted regardless of the agreed term unless the Landlord demonstrates the need to inhabit the place personally, or that a new construction is necessary. If a Landlord has to begin an Eviction Process for lack of payment, a Tenant can avoid the eviction by paying all delayed rents and legal expenses. Having these two home Categories is the reason why an appraisal performed by an Architect or Engineer is required in order to start a Court Eviction Process, meaning a Landlord will be forced to spend a lot of money to fulfill such a requirement.

When renting Condos it is necessary to take into consideration that Tenants needs to acknowledge they have read and will respect the internal by-laws of the project, as well as other dispositions contained in the Condominium Property Law. When the Home Owners Association meetings take place, Tenants have the legal right to participate and make any suggestions, but they cannot vote. Only home owners can legally vote and approve any decisions or changes.

Some special situations are also ruled by the law. If a landlord decides to build a maximum of two homes or commercial places on the same land where his or her home is located, and such places have a common entrance along with the Landlord's home, the Landlord is entitled to terminate the contract anytime providing 1 month notice to vacate the property. After that term, if the Tenant is reluctant to leave the premises, then the Landlord is entitled to request an Administrative Eviction in front of the Ministry of Security in order to have the Tenant taken out of the property by the local police.

It is necessary to consider that any Eviction Process in Court takes time; meaning an Eviction Lawsuit will take between one and two years in Court. In fact some renters like to rent places paying first month and security deposit, and then stop paying rent until the tenant knows the official eviction order is signed. At that moment renter just moves out earning a number of rent-free months. One tool that can be used by Landlords suffering through this situation is to request through the process that the Judge performs a visit in order to make an inventory of all Tenant's belongings, to be held as guaranty for payment. Most people will not want their big TV confiscated; therefore it may cause them to move earlier.

As mentioned above, the law grants a minimum term

of three years no matter what, except for the cases mentioned above. However there are two other exceptions:

- **Trust contract.** If the property to be rented is a trust asset according to a Trust Contract, the person with legal faculties to rent the property will be the Trustee. In this case that the Trustee is only authorized to rent for a maximum term of 1 year, then that term rules. Last year an amendment introduced to the Code of Commerce eliminated the transfer tax exemption to Trusted Assets therefore making Trust Contracts and transferring the trusted assets into the Trustee's name is now more expensive and difficult.
- **Usufruct right.** One property owner can legally transfer the usufruct right of a property into a different person's name. This is a kind of lien against the property, meaning the usufruct beneficiary is the one entitled to use and enjoy the property as well as rent it if necessary. If the beneficiary of the usufruct right only gets this benefit for less than three years that means the property can't be rented for any longer time than what remains.

All situations other than renting Homes or Commercial/Industrial places have different regulations. Some situations excluded from this Rental Law are as follows:

- Hotels, Bed and Breakfasts and Motels
- Homes and Premises rented with the purpose of tourism
- Spaces rented for vehicle parking
- When a home is granted to a person to live without paying rent, or homes granted to employees by the employer
- Farms and properties rented for agricultural purposes

For Landlords it is important to be cautious at the moment of rental. Getting references or performing credit reports on Tenants is highly recommended, considering a bad tenant can create big problems, and any eviction process will be both expensive and time consuming. Tenants also need to understand their rights in order not to suffer any abuse from Landlords. Remember, get it in writing!

ALLAN GARRO NAVARRO
Attorney at Law
allan@garrolaw.com
www.garrolaw.com