

Fast Track Evictions Could Be a Sham.

It is well known that the economic crisis affected property values in general, due to oversupply and weak demand. Also many borrowers could not continue to pay their loans and lost their homes to banks, which in turn had to start selling those properties at prices below market value. It happened all around the world, and Costa Rica was no exception to this problem.

For the same reason many tenants could not keep paying their rent, severely affecting landlords all over the country. Many "smart" brains learned that the Tenancy Act is weak and the justice system is slow, so it became easy for tenants to lease a place by paying only the first month rent, waiting until an official eviction notice was signed and then moving out quickly after several months of free rent.

In order to try to end the practice, last September 5TH a new Law called MONITORIO ARRENDATICIO was published in the official Gazette, creating a more expeditious procedure for evictions. The spirit of the law is to establish a faster procedure which is basically verbal. It applies to all properties being rented as homes or for commercial purposes in the following scenarios:

- when the renter stops paying the rent or the utilities,
- when a renter stops paying the management fee on a condo project and
- when the rental term has expired and the renter is reluctant to leave the premises.

This is the way it works: a. landlord submits the eviction request specifying the cause for eviction, b. the judge accepts the case and grants the tenant 15 days to respond or leave the premises, c. if the tenant's response does not have a valid legal basis, the judge orders an immediate eviction, e. if the tenant's opposition has validity, a verbal hearing is set where all evidence is presented, d. right after the verbal hearing ends the judge provides an oral decree. Once the case is admitted the judge requires the tenant to pay into Court the amount of rent, otherwise the eviction will be immediately executed.

The requirement to oppose the eviction must be based on valid legal reasons, a big change from the current procedure which allows the Tenant to present senseless arguments to delay the eviction for months or even years. The new law also includes another interesting factor. It allows the lessor to retain the tenant's personal

property as security for payment of rent arrears and allows the judge to make an inventory of the goods in question.

Once you read this new law in detail, it is easy to conclude that now everything will improve and that the eviction processes will be very fast. It is true that oral hearings are much better than written, but it is also true that oral procedures are more expensive and our courts are underfunded. We have serious doubts as to whether it will actually happen or if it will be like other laws which were approved to improve things but in reality the opposite happened.

In 2008 a new Collection Law took effect and brought the same "fast track" promise, including verbal hearings. The law was well written, however the Court decided to create specific Courts for Collections instead of leaving it in the hands of regular Civil Courts. That was a big mistake that caused the total collapse of the Collections system. It is a nightmare for Creditors to go through the hoops required to get their cases admitted, hugely benefiting debtors who are reluctant to pay. The new Evictions Law could go the same way, allowing the creation of a special Eviction Courts which could cause exactly the same problem.

Another point of concern is a precedent from the Constitutional Court. The current law initially had the same requirement for the judge to require the tenant to pay rents into court, under penalty of ordering the immediate evacuation, but the Constitutional Court said that was the same as putting a price on Justice and revoked the requirement. It is foreseeable that a tenant will challenge this new law in Constitutional Court based on this precedent. If the court agrees to hear the challenge, all eviction cases will be suspended until the Justices come to a decision, which could take a year or two.

Despite the recent approval of a well-intentioned law to improve and accelerate the process of eviction, there is good reason to believe that in reality it could complicate matters even more, as has been the case with the latest laws passed. Only time will tell if this law will be for better or worse.

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