

COVID-19 | URBAN RENTALS

On the 6th of April, Law No. 4-C / 2020 established an exceptional regime for situations of late payment of rent due under the terms of urban residential and non-residential contracts, within the scope of the COVID-19 pandemic.

<p>Scope of Application</p>	<p>The law is applicable to residential and non-residential urban rental contracts, as well as, with the necessary adaptations, to other contractual forms of property usage.</p>
<p>Loss of Earnings</p>	<p style="text-align: center;">Residential Rentals</p> <p>In the case of residential leases, the law applies when:</p> <ul style="list-style-type: none"> a) There is drop of more than 20% of the tenant's household income compared to the income of the previous month or the same period of the previous year; and b) The debt-to-income ratio of the tenant's household, calculated as a percentage of the income of all the members of that household destined to payment of the rent is, or becomes greater than 35%; <p>or</p> <ul style="list-style-type: none"> c) A drop of more than 20% in the income of the landlord's household compared to the income of the previous month or the same period of the previous year; and d) This percentage of loss of income is caused by the non-payment of rents by tenants under the provisions of this law. <p>* The manner of demonstrating the decrease in earnings is still awaiting regulation:</p>
<p>Protection against payment in arrears of rent</p>	<p>In the situations referred to in subparagraphs (a) to (d) above, the landlord is only entitled to terminate the lease for failure to pay the rent due in the months in which the state of emergency is in force and in the first subsequent month, if the lessee does not make his payment within 12 (twelve) months from the end of that period, in monthly instalments of not less than one-twelfth of the total amount, to be paid together with the normal rent for each month.</p>
<p>Financial support (tenants)</p>	<p>Residential tenants, as well as the guarantors of students who do not earn income from work, who are proven to be in the situations referred to in paragraphs (a) to (d) above, and are unable to pay the rent on the properties that constitute their permanent residence or, in the case of</p>

	<p>students who take up residence because they frequent educational establishments located more than 50 km from their permanent family home, may apply to the Institute of Housing and Urban Rehabilitation, I. P. (IHRU, I. P.) for financial support.</p> <p>* The regulation with the conditions for granting financial support will soon be published on the Housing Portal.</p>
<p>Type of financial support</p>	<p>Financial support is granted in the form of an interest-free loan.</p>
<p>Value of the support</p>	<p>Financial support is intended to support the difference between the amount of monthly income due and the amount resulting from the application of a maximum debt-to-income ratio of 35% to household income. In any case, the remaining disposable income of the whole family cannot be lower than the social support index (<i>IAS – Índice de Apoio Social</i>).</p>
<p>Financial support (landlords)</p> <p>Exclusions</p>	<p>Residential landlords who can prove the decrease in income referred to in (c) above, whose tenants do not resort to the <i>IHRU, IP</i> loan, may request that entity to grant financial support to offset the amount of monthly rent, due and unpaid, whenever the remaining disposable income of the household falls, for this reason, below the social support index.</p> <p>Financial support does not apply to residential tenants whose decrease in income determines the reduction in the amount of rents they owe, under the terms established in special rental or income regimes, such as supported rent and social rent.</p>
<p>Duty of Information</p>	<p>Tenants who are unable to pay the rent have a duty to inform the landlord, in writing, up to five days before the due date of the first rent payment for which they intend to benefit from the regime provided for in this chapter, attaching the supporting documentation for the situation (pending regulation). In the case of rents due on April 1, 2020, notification to the landlord can be made until April 27, 2020.</p>

Decrease in income

Non-residential leases

In the case of non-residential leases, the law applies to:

a) Establishments open to the public for retail trade and service provision that are closed or whose activities are suspended under Decree No. 2-A / 2020, of 20 March, or by legislative or administrative law, under the terms of Decree-Law no. 10 -A / 2020, of 13 March, in its current wording, or under the Basic Law for Civil Protection, approved by Law no. 27/2006, of July 3, in its current wording, of the Basic Law on Health, approved by Law No. 95/2019, of September 4, or other provisions aimed at implementing the state of emergency, including in cases where they maintain the provision of electronic commerce activities, or the provision of services remotely or through an electronic platform;

b) Catering establishments and the like, including in cases where they maintain activity for the exclusive purpose of making food for consumption outside the establishment or home delivery, under the terms provided for in Decree No. 2-A / 2020, of 20 March, or any other provision that allows it.

Deferral of income

In the situations referred to in subparagraphs (a) and (b) above, the tenant may defer payment of rents due during the months in which the state of emergency is in force and in the first subsequent month, for the 12 months after the end of that period, in instalments of not less than one-twelfth of the total amount, paid together with the rent for the month current month.

Protection in case of rent payment in arrears and other penalties

Failure to pay rent due in the months in which the state of emergency prevails and in the first subsequent month cannot be invoked as a basis for resolution, rescindment or other form of contract termination, nor as a basis for the obligation to vacate properties.

Likewise, in the aforementioned situations, the landlord will not be able to demand from the tenants the payment of any penalty based on the delay in the payment of rents that are due during the said period.

Other forms of commercial use of property

The provision regarding non-residential leases applies, with the necessary adaptations, to other contractual forms of use of real estate for commercial purposes.

<p>Assumptions</p>	<p>Leases in which public entities are stakeholders</p> <p>Without prejudice to the above, public entities with properties leased or assigned under another contractual form may:</p> <p>(a) reduce rents to tenants who have proven to have a decrease in income of more than 20% compared to the income of the previous month or the same period of the previous year, when the same results in a debt-to-income ratio of more than 35%;</p> <p>(b) exempt tenants who prove they have ceased to receive any income after March 1, 2020;</p> <p>(c) establish a moratorium on its tenants.</p>
<p>Exclusions</p>	<p>The measure provided for in (a) above is not applicable to residential tenants, whose decrease in income determines a reduction in the value of rent due by them, under the terms established in special rental or leasing regimes, such as the supported rent and social income.</p>
<p>Penalties</p>	<p>Additional Provisions</p> <p>The compensation provided for in paragraph 1 of article 1041 of the Civil Code, for delay in the payment of rents that are due in the months in which the state of emergency is in force and in the first subsequent month, is not demandable whenever the assumptions pertaining to application of the law are verified.</p> <p>During the law enforcement period, the landlord cannot refuse the rental payments until the obligation to pay compensation for late payment of rents is fulfilled, pursuant to paragraph 3 of the aforementioned legal provision.</p>
<p>Immediate due payment</p>	<p>The termination of the contract by the tenant renders payment of past due and unpaid rents mandatory with immediate effect.</p>
<p>Timeframe of application of the law</p>	<p>The law is applicable to rents due on or after April 1, 2020.</p>

The measures hereby approved are intended to reinforce the extraordinary and temporary measures to protect tenants previously approved in the context of COVID-19, namely those provided for in Law No. 1-A / 2020, of 19 March, with the wording introduced by Law No. 4- A / 2020, of 6 April, namely:

- I. suspension of eviction procedures, special eviction procedures and processes for repossession of leased property, when due to the final judicial decision proffered, the tenant may be placed in a situation of fragility due to lack of own housing or other imperative social reason;
- II. suspension of the effects of rescindment of residential and non-residential rental contracts by the landlord;
- III. suspension of the expiry of residential and non-residential rental contracts, unless the lessee does not object to the termination;
- IV. suspension of the effects of revocation and of the landlord's opposition to the renewal of residential and non-residential rental contracts;
- V. suspension of the period provided for in article 1053 of the Civil Code for vacating the leased property, on the expiry of the lease, pursuant to the provisions of paragraphs b) and following of article 1051 of the Civil Code, if the expiry of that period occurs during the period of time in which the measures are in force;
- VI. suspension of foreclosure on property that constitutes the defendant's own permanent residence, until the prevention, containment, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and COVID-19 disease ceases, as determined by the national public health authority.

Faro, 13th April 2020

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Translated into English

by Safe Communities

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