

RENTING YOUR HOME LONG TERM IN SPAIN



what you need to know & what you should be asking

Firstly - this article isn't in any way intended to be legal advice - although you can't get away from the legalities, so the law will be referred to. (All references to the law are based upon the recent changes to the LAU in June 2013). Secondly - this isn't an 'all agents are bad, all tenants are good' article. There are bad agents - there are some who have no idea what they are doing as far as the legalities of long term rental - & worse, there are some who DO know the rules & *still* break them left, right & centre. But there are good agents who do their best for *both* clients - the tenants *and* the property owner.

There are of course also bad tenants. You only have to look at the 'name & shame' sites on Facebook to see what dreadful things some tenants do to the properties they rent.

Thankfully (hopefully) the bad agents & the bad tenants are the minority.

This article is intended as a guide to what questions you should be asking of the agent, both as a prospective tenant, and

prospective landlord - or if there's no agent involved - what the tenant & owner should be asking each other.

- **Be upfront & honest about how long you want to rent for.** Tenants - if you truly only want to stay 3 months, that *isn't* a long term rental. There are different contracts for short term, essentially holiday lets. Owners - if you don't truly want a long term tenant - just do short term holiday lets. A long term contract is for a minimum of 6 months. Long term rental contracts, according to the law, should be for 6 or 12 months. Once the initial period of the contract is reached, it is *automatically* renewed for a period of three years. No new contract needs to be signed. There needs be no further negotiation. It simply continues. Providing the tenant isn't in any way in breach of the contract they have the right to stay in the property for that period of time. Should they wish to leave before the end of that time they need give just one month notice, although there can be penalties written into the contract in the form a proportional compensation, according to the new rules. For example, if it's a one year contract, it can be written in that there is a penalty equivalent to one month's rent, proportionally, should the tenant leave before the end of the contract. So if they leave after 9 months, they would have to pay the equivalent of half a month as compensation.

Pretty much the only way a tenant who is in no way in breach of the contract can be made to leave before the end of the three years, is if the owner or immediate family *needs* the property to live in themselves, due to homelessness on their part, for one reason or another.

- **If you are using an agent - find out exactly what 'the deal' is.** Some agents should really be called 'property finders'. They have lists of properties, sometimes working on behalf of rental agents. They show the properties to prospective tenants for a commission. The commission might be the equivalent of half a month or a month (or more) rent. It might be paid by the owner of the property, it might be paid by the tenant, and it might be shared. Whatever the 'deal' is, make sure you know (in writing) *before* you list your property with one, or *before*, as a prospective tenant, you view a single property. The property finder might deal with the signing of the contract, but their responsibility will end at that point. Any problems with the property or between the tenant & owner would have to be sorted out between themselves. The rent is paid directly to the owner.



Some agents will offer an ongoing support service. This could simply mean phone or e-mail support, with little or no face-to-face contact. They might arrange for a plumber when the heating breaks down, or they might give the tenant a number to call. Or they might offer a 'Complete Service' - that could mean that they collect the rent,

contact the plumber, check that the work is done properly, pay the bill etc..

Whatever the arrangement is, both the property owner & the tenant need to know right from the start. So from a tenant's point of view - ASK!

- **Who pays for the new washing machine?** If the property is rented furnished, then all 'white goods' will be supplied & must be in good working order. As must heating/aircon systems, pool pumps, irrigation systems etc., even in unfurnished properties. Basically, if it's there when the tenant moves in, it must be in working order. But what happens if it breaks down? Unless there has been misuse by the tenant, the property owner is responsible for the repair or replacement of these things. The logistics of payment can vary. The law says that the property owner should arrange for the repair/replacement as quickly as possible & pay for it himself. As I said earlier, the rental agent might take responsibility for this - but many don't. If there is no agent, or if it's a telephone/email support service, and the owner is unable to transfer funds quickly enough, it's not unusual for the tenant to pay for the repairs himself & with the agreement of the owner, deduct it from the next rental payment. It is of course best to get the agreement in writing, and receipts would have to be supplied.



- **Maintenance of the structure of a property.** The owner is responsible for the maintenance of the structure of the property. For example, if the roof leaks, the tenant isn't responsible for the repair. If the door or window frames rot, it's up to the owner to deal with it. If the terrace collapses into the cesspit, or the swimming pool springs a leak, it's not the tenant's responsibility. Even with a long term rental.

However - if the window is smashed/the shelf in the bathroom get damaged as a result of negligence by the tenant, then the tenant is responsible for the repair.



- **Maintenance of private pool & garden.** This is a matter for individual contracts. In some cases the tenant will deal with it or pay someone to do it for them, in some it is included in the rent & paid for by the owner, & in others, the owner contracts an individual or company & the tenant picks up the bill. It's important that this is clear in the contract, so both tenant & owner need to discuss their needs.

- **How do I know the property I'm renting won't be repossessed or sold?**

This seems to be a growing problem. I've known several people & families in the last year or so who have had to move because the owners of the property they are renting haven't paid the mortgage & the bank has started repossession proceedings - it has happened to one family I know twice in around 6 months! So what can you do to protect your home? Some agents will insist that the property owner sign a declaration that there are no debts against the property, including mortgage payments & utilities.

There is provision for the rental contract to be registered with the Land Registry. If registered, then if the property is sold or repossessed, the tenant has 'sitting tenants' rights, & the contract has to be honoured.

It's also possible to get a *nota simple* for the property at a small cost, which will also show any debts or legal proceedings against the property.

- **How can I be sure that the tenant will pay the rent?**

It's of course possible to check references - although that can be difficult if the tenant has just arrived in the country. It's not unreasonable in that situation to ask pointed questions about income. Many agents will share information about the reliability of tenants too.

If you're using an agent, check if this is part of what they will be doing for you. If the rental contract is registered with the Land Registry, eviction for non-payment of rent can be initiated when the rent is just 10 days late.

- **What about the deposit & the rent?** The law requires 1 month deposit, equal to a month's rent - however the tenant & landlord can agree to more should they wish to.

Rent is usually paid a month upfront/in advance. The deposit is supposed to be held in a separate account (in escrow) so that it is available for return when the tenant leaves. It should be returned to the tenant when they leave, less any costs incurred for damages (actual damage, not wear & tear or cleaning) & any unpaid bills. To avoid disagreement as to the condition of the property it is highly recommended that both tenant & landlord have a set of photos & a full inventory of equipment, when the tenant takes possession of the property. Some owners prefer to have the rent paid in cash. If so, a proper receipt should be issued each month. It is recommended that a standing order for the rent to be set up to pay the rent directly from the tenant's account to the owner's.



- **Tax.** Landlords are supposed to declare the rental income for tax - they can then claim tax breaks for all sorts of things regarding the upkeep of the property. Many tenants can also declare their rental *against* their income tax. Not all landlords do declare the income, unfortunately. Tenants who will be including their rental in their tax returns need to be sure that the landlord is also declaring. This is best discussed *before* a contract is signed.
- **Energy efficiency certificate.** All long term rental properties now have to have an Energy Efficiency Certificate. It is the owner's responsibility to arrange & pay for this.

- **Access to the property.** The agent or owner of the property can have reasonable access. This means that they can periodically visit to ensure that all is OK. All visits should be arranged in advance & should only take place when the tenant is present. The agent or owner should never enter the property - even the garden - without the tenant's knowledge or consent. Most of the time all that is required is a quick phone call to agree on a time.
- **Utility Bills.** These are usually the responsibility of the tenant. It is common practice for utility bills to remain in the owner's name, but be paid by direct debit by the tenant. Some owners prefer to pay the bill & collect the cash from the tenant, and sometimes the bills are put into the tenant's name. Agree on how this is to be dealt with before the contract is signed. Local taxes are usually the responsibility of the owner. This should be made clear in the contract
- **The contract.** It should be written in Spanish - if there were ever reason to go to court it would have to be in Spanish, so it's best to just have it in Spanish in the first place. If you - owner or tenant - don't speak a good level of Spanish, make sure you get an independent translation - not a googletranslate version - or at the very least get a Spanish speaker to check over any translation you might have been provided. Don't sign anything unless or until you are happy with what you are signing.

[A link to a pro-forma contract](#)

[The LAU / Ley de Arrendamientos Urbanos - the law governing long term residential rental](#)

The most important thing really is to **COMMUNICATE** - either with the agent or directly with the owner or tenant.



With thanks to Jo Ivory of Sunset Properties for helping with an 'agents point of view'.