



NEWS, LATEST, CURRENT TOPICS

SPECIAL EVICTION PROCEDURE V. JUDICIAL EVICTION PROCEEDINGS

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At a time when renting in Portugal is once again taking on an important social relevance, we address the matter of knowing when a landlord can resort to the Special Eviction Procedure, regulated in Law nr. 6/2006 of 27 February (henceforth referred to as NRAU), and when it becomes necessary to initiate court proceedings to obtain an eviction order, which in turn is regulated by the Civil Procedure Code.

In general terms, eviction proceedings in court aim to obtain an order of termination of a lease and the consequent order to vacate the premises. This, in situations where there are grounds to terminate the lease (or termination already took effect, for any given cause), and the tenant refuses to return the premises voluntarily on the date provided for by law, set out in the contract or agreed between the parties.

Notwithstanding the above, the legislator provides for the possibility of eviction without resorting to the courts. This is known as the **Special Eviction Procedure** (PED being the Portuguese acronym), which is carried out at the Office of the Tenants and Landlords (BAS in Portuguese – formerly known as the National Lease Office), and begins with the submission of an electronic form accompanied by some mandatory supporting documentation.

When the eviction is based on termination due to rents in arrears, payment may be demanded together with the eviction request.

Once the application has been submitted, the tenant will be notified by the BAS within 15 (fifteen) days to:

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(i) vacate the premises and, if necessary, pay the amount corresponding to the sums claimed; or

(ii) submit an opposition to the claim and/or request that their eviction be deferred.

If the Tenant opposes the eviction, the matter is referred to the Civil Court and becomes a court case.

The same will happen if the tenant requests a deferral of eviction, i. e. a delay in leaving the premises for compelling social reasons.

If there is no opposition from the tenant to the eviction, nor a request for the eviction to be delayed, the BAS shall grant an **enforceable title to vacate the premises**, and a court order granting the authorities legitimacy to enter the premises coercively shall be given in writing immediately. It will then be up to the Enforcement Agent or Notary appointed for the purpose to go to the location and take possession of the asset, provided that the landlord paid the respective fees in advance.

PED is generally the swiftest and most cost-effective way to recover possession of real estate assets when they are not voluntarily returned by the respective tenants.

Nonetheless, given the high volume of cases pending at the BAS, contrary to the legislator's initial intention (to have PED take no more than three months to be completed), a special eviction procedure usually takes between six (6) months and one (1) year to reach the stage of taking possession of the premises.

Not all lease agreements are eligible for landlords to access the abovementioned extrajudicial (or quasi-judicial) route. The following requirements must be met, for that purpose:

- 1) The existence of a written contract signed by both parties;
- 2) Knowledge of the correct Portuguese tax numbers of each tenant;

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3) Declaration of the contract to the Tax Authority, with the consequent payment of Stamp Duty by the landlord, and fulfilment of all subsequent tax obligations;

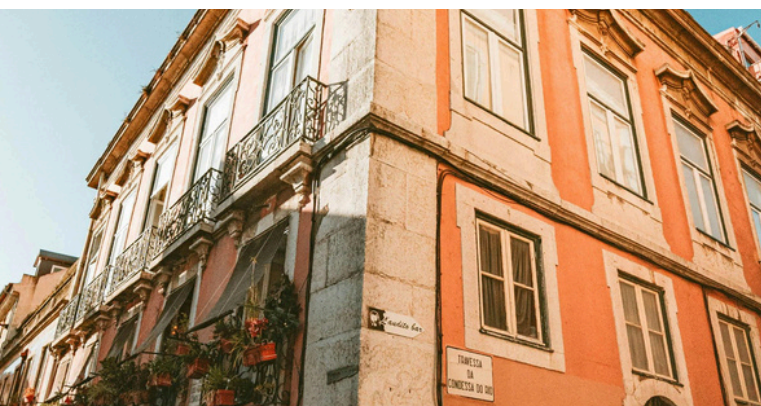
4) The existence of a communication sent with all the legal formalities regarding the grounds for termination of the contract, including indispensable proof of receipt by each of the tenants (particularly important in the case of spouses).

Should the landlord be unable or unwilling to resort to the BAS, they shall have the alternative of initiating classic **court proceedings to obtain an eviction order**, which will be carried out entirely by the Civil Courts.

The proceedings begin with filing an initial petition, in which the reasons for the eviction request must be detailed. These proceedings can also include a request for a payment order when there are outstanding rents.

Once the case has been assigned to a judge, the court clerk will notify the tenant to respond within 30 (thirty) days, failing which the facts claimed in the initial petition will be deemed as confessed. Similarly to the PED, the tenant may also use the same 30-day deadline to file a request for the eviction to be delayed, provided that sufficient grounds and supporting evidence are provided.

It will be up to the court, depending on the volume of cases it has pending, to advance the case, which may involve a preliminary hearing, interlocutory decisions (for example if there is a request to defer eviction) and will always culminate in a final hearing, after which the order will be granted in writing.



If the eviction order is granted, i. e. termination of the contract is upheld and, as a result, the tenant is ordered to vacate the premises, the most likely scenario is that the tenant will not voluntarily leave. Should that be the case, the landlord will be forced to initiate subsequent enforcement proceedings for the return of the premises. The same shall be true for enforcing payment of rents in arrears.

In light of all the above and to summarise, resorting to the courts is not only more costly and time-consuming, but it may also require additional legal proceedings in order to effectively achieve eviction and/or debt collection.

With that in mind, it is advisable to obtain legal advice both before entering into a lease agreement and also when preparing to send formal notices to terminate such an agreement, as both phases can be decisive to allow or deny access to certain legal tools available to landlords.

