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Rent deposit and guarantees

When leasing residential properties the Spanish rental law provides for only one month's rent. However, in practice, two months' rent is usually requested as a security against damages to the rental object. However, this amount may also be considerably higher for luxury properties. Payment of interest on the amount is rather unusual. The Spanish law does not permit a "living off" of the rent deposit in the last months of the term of lease. In so doing the lessee even makes himself liable to prosecution, with serious consequences being the possible result. However, the lessee is not powerless, should he fear that the lessor is unjustifiably withholding the rent deposit. A lawyer can provide the correct assistance in this instance, with the outstanding rental payments frequently then being deposited with a notary public, after prior notification of the lessor, until the parties have agreed on a solution.

In many cases the owner also requests a guaranty (Spanish bank guarantee) from the lessee to hedge the monthly rental payment. For a non-resident, who cannot demonstrate any bank history whatsoever with the local institutions, this means that the relevant amount is frozen on the account. The only advantage of this procedure is that interest is paid on the relevant amount. As a fee is incurred when creating guaranties and the latter also causes monthly costs, many rental parties agree to an advance payment of the rent, in order to avoid costs and bureaucracy.

Frequently an arbitration contract, concluded in addition to the rental contract, suffices in order to guarantee the contractual agreements on both sides. In this arbitration contract both parties agree to acknowledge the judgement of an arbitration court. This has an immense advantage with regard to cost and time saving, as the courts are sometimes very overtaxed and valuable time is lost before a hearing date is set. The important thing for the lessee is that he has exactly the same right to avail himself of the services of the arbitration court as the lessor has.

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