Non-renewal notice sent to residential tenant by property managers

A topical problem linked to the globalisation of fund property owners and in-situ property managers.

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1. Barcelona Provincial Court (Seventh Chamber) Judgment, 30 April 2024

In essence, the issue was that a landlord's non-renewal notice in accordance with Articles 9 and 10 of the Urban Tenancies Act ('LAU') was sent by a third party company, via *burofax* (content-certified letter with return receipt), without the tenant having been made aware of the commercial relationship between the said company and the landlord.

The tenant claimed that she never received the advance notice referred to in the possession claim to evict - the only document laid before the court was a certificate issued by a private company (expert witness) that recorded an attempt to serve a *burofax* on 31 May 2021, the outcome of which was 'undelivered, note left' - and that at least two further attempts at serving notice should have been made.

The Provincial Court ruled in favour of the tenant.

Article 9(1) of the Urban Tenancies Act, in the wording in force at the time the tenancy agreement was concluded (27 September

2017), stipulated that "the term of the lease will be freely agreed between the parties"; and added: "If such is less than three years, on the day the agreement terminates, it will be compulsorily extended for annual periods until the lease reaches a minimum duration of three years, unless the tenant informs the landlord, at least thirty days in advance of the date of termination of the agreement or of any of the extensions, of his or her intention not to renew it". For its part, Article 10(1) provided as follows: "If, on the termination date of the agreement, or of any of its extensions, once at least three years of its term have elapsed, neither of the parties has notified the other, at least thirty days in advance of that date, of their intention not to renew it, the agreement will necessarily be extended for a further year".

The tenant must be in a position to know that the notice of non-renewal actually comes from the landlord

It is well known, a legal doctrine has repeatedly stated, that, in those cases, the *burofax* should have the effects that are proper to it - mandatory communication to the tenant of the owner's intention to terminate the tenancy - given that, in general, it is understood that a failure to deliver is solely attributable to the addressee.

However, these considerations are valid in the context of a specific contractual relationship and provided that the addressee has the necessary information to know that the communication or request comes from the other contracting party, or from a third party who they know has the power or representation to act on behalf of the latter, or who is otherwise linked to it. And this is how it must be understood because the said communication is an essential requirement to end the tenancy and assign to the tenant the duty to return possession of the dwelling occupied in such capacity.

In the case tried, there was no evidence that the intended addressee had the necessary information to know that the *burofax* was for all intents sent by the company that owned the leased dwelling. In the certificate issued by the company Logalty Prueba por Interposición, S.L., it is expressly stated, in addition to the fact that a note was left for the addressee, that the sender of the *burofax* was the company Gefinco Gestión de Inmuebles, S.L., and the truth is that in the proceedings no document was found that indicated what was the relationship between that company and Buildingcenter, S.A.U., and much less that the tenant was aware that Gefinco Gestión de Inmuebles, S.L. could be acting on behalf of Buildingcenter, S.A.U. or that it managed the leases of the property owned by the latter.

There is no legal rule that requires the addressee of a communication, always and in any case, to take delivery. The aim of this is to point out that, regardless of whether the company that appeared as the sender of the *burofax* was authorised to intervene in the tenancy established by Buildingcenter, S.A.U., it was not proven that the tenant was aware of such possible representation, or that she had reasons to connect or link the sender with her landlord, and under such a premise it is disproportionate to assign to said tenant the duty to adopt a proactive behaviour in order to collect a *burofax* sent

by a company unknown to her, and even more so to deduce from such an alleged lack of diligence - rather non-existent - the serious consequence of terminating the lease on the dwelling that the tenant has been occupying for at least four years.

The ruling of this Chamber of 7 November 2023 set a precedent for this doctrine.

2. Commentary

But what exactly does the tenant need to know for the notice to count as notice from the landlord? Let's imagine that Gefinco sends the *burofax* as the administrator of Buildingcenter's interests. The tenant must undoubtedly be aware of this, even more so if Gefinco claims to be acting in a voluntary capacity. But for this, it is not necessary to show the contract or the power of attorney. What is necessary is that at some point the tenant has been made *aware, not by Gefinco but by the landlord, that the former manages its tenancies, without the need to claim or prove an effective power of attorney, nor can the tenant demand proof of the continued existence of such intent to delegate. Of course, estoppel is decisive.* Whoever has paid the rental bills drawn up by Gefinco cannot then deny the latter's entitlement to serve notice of non-renewal.

Also curious, and dangerous, is the doctrine that the addressee of a *burofax* sent by a person they do not know can unconditionally refuse to take delivery and that this has no negative consequences. However, the doctrine that is being commented on will only apply to addressed notices, not to acts on behalf of a third party whose effects are produced *opere operato*, such as the interruption of a limitation period.

It is clear that the civil court system in Barcelona is an advocacy group when it comes to residential tenancy disputes.