

# BULLETIN

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## Payment Order Requesting Evacuation and its Consequences

The cases of evacuation of a property are regulated in the provisions of the Turkish Code of Obligations and the Enforcement Bankruptcy Law, and the subject of this research is the payment order with a request for eviction regulated in the Execution and Bankruptcy Law and the eviction lawsuit to be filed accordingly.

One of the types of proceedings regulated in the Enforcement and Bankruptcy Law is to prosecute with a payment order with an eviction request, and in cases where the rental fee is not paid or the lease agreement is terminated, it is possible to take action with this method. In order to apply for evacuation in the event that the lease agreement is terminated, the lessor must have a written lease agreement and a written commitment to evict the tenant at the end of the contract or commitment to evacuate the property, and in such cases, a direct eviction order will be sent, not a payment order.

The subject of this study is the results related to sending payment order with an eviction request, therefore, the procedures to be followed in case of non-payment of the rental fee are discussed below.

### Sending a Payment Order with an Eviction Request

As we mentioned above, it is possible for the debtor to be evicted due to non-payment of the rent. For this, an application will be made to the enforcement office and a warning payment order will be sent to evict the property if the rent debt is not paid within thirty (30) days. The debtor has the right to object to the payment order issued to him within seven (7) days, and in case this right of objection is exercised, the creditor may request the continuation of the proceeding by applying one of the methods of removing the objection or canceling it.

However, the creditor must wait until the thirty-day period given to the debtor has passed from the notification of the payment order in order to sue for the discharge of the debtor. If the debtor does not pay within the thirty-day period, the creditor may file a lawsuit for the debtor's discharge before the Enforcement Court.

### Objection to a Payment Order

Pursuant to Article 269 of the Enforcement and Bankruptcy Law; The debtor may object to the payment order by notifying the Execution Office within the seven-day (7) objection period. The debtor's objection stops the proceedings.

Pursuant to the second paragraph of the Article; If the debtor does not object the lease contract and, if any, his signature on the contract, clearly and definitively, he is deemed to have accepted the contract.

Different procedures are proposed in cases where the debtor does not accept the lease contract and his signature on the contract, or if the debtor does not reject the contract and objects that the rent is paid or cannot be demanded for any other reason.

Accordingly, if the debtor has accepted the lease and his signature on the contract; While it is possible for the creditor to request and sue for the removal of the objection from the Enforcement Court and the eviction of the immovable, in case of objection to the lease contract and signature, the payment of the rent and the evacuation of the immovable or the cancellation of the objection and the evacuation of the immovable will be requested from the Civil Court of Peace.

Accordingly, if the debtor has accepted the lease and his signature on the contract; While it is possible for the creditor to request and sue for the removal of the objection from the Enforcement Court and the eviction of the property, in case of objection to the lease contract and signature, the payment of the rent and the evacuation of the property or the cancellation of the objection and the evacuation of the property will be requested from the Civil Court of Peace.

### **Consequences of Objection to the Payment Order**

If the debtor objects to the debt within the seven-day (7) objection period, the creditor must sue for the removal of the objection and the eviction of the immovable within the six-month disqualification period. However, the creditor must wait for the thirty-day (30) payment period granted by the payment order before the eviction action can be substituted. Before the thirty-day (30) deadline, the creditor does not have the opportunity to sue for the debtor's eviction.

If the debt is objected within the time limit and the payment is not made within the thirty-day (30) payment period stipulated in the Law; the creditor, pursuant to Article 269/3 of the Enforcement and Bankruptcy Law; may apply to the Enforcement Court in the place where the enforcement proceeding is carried out in order to remove the objection and to ensure the evacuation of the debtor.

However, if the debtor objects to the lease agreement or the signature under the contract, the creditor does not have the opportunity to apply to the Enforcement Court, and in this case, an eviction must be requested from the Civil Court of Peace with the payment of the rent and the eviction or annulment of the objection. Because, if the lease agreement/signature is denied by the debtor, the existence of the lease relationship will be determined by the Court, and this matter falls under the jurisdiction of the Civil Courts of Peace.

The exception to this situation is; It is the case that the creditor has a lease agreement arranged by a notary public. Accordingly, if the debtor has objected to the lease agreement drawn up by the notary public, the creditor may apply to the Enforcement Court and request the removal of the objection and the eviction of the property. However, if the lease agreement is made in ordinary writing and the debtor objects to the lease agreement, the creditor will demand the payment of the rental fee and the eviction of the property from the Civil Court of Peace. If the creditor files a lawsuit in the Civil Court of Peace due to the denial of the signature of the debtor on the lease agreement and if this case is concluded in his favor, the debtor will be sentenced to a fine from one hundred thousand Turkish lira (100.000) to five hundred thousand (500.000) Turkish lira in accordance with the third paragraph of Article 269/b of the Execution and Bankruptcy Law.

If the debtor does not object to the lease agreement and the signature on the contract, in the case where the creditor will remove the objection and replace him with a request for eviction, the Enforcement Court will first determine whether the request for enforcement is voluntary, whether the objection and payment periods are specified in accordance with the law in the payment order sent, and whether the objection is removed and the eviction request is filed. It will be examined whether it is done within the six-month period of disqualification. At the end of this examination, if it is determined that the request for follow-up has been duly served and the case has been filed within the six-month period of disqualification, the court proceeds to hear the merits of the case.

Pursuant to Article 63 of the Enforcement and Bankruptcy Law, the debtor is bound by the grounds of objection and cannot rely on any other reason other than what is understood from the text of the promissory note on which the creditor is based and the matters mentioned in the objection petition.

Since the debtor is bound by the "reasons for objection" that he has declared, after rejecting the "rental contract" in his objection, he will be bound by the reasons for the objection and cannot object to the "monthly rent amount", "the right to follow-up of the lessor" for any reason, whether for settlement of the rent debt or any other reason.

If the debtor has not objected to the lease agreement and the signature in the contract, in accordance with Article 269/c of the Enforcement and Bankruptcy Law, in the case of annulment and eviction, the reasons for the objection and the request are drawn up by the notary public ex officio or a document whose signature is approved or acknowledged by the creditor, or the authorities of the official offices or the competent authorities. It is obliged to prove it with a receipt or document given within and duly. Therefore, documents submitted by the debtor, other than those listed in this article, will not have the quality of proof.

In addition to this, the creditor may demand compensation not less than twenty percent, pursuant to the last paragraph of Article 68 of the Enforcement Bankruptcy Law, together with the cancellation of the objection and the eviction requests. If such a request is not made by the creditor, compensation cannot be ordered by the Enforcement Court on its own.

## Conclusion

As we mentioned above, if the debtor does not object to the payment order with a notice of eviction to be sent by the creditor and the payment is not made within the thirty-day (30) payment period, the creditor will be able to request the debtor's eviction from the Enforcement Court within six (6) months.

In the event that the debtor objects to the payment order with a request for eviction, different procedures are regulated depending on the subject of the objection. In the event that the debtor does not deny the signature on the lease agreement and the contract itself, the creditor may withdraw the objection from the Enforcement Court within a six-month (6) deprivation period following the expiry of the thirty-day (30) payment period, and demand the eviction of the property and indemnity not less than twenty percent. In the case to be heard, if the debtor cannot prove that he has paid the debt with the documents stipulated in Article 269/c, the property will be evacuated with the continuation of the proceedings.

If the debtor objects to the lease agreement and the signature on the agreement, the payment of the rent and the eviction lawsuit will be substituted by the creditor in the Civil Court of Peace and if the debtor's objection to signature is found to be unjustified, a fine of one hundred thousand to five hundred thousand liras will be imposed on him.