

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL:

POLICE

Subject: LANDLORD-TENANT DISPUTES

INTRODUCTION

Although much of the law relating to landlord-tenant disputes is civil, the landlord or tenant may occasionally be in violation of a criminal law. This instruction is intended to serve as a guide to landlord-tenant law so that officers may properly advise those involved and protect the rights of all parties to these disputes.

EVICCTIONS WITHOUT A COURT ORDER

The landlord may not forcibly evict the tenant without a court order even though the tenant is behind in rental agreement. A landlord who, without a court order, changes the locks or otherwise forces a tenant to leave without the tenant's permission is in violation of Section 418 P.C., a misdemeanor.

When the officer is confronted with a situation where there has been an illegal eviction, the officer should advise the landlord to let the tenant back into his apartment until he obtains a court order. If he refuses, he is subject to arrest for violation of Section 418 P.C. Generally, a polite explanation of the law should suffice. If an arrest must be made, the tenant involved should make a citizen's arrest.

SEIZURE OF TENANT'S PROPERTY WITHOUT A COURT ORDER

A landlord who, without a court order, seizes the tenant's property in lieu of rent or for any other reason is in violation of 418 P.C. The officer should advise the landlord that he is subject to arrest if he fails to return the property. Any arrest should be made by the tenant. Again, an explanation of the law involved is usually all that should be needed to resolve the matter.

EVICCTIONS AND SEIZURE OF PROPERTY WITH A COURT ORDER

A landlord may legally evict the tenant with a court order. However, the officer on the scene should not help the landlord in carrying out the court order. If the evicting cannot be carried out peacefully, the officer should advise the landlord to obtain the help of the County Marshal in carrying out the court order.

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OTHER LANDLORD-TENANT PROBLEMS

1. The Landlord Enters the Tenant's Apartment to "Snoop Around"

Under the Health and Safety Code, a landlord may enter an apartment to inspect for damage or perform needed work. Such entry can only be made between 8:00 a.m. and 6:00 p.m., and then only under "reasonable circumstances". A tenant has the right to refuse entry at any given time due to inconvenience. Continued refusal to let the landlord in would subject the tenant to civil liability.

Any entry made for snooping around, harassment, etc., would be a criminal trespass under 602.5 P.C. (misdemeanor).

2. Termination of Services

It is a violation of Civil Code Section 789.3 for a landlord to interrupt or terminate any utility service furnished the tenant, such as water, heat, electricity, gas or telephone, and the landlord is liable to the tenant in a civil action for the actual damages suffered by the tenant and \$100 for each day or part thereof the tenant is deprived of utility service.

3. How Much Notice Must be Given to Evict a Tenant?

If the tenancy is month-to-month and the tenant has not violated the terms of the agreement, the landlord may end the tenancy for any reason, so long as he gives the tenant 30 days written notice. However, if the tenant has violated his rental agreement, or is behind in his rent, the landlord need only give the tenant three days written notice, stating exactly what the tenant did wrong.

The landlord must give written notice on the proper legal form to every adult to whom the premises are rented. These forms may be found at most stationery stores.

If the tenant refuses to move after the three or thirty-day notice is up, the landlord must file an Unlawful Detainer Complaint in Municipal Court. Within a few weeks, the landlord would be able to obtain an eviction order.

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4. Landlord Refuses to Return Cleaning Deposit

In the absence of criminal fraud, deposit disputes are civil. The tenant should be advised to file an action in Small Claims Court for the return of his deposit or to see his attorney.

5. Advising Landlords and Tenants

Officers should refrain from giving either of the parties an opinion as to which one is right. A court hearing might reveal facts which were unknown to the officer and the court decision could be different from the officer's opinion. Officers should encourage the parties to consult with their own attorney to resolve their legal problems. If a landlord or tenant indicates that he is not in a financial position to retain an attorney, officers may refer them to the Legal Aid Society.

6. Landlord Tenant Disputes (305)

a. *The 1987 enactment of CC1946.5 and PC602.3, allows the owner-occupant of a dwelling who rents a room of the dwelling but retains a right of access to all areas of the dwelling and the right to evict without using the normal unlawful detainer channels. KEY ELEMENTS TO CONSIDER:*

- 1) *The lodger's removal may be effected through a citizen's arrest by the owner (834.7PC) with physical removal by an assisting officer.*
- 2) *These sections apply only to owner-occupied dwellings where a SINGLE LODGER resides.*
- 3) *The owner must be an occupant with overall control of the dwelling and retain right of access to all areas of the unit occupied by the lodger.*
- 4) *The owner must have provided written notice of termination pursuant to CCP1162, and allowed the time prescribed to have expired.*
- 5) *These sections do not preclude the owner from initiating an action for unlawful detainer.*

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HOTEL-MOTEL PROBLEMS

1. General Rules

A temporary residence, such as a hotel or motel, is not covered under general landlord-tenant law. Thus, a manager may lawfully evict a guest from a hotel or motel for non-payment of the room fee and hold the guest's personal belongings as security for payment. If the guest leaves the hotel or motel without paying for the room or services, a prima facie case of Defrauding an Innkeeper is established (see Penal Code Section 537).

2. Residential Hotels

Many hotels/motels rent rooms on a weekly or monthly basis similar to an apartment. In certain situations, these establishments must be treated as apartments and normal landlord-tenant law would apply. Officers should advise the parties to any landlord-tenant disputes in this environment to contact their respective attorneys.

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