



TRAINING BULLETIN

Los Angeles Police Department

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LANDLORD/TENANT DISPUTES

Landlord/tenant dispute calls may sometimes be a source of frustration for patrol officers. Since rental agreements are civil in nature, officers often lack the authority to do anything other than keep the peace. As part of an officer's response, it is important to understand the general concepts involving landlord/tenant issues.

It is also important to note that most of the criminal violations that are alleged in these incidents are misdemeanors, and therefore must be committed in an officer's presence to make a custodial arrest. The relevant criminal sections are discussed in this Bulletin.

Landlord/Tenant Relationship Defined

A landlord/tenant relationship is one in which the landlord (a person or company) owns a rental unit and rents or leases the rental unit to another person, called a tenant, who lives within the unit. The tenant obtains the right to the use and possession of the rental unit during the lease or agreement. The rental contract between the parties grants the tenant legal possession of the premises until the agreement expires, the parties terminate the tenancy with the requisite written notice (as in the case of a month-to-month tenancy), a court issues a writ of possession following an unlawful detainer action, or such time as a court enters a civil judgment declaring the tenant in breach of contract for failure to pay rent. The rental contract is generally in writing; however, it may be verbal. Moreover, if a tenant remains on the premises after the expiration of the original term of the tenancy and pays rent, and the landlord accepts the rent, the parties are presumed to have renewed the lease on a month-to-month basis (Civil Code Section 1945).

There are certain exceptions to the typical landlord/tenant relationship, such as the "hotel/motel" and "single lodger" exceptions, which will be discussed in the attached Frequently Asked Questions.

The Agreement or Lease

The landlord and tenant will normally sign a rental agreement in which the tenant gains possession of the property. The rental agreement specifies all the terms of the agreement between the landlord and tenant. It states the rent, length of time between payments, and landlord/tenant obligations. The most common rental agreements are in

writing; however, oral agreements are legally binding as long as the agreement does not exceed one year.

Note: Any time a landlord and tenant agree to the lease of a rental unit for more than one year, the agreement must be in writing (Civil Code Section 1624(a)(3)). If the agreement for a tenancy exceeding one year is not in writing, it is not enforceable.

When the landlord wants to recover possession at the end of the contract period, and the tenant refuses to move out, the landlord must have the tenant legally evicted.

Unlawful Conduct by Landlord

Officers must be mindful that even if a landlord has the proper legal grounds for evicting a tenant through the legal process, it is unlawful for the landlord to use illegal methods (i.e., lockout, seizure, trespass, etc.) in an attempt to force the tenant to vacate the premises. Effective handling of landlord/tenant disputes often requires an understanding of applicable Penal Code provisions as well as civil law governing landlord/tenant disputes.

THE EVICTION PROCESS

Three-Day Notice

If the tenant is behind in their rent or violates a condition of the rental agreement, the landlord must first give the tenant a written three-day notice to correct these deficiencies (Code of Civil Procedure Section 1161). The three days does not include weekends or judicial holidays. If the tenant fails to comply with the three-day notice, the landlord may file an unlawful detainer lawsuit to begin the eviction process. This is the most common legal remedy available to a landlord who wishes to evict a tenant, particularly if the tenant has violated the lease.

Thirty-Day or Sixty-Day Notice

If a landlord decides that they want to terminate a month-to-month tenancy, the landlord must give the tenant a written 30-day notice to vacate the premises (if the tenant has lived in the rental unit for less than a year) or a 60-day notice (if the tenant has lived in the rental unit for over a year). The City of Los Angeles has a rent control ordinance, which allows eviction only for specific reasons (Los Angeles Municipal Code Section 151.09); the specific reason(s) must be stated in the three-day notice to correct, as well as in the unlawful detainer, in order to end the tenancy. If the tenant does not move out after the applicable noticed time period (30 or 60 days), the landlord may file an unlawful detainer lawsuit.

Unlawful Detainer Lawsuit (Eviction Lawsuit)

An unlawful detainer lawsuit is considered a “summary court procedure,” and therefore, moves through the court system quickly. Once the tenant receives a copy of the complaint, they normally have five days to file a written response. The court schedules a hearing so both the landlord and tenant may present their sides. Ultimately, a ruling is made. If the judge rules in favor of the landlord, the court will issue a “writ of possession.” Once the “writ of possession” is issued, the tenant has five days to leave voluntarily. After five days, the Los Angeles County Sheriff’s Department (LASD) may physically evict the tenant and allow the landlord to take possession of the property.

The landlord does not have the right to take possession of the property until after the sheriff evicts the tenant, or the tenant voluntarily leaves.

Note: LAPD officers do not have the statutory authority to evict a tenant. Only LASD has the authority to evict a tenant. Should a tenant return to the premises once evicted, they may be arrested for a violation of Penal Code Section 602.5, Trespass.

CONCLUSION

The role of the officer in a landlord-tenant dispute is to keep or restore order rather than enforcing civil law. Officers should not give legal advice. In most instances, an officer’s primary duty is simply to keep the peace by facilitating dispute resolution or by informing the parties of the legal processes and resources available to them.

This Bulletin cancels and supersedes Volume XLIV, Issue 1, Landlord/Tenant Disputes, March 2014

Field Training Services Unit
Police Training and Education

DISTRIBUTION “A”

Attachments: Frequently Asked Questions
Summary of Laws and Definitions

Landlord/Tenant Disputes Frequently Asked Questions

Can a landlord lawfully lockout a tenant and/or seize the tenant's property?

No. Very often, when a tenant is behind in his/her rent, the landlord will jam or change the tenant's door lock in order to prevent the tenant's further use of the dwelling until the rent is paid. This lockout procedure is considered forcible and is a misdemeanor prohibited by Penal Code (PC) Section 418 and Los Angeles Municipal Code (LAMC) Section 41.33.

Officers should advise the landlord to permit the tenant back into the dwelling and to proceed with an unlawful detainer lawsuit instead. Officers lack the legal authority to demand that the landlord allow re-entry to the tenant. Officers should take any necessary crime reports or accept any lawful private person's arrest.

Can a landlord remove the property of a former tenant?

Yes. A landlord also has a right to dispose of personal property that remains on the premises after the tenancy has terminated and the tenant has vacated the premises. Civil Code (CC) Section 1980 et seq. governs the disposition of the former tenant's property and sets forth strict procedures for storage, notice and sale of the former tenant's property. Generally, the landlord may either leave the personal property in the vacated premises or put it in safe storage. Either way, the landlord must give written notice to the former tenant, describing the abandoned property, informing the tenant (or other owner) where the property may be claimed, and advising the tenant that he/she has 15 days (in the case of personal delivery of the notice) or 18 days (in the case of mailing the notice) within which to pay for the storage and take possession of the property.

This notice also informs the former tenant (or other owner of the property) that if he/she fails to reclaim the abandoned property within the specified time, it will be sold at a public sale or, if its resale value is less than \$300, it may be kept, sold, or destroyed by the landlord (CC Sections 1984-1986). If the tenant or owner pays the reasonable rental costs and reclaims the property within the specified time, the landlord must release the property to them. In fact, even if the deadline has passed, the landlord still must release the property—assuming it has not yet been sold or destroyed—provided that the former tenant pays all reasonable costs of storage, advertising, and preparation for sale, if any such costs were incurred.

Can a landlord stop utility service?

No. A landlord cannot interrupt or terminate the utility services of a tenant such as gas, water, and electricity. This is prohibited by LAMC Section 41.33, which states in part, "No person, except a duly authorized officer pursuant to the authority of legal process, shall interfere with the peaceful enjoyment, use, possession or occupancy of any premises by the lawful lessee or tenant."

When can a landlord enter the rental unit?

California law states that a landlord may enter a rental unit for the following reasons:

- In an emergency

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- The tenant has moved out or has abandoned the rental unit
- To make necessary or agreed-upon repairs, decorations, alterations, or other improvements
- To show the unit to prospective tenants, purchasers, or lenders
- To provide entry to contractors or workers who are to perform work on the unit, or to conduct an initial inspection before the end of the tenancy
- A court order permits the landlord to enter
- If the tenant has a waterbed, to inspect the installation of the waterbed upon completion, and periodically thereafter, to ensure the installation meets the law's requirements

Except when a tenant has moved out or abandoned the rental unit or in an emergency, the landlord must give the tenant reasonable advanced notice, in writing, before entering the unit and may only enter during normal business hours (generally between 0800 hours and 1700 hours on weekdays), unless otherwise agreed to by the parties. The law considers 24-hour notice to be reasonable in most situations.

Is there an exception to the typical landlord/tenant relationship for a single lodger commonly known as the "roommate" in a residence?

Yes. Not all occupants are tenants whom the landlord can evict only by bringing an unlawful detainer lawsuit. For example, CC Section 1946.5 was enacted to expedite the removal of a "lodger" (aka "roomer") who has temporary possession within a dwelling with the owner. For this statute to apply, however, all four of the following conditions must be met:

- The dwelling must be owner-occupied
- The owner must retain a right of access to all areas of the dwelling and have overall control of the unit (i.e., no locked doors)
- The lodger/roomer must be the only lodger residing in the residence
- The lodger must have a contract either for a room, or for room and board (i.e., must have agreed to provide something of value to the landlord in return).

If all of these conditions are met, then an abbreviated procedure, set out in CC Section 1946.5, can be used to remove the lodger. Namely, a simple written notice can terminate the right of occupancy. The notice must be given before the expiration of the term of occupancy (such as weekly, bi-weekly, or monthly), but not longer than thirty days. For example, for a monthly tenancy, the lodger would be entitled to a notice of 30 days.

Nothing else is required. In other words, when the required notice period is up, it is not necessary to file an unlawful detainer lawsuit. If the lodger remains on the property, he becomes a trespasser subject to PC Section 602.3. He can then be ordered to leave, and upon his refusal to do so, a private person's arrest can be made.

Officers should not confuse a single lodger with a *gratuitous guest*. A gratuitous guest is a person who is in temporary possession of the dwelling unit with the owner, simply because of the goodwill of the owner.

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For example, if the owner allowed someone to temporarily share or visit his residence, the owner would simply need to ask or tell that person to leave; no notice or other legal step is required. If the guest does not comply, his further occupancy becomes an illegal trespass.

A “tenancy at will” is created by agreement of the parties, but has no fixed term and is terminable at the will of either party. It results from an entry and occupancy by the tenant with the permission of the owner. A tenant at will must be given a written 30-day notice, and then the landlord must follow the eviction proceeding, in order to have the tenant removed from possession (CC Section 789).

Does an owner of a hotel/motel file an unlawful detainer action to have a lodger removed?

No. As long as the property is actually a hotel/motel as defined by CC Section 1940, the owner of the property does not have to file an unlawful detainer action in court to have a temporary lodger removed. The owner may have the lodger removed if he/she does not pay or commits a violation of the hotel/motel’s policies. If the lodger refuses to vacate the premises, the lodger may be arrested for 602 PC – Trespass.

There are times when a property owner will tell the officer that the residence is a hotel/motel, so the owner can have the lodger removed without taking civil action. Officers must inspect the premises to actually see if the property qualifies as a hotel/motel.

To qualify as a hotel/motel pursuant to CC Section 1940, the innkeeper retains a right of access to, and control of, the dwelling unit and the hotel or motel provides or offers all of the following services to all of the residents:

- Occupancy for periods of fewer than seven days
- A fireproof safe for residents’ use
- A central telephone service
- Maid, mail, and room service
- Food service provided by a food establishment that is on or next to the hotel/motel grounds and that is operated in conjunction with the hotel/motel

Note: It is important to be aware that a hotel/motel that allows residents to obtain 30-day rental agreements has established a “tenancy” even if the other requirements for a hotel/motel exist. In such cases, the exception is not applicable and the landlord will have to begin the eviction process.

What is the process used for the removal of a participant in a transitional housing program?

Transitional housing programs are for the temporary treatment of homeless persons struggling with drug abuse, alcohol abuse, etc. The participants in these programs do not stay on a long-term basis. The stay in transitional housing programs ranges from one month to two years (Health and Safety Code Section 50582). The transitional housing program is designed to provide homeless persons with the necessary skills to live independently in permanent housing. The program must have comprehensive social service

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programs, such as alcohol and drug abuse counseling, employment assistance services, etc. In addition, the program must provide a participant with a temporary housing unit and the individual must agree to comply with the program rules and regulations.

In many cases, the participant may sign a contract with the program operator. A violation of the contract may be used to support the request for a court order, but it is not to be enforced by officers. A program participant may be excluded from a transitional housing program site if a court grants a restraining order. A restraining order can only be obtained when a program operator shows clear and convincing evidence of abuse and that great or irreparable harm would result to the program operator, a program participant, or an individual residing within 100 feet of the program site if the participant remained in the program (Health and Safety Code Section 50585). If a program operator obtains a restraining order, the police may be contacted to remove the program participant from the program site. If the participant refuses to leave, the police may arrest the participant under 166 PC – Violation of a Court Order. Without a court order, officers have no legal authority to remove the participant.

What if a new landlord has taken possession of the property after a foreclosure?

A tenant cannot be evicted until either the end of a lease, or with a 90-day notice. However, if the building is under the Los Angeles Rent Stabilization Ordinance, a landlord cannot evict a tenant because of a foreclosure. If the bank or lender which takes over a property in a foreclosure tries to evict a renter, inform the tenant to call the Los Angeles Housing and Community Investment Department, Rent Stabilization Customer Service Hotline and Public Information at (866) 557-7368.

What about evictions requiring the filing of a declaration?

Under the Los Angeles Rent Stabilization Ordinance, a landlord must file a “Landlord Declaration of Intent to Evict” form with the Los Angeles Housing and Community Investment Department citing at least one of the following: illegal purpose nuisance (related to illegal drug or gang activity); owner/family member or resident manager’s occupancy; or permanent removal and demolition to comply with a government order, or United States Department of Housing and Urban Development eviction.

Where should I refer a tenant who has habitability or safety issues within the building?

Inform the tenant to document the problems they are experiencing and to contact their landlord. If their landlord refuses to make the necessary repairs, inform the tenant that they can file a complaint regarding living conditions or possible code violations with the following:

- Los Angeles Housing and Community Investment Department at (866) 557-7368
- Los Angeles County Department of Public Health, Environmental Health Customer Call Center at (888) 700-9995
- Los Angeles Department of Building and Safety at 311

Landlord/Tenant Disputes Summary of Laws and Definitions

Summary of Laws

PC Section 418 – Forcible Entry and Detainer

1. Procuring, encouraging, or assisting another to use
 2. Any force or violence
 3. In entering or detaining any lands or other possessions of another
- Practical use: When a landlord locks out a tenant and/or seizes their property.

Misdemeanor

PC Section 602.5 – Trespass

1. Entering or remaining
 2. In any noncommercial dwelling house, apartment, or other residential place
 3. Without consent of the owner or his/her agent or the person in lawful possession
- Practical use: When a landlord enters a tenant's residence unannounced to snoop around or harass the tenant.

Misdemeanor

PC Section 602.3 – Single Lodger in Owner-Occupied Dwelling

1. A single lodger (roommate)
 2. Who remains on the premises of an owner-occupied dwelling
 3. After receipt of notice terminating the agreement and expiration of the notice period
- Practical use: The lodger may be issued a Release from Custody (RFC) for a private person's arrest of 602.3 PC. Either the owner or representative may effect the arrest pursuant to Section 837 PC – Arrests by Private Persons.

Infraction

LAMC Section 41.33 – Landlords Disturbing Tenants

1. Interfering with
 2. The peaceful enjoyment, use, possession, or occupancy
 3. Of any premises by the lawful lessee or tenant of such premises
 4. By threat, fraud, intimidation, coercion, duress, toleration of a public nuisance, or
 5. By cutting off heat, light, water, fuel, or free communication
- Practical use: When a landlord shuts off a tenant's utilities, the landlord may be cited or arrested pursuant to Section 837 PC – Arrests by Private Persons.

Misdemeanor or Infraction

Civil Code Section 789.3 – Utility Services

1. Landlord with intent to terminate a lease or tenancy
 2. Willfully causes
 3. The interruption or termination of any utility service furnished to tenant
- Practical use: Provides the tenant with a civil remedy in the form of damages when a landlord interrupts or terminates utility service furnished to the tenant.

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Definitions

Eviction: A court-administered proceeding for removing a tenant from a rental unit when a tenant violates the rental agreement or does not comply with a notice ending the tenancy.

Eviction Notice (or a Three-Day Notice): A three-day notice the landlord serves on the tenant when the tenant has violated the lease or rental agreement. The three-day notice usually instructs the tenant to either leave the rental unit or comply with the lease or rental (e.g., by paying past-due rent) within the three-day period.

Guest: A person who does not have the rights of a tenant, such as a person who stays in a transient hotel for fewer than seven days, or a person granted temporary possession of the dwelling with the owner, with no payment or reward.

Landlord: A business or person who owns a rental unit, and who rents or leases the rental unit to another person, called a tenant.

Lease: A rental agreement, usually in writing, that establishes all the terms and duration of the agreement and that lasts for a predetermined length of time (e.g., six months or a year).

Lockout: When a landlord locks a tenant out of the rental unit with the intent of terminating the tenancy. Lockouts, and all other self-help eviction remedies, are illegal.

Lodger: A person who lives in a room in a house where the owner lives. The owner can enter all areas occupied by the lodger, and has overall control of the house.

Rental Agreement: An oral or written agreement between a tenant and a landlord, made before the tenant moves in, which establishes the terms of the tenancy, such as the amount of the rent and when it is due. See Lease and Rental Period.

Rental Period: The length of time between rental payments (e.g., a week or a month).

Tenancy: The tenant's exclusive right, created by a rental agreement between the landlord and the tenant, to use and possess the landlord's rental unit.

Tenant: A person who rents or leases a rental unit from a landlord. The tenant obtains the right to the exclusive use and possession of the rental unit during the lease or rental period.

Unlawful Detainer Lawsuit: A lawsuit that a landlord must file and win before the landlord can evict a tenant (also called an "eviction" lawsuit).

Writ of Possession: A document issued by the court after the landlord wins an unlawful detainer (eviction) lawsuit. The writ of possession is served on the tenant by the sheriff. The writ informs the tenant that the tenant must leave the rental unit within five days, or the sheriff will forcibly remove the tenant.