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LANDLORD BEWARE: THE WRONGFUL EVICTION CASE

Note: This article was authored by Lawrence A. Strid and appeared in the Winter 2009 Edition of *The Gavel*, and is copyrighted to the Orange County Trial Lawyers Association.

It can be a frustrating experience for a landlord who is renting or leasing out a room or an entire residence to find that the rental income from their tenant has ceased to be paid, but that the tenant has not vacated the premises. In such a situation, there may be a tendency on the part of the landlord to conclude that because they own the property, that they have an unfettered right to enter onto the premises at will, and to take steps in regard to the property that will make it less inviting for the non-paying tenant to continue to occupy same.

Turning off the tenant's utilities, removing the tenant's property from the premises, changing the locks, and removing doors or windows can all be a weighty incentive for a non-paying tenant to look elsewhere for lodging. The problem for the landlord, however, is that the resort to these measures without the consent of the tenant or a court order entitling the landlord to possession of the premises are exercises in "self-help" that the law abhors and which will expose the landlord to civil liability if they elect to take the law into their own hands.

The law frowns on self-help because it can lead to breaches of the peace and deprive people of life, liberty, or property without due process.

In furtherance of this public policy against self-help, California Civil Code section 789.3 contains a laundry list of prohibited actions on the part of landlords toward their tenants, when engaged in an attempt to terminate a tenancy.

Specifically, the landlord may not directly or indirectly interrupt or cut off utilities (including water, heat, light, electricity, gas, telephone, elevator, or refrigeration, whether or not it is under the control of the landlord); prevent access to the property by changing the locks or using a bootlock; remove outside doors or windows; or remove or seize the tenant's personal property or furnishings without the prior written consent of the tenant.

The statute provides a remedy for the aggrieved tenant, including bringing a claim for their actual

damages, a statutory fine of \$100.00 per day of each violation with a minimum fine of \$250.00, and an award of attorney's fees to the prevailing party in any legal action based upon the statute.

As any of the prohibited conduct in this code section would also serve to interfere with or interrupt the tenant's indisputable legal right to "quiet possession" of the property, the landlord in engaging in such acts will also be exposed to liability under Civil Code section 1940.2, and which provides for a civil penalty of \$2,000.00 for actions of a landlord that are designed to influence a tenant to vacate a dwelling and which involve the use or threat of force, willful threats, or menacing conduct.

As if the statutory penalties and remedies were not enough, the landlord can also face additional legal liability under what is called the "common law", depending upon the circumstances involved in the exercise of self-help. For example, a physical confrontation with the tenant in conjunction with the above may lead to a claim for assault and/or battery. Entering onto the premises without the tenant's permission or without obtaining a court order may expose the landlord to a claim for trespass. Any exercise in self-help can also lead to the landlord facing claims for intentional infliction of emotional distress, negligence, or conversion of the tenant's personal property.

In regard to the latter, if the landlord takes illegal possession of the tenant's personal property, his complicity therein may also subject him to an award of treble damages and attorney's fees under Penal Code section 496(c).

Lastly, if there is a written lease or rental agreement between the landlord and tenant, and if it has an attorney's fees clause (as most such agreements contain), then the prevailing party in the wrongful eviction lawsuit will have another legal basis upon which to seek their attorney's fees from the losing party, and which will almost certainly be the landlord if the latter has run afoul of Civil Code sections 789.3 and/or 1940.2.

A complete discussion of legal eviction (aka unlawful detainer) procedure is somewhat beyond the scope of this article, but in general the following are the only grounds upon which a landlord has a right to request that the tenant vacate the premises:

1. Failure to pay rent, after the landlord serves a three day notice to pay rent or quit the premises;
2. Expiration of a fixed lease term;

3. The tenant's creation of a nuisance upon the premises, after the landlord serves a 3 day notice to quit the premises;
4. In a month to month tenancy, a failure to vacate the premises after the tenant receives a 30 day notice requesting that they vacate the premises (Civil Code sec. 789).

It must be emphasized that each of these circumstances requires the landlord to serve a written notice on the tenant to vacate (or to cure the rent or nuisance situation), *prior* to filing suit, other than the expiration of a fixed lease term. If the tenant doesn't vacate or cure the situation thereafter, then the landlord must file an unlawful detainer action and serve it upon the tenant, and then proceed to a summary trial hearing to obtain a court order awarding them possession, along with a money judgment for any past due rent.

It should also be noted that the unlawful detainer procedure is not limited to the usual fixed term lease or month to month rental of an apartment or private residence, but is also required where the landlord is a lender who has foreclosed on a property and the prior owner still occupies same, or where a private homeowner has let out a room in their home to a tenant.

While many landlords might view the law on this subject to be on the side of the tenant, there is an old saying that "possession is 9/10th of the law", and what is of concern under the law is the self-help landlord literally throwing people into the street or exposing the tenant or their property to potential injury or harm, by not following the unlawful detainer procedure.

Unlawful detainer proceedings can be had in a relatively short period of time, and are relatively inexpensive, even if an attorney has to be retained to handle the matter. It is unquestionably less expensive than the landlord taking matters into their own hands and then finding themselves on the wrong end of a wrongful eviction lawsuit.

LEGAL LINKS

Attorneys: Don't retain an attorney unless you know something about his/her background and standing with the State Bar of California. The State Bar's website can let you know the status of any attorney's license to practice law, whether they have a disciplinary record, their undergraduate background, their address, the length of time they have been in practice, and their undergraduate education and law school. Go to: http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

Contractors: Don't retain a contractor unless you can verify that they are licensed, bonded, and have workers' compensation insurance. The Contractor's State License Board (CSLB) has this information available at its website. Go to: <http://www2.cslb.ca.gov/OnlineServices/CheckLicense/LicenseRequest.asp>

Corporations: If you are contemplating a major business transaction with a business representing itself to be a corporation or a limited liability corporation, you ought to check on their corporate status first. An unlicensed corporation or a corporation that has its license suspended cannot legally do business, and if they are unlicensed but doing business anyway then one should exercise caution before putting money and time into a business which may be a sham and leave you without legal redress. This information is usually on-line with the secretary of state for any given state. In California, go to: <http://kepler.sos.ca.gov/list.html>

Orange County Superior Court (OCSC): OCSC maintains a user friendly website, where you can search their civil and criminal case indices, by name or case number, to see the docket listing on any given case in order to review its status in the court system. This is a great free method of conducting a background search on any individual or business, or for following the court status on a case that may be of interest to you. Although you can't view or download the actual court documents on file at this point in time, obtaining copies of court documents is relatively inexpensive if you are willing to go to the courthouse and pay for copies, and it is eventually expected that the website will be updated so that you can actually access and download court documents on-line. Go to: <http://www.occourts.org/>