



Seattle Police Department Training Digest

TD14-00013

Landlord/Tenant Complaints

November 5th, 2014

Formerly P&T 016

Last updated: 11/5/2007 by the Legal Advisor

Department Policy

Landlord-tenant disputes often include criminal offenses as well as civil violations. Civil remedies usually require several months, depriving tenants of utilities, clothing, and housing. Early intervention by law enforcement helps bridge the gap between civil and criminal law, is highly effective in stopping illegal evictions, and prevents disputes from escalating into criminal offenses. Therefore, a working knowledge of the relevant criminal and civil laws is essential to officers in settling these disputes. The primary objective of responding officers is to stop or prevent criminal activity, and to suggest appropriate alternative solutions. Officers shall complete a General Offense Report for landlord-tenant incidents involving possible criminal behavior.

Definitions

- "Dwelling Unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.
- "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.
- "Rental Agreement" means all agreements that establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a dwelling unit.
- "Tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

Establishment of Tenacy

A threshold determination that the officer must make is whether the occupant has established a possessory right to the premises (tenancy). The rights of the parties and



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the appropriate law enforcement response will usually turn on this initial question. A tenancy is present when the owner or his agent grants the right of exclusive control or possession of certain premises to another person for a period of time. Conversely, a guest, visitor or trespasser is an occupant without any possessory rights. A guest or visitor has only a revocable right to temporarily use the premises and are guilty of criminal trespass if they refuse to leave after the request of the tenant. This would normally be the case in a short-term situation, and/or if a predetermined (move out) date had been agreed upon. When a person occupies a space for an extended period of time without being obligated to pay rent, they become a "tenant at will" and can only be removed under an eviction action. *RCW 7.28

The name of each tenant does not have to be on the rental agreement. In disputes between roommates or co-tenants, the complaining tenant must use the legal process to evict the other tenant if he or she refuses to leave.

In determining whether the occupant is a tenant, officers should look for the following kinds of evidence: a rental agreement (written or verbal); rent receipts; utility or phone bills in occupant's name. Other items may tend to support a claim of tenancy as opposed to a more transitory stay: larger items of furniture; other official mail; personal ID bearing the occupant's current address, (bear in mind that the Postal Service will deliver to an address regardless of who the legitimate occupant is and that it is not currently necessary to prove residence in order to obtain ID). These supporting items should not become the sole arbiters in deciding whether or not there is a tenancy. Talk to neighbors to see if they can corroborate the claim. If still unsure, the officer should assume that there is a tenancy and advise accordingly.

Transient Accommodations

A key factor in resolving landlord-tenant disputes in transient accommodations is to determine whether the tenant is truly a "tenant" or is merely a "guest." Although there is no single determining factor, factors to be considered are whether the person makes his home in the building or is merely staying there temporarily and has a home elsewhere, and whether he pays his rent by the day or by the week or month. Some occupants may be tenants, whereas others are guests.

Motels, Hotels, Inns, & Rooming/Boarding Houses

A person paying for lodging on a weekly basis may be a tenant in one case (i.e., a person who lives at an inexpensive motel), but a guest in another case (i.e., a stay for a



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week at a ski resort). Older motels and rooming houses are often rented to low-income people as long-term residences. Such rental circumstances are tenancies.

RCW 60.64.010

Guests (but not tenants) in transient accommodations may be locked out for non-payment of room charges and may have their property held, without court order, until the room charges are paid. However, proprietors may be liable for any injuries caused by unnecessary force or violence.

Non-payment of room charges is a gross misdemeanor if under \$75.00 and a felony if \$75.00 or more.

Emergency Shelters

A difficult area concerns the status and rights of people living in emergency shelters. Homeless people in shelters usually pay no rent, yet treat the shelter as home, sometimes residing for extended periods. These people often have substance abuse or mental problems and may be violent. Officers should first stop any violent or threatening behavior regardless of whether the person is a tenant or guest. In shelters with common sleeping/dining areas, an arrest may be necessary.

Factors to consider in determining tenancy status are:

1. Did the shelter provider and occupant intend the occupant to establish short term or long-term residence in the facility?
2. Does the provider or the occupant have the primary "exercise of domain" over the person's living quarters?

Example A: An easy case scenario would be an occupant of a few days or one week. Such a person is a guest and may be locked out or arrested for criminal trespass if they refuse to leave.

Example B: Occupants in transitional housing possessing a rental agreement and an expectation to stay six weeks or longer are tenants and cannot be locked out or arrested for criminal trespass absent legal process.

Civil Eviction Process

A tenant cannot be physically removed from the premises for failure to pay rent or abide by the terms of the rental agreement, or have utilities shut off or property seized, until the following legal process is completed.



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1. The tenant receives a written eviction notice.
2. If the tenant does not comply with the notice (i.e., pay rent, or vacate), the landlord may bring a lawsuit for "unlawful detainer" to evict the tenant.
3. The landlord has the right to a summary determination of possession of the premises at a hearing six days after filing the lawsuit.
4. The tenant has a right to answer and appear in court to state his or her case.
5. The court may require a tenant to pay any rent owing into the registry of the court while the suit is pending.
6. If the court finds in favor of the landlord, the court will issue a writ of restitution, which directs the sheriff to remove the tenant within 3 to 10 days.
7. The losing side may be ordered to pay damages, court costs and attorney's fees. A judgment is enforceable for 10 years.

The above process is the exclusive legal remedy for a landlord to obtain possession of the premises, absent abandonment or a voluntary vacating by the tenant. Landlord initiated "self-help" eviction measures are illegal and prohibited. Rental agreements that authorize property seizures or evictions without legal process are void and unenforceable.

Note: When a tenant resists legal eviction, evictions are accomplished by the King County Sheriff, even inside the City of Seattle.

Abandonment

In a true abandonment, the landlord may, without a court order, enter the premises, remove and store the property, and after proper notice, sell it. However, to abandon the tenancy, the tenant must display by act or omission that he or she intends an absolute relinquishment of the premises and does not intend to return.

Prolonged absence of the tenant, even when rent is owed, is not alone sufficient evidence to prove abandonment. Likewise, an intention to not occupy the premises does not necessarily mean they have been abandoned. For an abandonment, there must be an intention to surrender the premises and the right to the tenancy. The fact that the tenant has left property is evidence that the tenant has probably not abandoned the property.



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Controlling Criminal Statutes

SMC 22.206.180 Harassing or retaliating against tenant.

- I. It is unlawful for any owner to interfere with a tenant's peaceable possession of the building or premises or by committing any of the following acts:
 - A. Changing or tampering with any lock or locks on a door or doors used by the tenant; or
 - B. Removing any door, window, fuse box, or other equipment, fixtures, or furniture; or
 - C. Requesting, causing or allowing any gas, electricity, water or other utility service supplied by the owner to be discontinued; or
 - D. Removing or excluding a tenant from the premises except pursuant to legal process; or
 - E. Evicting, increasing rent, or otherwise imposing, threatening or attempting any punitive measure against a tenant for the reason that the tenant has in good faith reported violations of this Code to the Department of Construction and Land Use, or otherwise exercised or attempted to exercise any legal rights granted tenants by law and arising out of the tenant's occupancy of the building;
 - F. Entering a tenant's housing unit or premises except:
 1. At reasonable times with the tenant's consent, after giving the tenant at least two (2) days' notice of intent to enter, for the purpose of inspecting the premises, making necessary or agreed repairs, alterations or improvements, supplying necessary or agreed services, or exhibiting the dwelling unit to prospective or actual purchasers, mortgages, tenants, workers or contractors; or
 2. In an emergency.(Ord. 1 13545 § 5(part), 1987.)

SMC 22.206.190 Harassing or retaliating against owner.

- I. It is unlawful for any tenant to harass or retaliate against an owner or to interfere with an owner's management and operation of a building or premises by committing any of the following acts:
 - A. Adding or tampering with any lock;



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- B. Removing or otherwise interfering with any supplied equipment, fixtures, furniture or services;
- C. Willfully damaging or causing others to damage the building or premises.

(Ord. 113545 § 5(part), 1987.)

RCW 59.12.230 Forcible entry and detainer-Penalty:

- I. Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed there from pursuant to the order or direction of any court, tribunal or officer shall afterwards return to settle or reside unlawfully upon, or take possession of, such lands or possessions, shall be guilty of a misdemeanor.
□ 1909 c 249 § 306; RRS § 2558. Prior: Code 1881 § 858; 1873 p 195 §66; 1854 p 86 § 60.□

Comment: The "force or violence" prohibited by RCW 59.12.230 requires that the entry or detainer is accompanied by a breach of the peace (or conduct tending to create such a breach) against a person on the premises at the time of entry or detention. Such force or violence is not required when the entry and detainer involve a former tenant who re-takes possession of the premises after an executed court order has granted possession to the landlord.

A landlord may be innocent of forcible entry and detainer, for example, if a lockout or property seizure occurs during the tenant's absence, and yet be guilty of criminal trespass or burglary.

Examples:

- Landlord removes doors or windows while tenant is present and protests.
- Tenant re-takes possession after an executed court order has given possession to the landlord.
- Landlord locks out tenant or seizes personal property and threatens violence if the tenant tries to re-enter premises or regain belongings.

Note: Officers who encounter incidents within the scope of this statute may contact the King County Sheriff's Civil Unit for assistance in verifying eviction status.



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Typical Complaints and Possible Related Charges

The following is a list of some of the potential criminal charges that may be applicable, depending on the particular facts, by category of typical complaints an officer may encounter. This list is included as a guide and is not intended to be exhaustive.

- Lockouts: criminal trespass, harassment, forcible detainer.
- Forcible evictions: criminal trespass, burglary, harassment, unlawful imprisonment, forcible entry and detainer.
- Property: criminal trespass, burglary, theft, malicious mischief, harassment, forcible entry, property destruction, forcible entry.
- Utility shutoffs: criminal trespass, malicious mischief, forcible entry.

Officer Intervention & Investigation Procedures

The Department's response to complaints involving alleged crimes shall not differ from the procedures used in responding to calls involving criminal activity in non landlord-tenant settings. Complaints of criminal activity will be investigated thoroughly and not dismissed as "civil only."

I. Police Officer Intervention and Investigation

A. Upon Arrival:

1. Make legal entry if needed to stop a breach of peace or to talk with the parties.
2. Protect yourself and others from injury.
3. Attempt to stabilize the situation by separating the parties.
4. Obtain emergency medical services if needed.

B. Initial Investigation:

1. Attempt to determine if violations of criminal law have been committed.
2. Interview all parties present.
3. Obtain an interpreter if needed.

C. Intervention:



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1. Explain to both parties which conduct is lawful and suggest alternative solutions:
 - a. Small claims court.
 - b. Referral services.
 - c. Consulting an attorney.
 2. If the perpetrator is unwilling to terminate the offense (e.g., the landlord refuses to unlock the premises), make it clear that he or she may be cited or arrested.
 3. If the tenant's property has been confiscated or removed, inform the landlord that it must be returned. Stand by to preserve the peace while the property is put back in the premises.
 4. If the utilities have been illegally terminated, inform the landlord of the potential \$100 a day penalty and criminal prosecution, and instruct him or her to restore the services.
 5. Give both parties a copy of the Department's Landlord/Tenant Rights and Responsibilities brochure. Reference 'A' below
- D. Valid Criminal Complaints:
1. Give each party a business card with the General Offense Number.
 2. Complete a General Offense Report.
 3. If an arrest is made, follow normal arrest/booking procedures.

REFERENCES

- Residential Landlord -Tenant Act (RCW chapter 59.18).
- Duties of Owners and Tenants (SMC subchapter 22.206)
- Forcible Entry and Detainer - Penalty (RCW 59.12.230)
- Landlord/Tenant Rights and Responsibilities brochure (Seattle Police Department, CSO Section).