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Landlords, Tenants, and Police Civil Liability

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1. Introduction

The relationship between landlords and tenants is often a volatile one, with disputes arising over a wide variety of issues, including money, the condition of the premises (and whose fault any defects are), the presence of pets (authorized or not), landlord entry into the rented premises, noise, the number of persons living in the apartment, lead paint, safety hazards, crime and drug or gang activity on and near the premises, and of course, eviction and tenant lockouts, both legal and illegal. On occasion, police officers are summoned to a rented premises by either a landlord (or their agent) or a tenant (or both). Sometimes the officers have arrived on the scene in response to a complaint by a third person about a noisy or violent disturbance between landlord and tenant.

Disputes arising from the landlord-tenant relationship literally "hit home," and can get emotional, with the resolution sometimes determining whether the tenant will continue to have a place to live or access to their possessions, or whether the landlord will receive the rent which is the basis of his or her livelihood and the ability to pay for and maintain the building. Frequently, officers are asked by one of the parties to take action, sometimes without knowledge of the origin of the dispute or some of the essential facts.

This article takes a brief look at some of the cases in which police officers or agencies faced possible civil liability for their response to such disputes. It does not pretend to summarize landlord-tenant law, which may vary vastly between jurisdictions in its particulars. At the conclusion, there are a few useful resources listed.

2. Landlords, Tenants, and Police Civil Liability

The case of <u>Soldal v. Cook County</u>, <u>Illinois</u>, #91-6516, 506 U.S. 56 (1992) involved a family that lived in a mobile home that they owned, which stood on rented land in a trailer park. While formal eviction proceedings were pending, the owners of the land and their agent proceeded to forcibly evict the tenants.

At the request of the landlord's agent, deputies from the Sheriff's Department were there at the eviction. The family claimed that the deputies knew that the eviction was illegal and that there was no eviction order from a court, but that they refused to take their complaint for criminal trespass or interfere with the eviction process. They allegedly told the family that it was "between the landlord and the tenant."

A state court judge in the pending eviction case ruled that the eviction was improper, and the family's trailer, which was damaged during the incident, was taken back to the park. The family filed a federal civil rights lawsuit, claiming that the property owner and its agent conspired with the deputies to carry out the unreasonable seizure and removal of their mobile home, in violation of their Fourth and Fourteenth Amendment rights.

A unanimous U.S. Supreme Court ruled that the seizure and removal of the mobile home "implicated" the family's Fourth Amendment rights. A seizure of property, for Fourth Amendment purposes, the Court noted, happens when there is any "meaningful interference" with the owner's "possessory interests in that property." Property is protected against such seizures being carried out unreasonably even when no privacy or liberty is involved, and even when no "search" has been carried out.

The officers' presence during the illegal eviction together with their inaction, could, therefore, violate Fourth Amendment rights and lead to civil liability. Repossessions or attachments of property, if they involve entering a home, intruding on the resident's privacy, or interfering with their liberty, also "implicate" the Fourth Amendment. The Court rejected the argument that its ruling would lead to a "new wave of litigation" in federal courts.

Many such seizures, the Court reasoned, would be found constitutional under a "reasonableness" standard. The Court also stated that "police will not often choose to further an enterprise knowing that it is contrary to state law."

In a later case in which officers assisted a landlord in a dispute with a tenant, the court found that they were not entitled to qualified immunity on a false arrest claim. In Radvansky v. Olmsted Falls, #03-3798, 395 F.3d 291 (6th Cir. 2005), police arrested a man

for burglary of a home. The arrestee had been living as a tenant at that residence, but had a dispute with his landlord. The landlord had previously called the police department after the tenant left for Florida for a period of time. He told police that the tenant owed him \$100 in rent and that the tenant still had keys. The landlord was advised that he could simply change the locks and lock the tenant out, which was incorrect under state law, which required the use of legal process to evict a tenant.

When the tenant returned, and found a note indicating that the locks had been changed, he broke in for the purpose of retrieving some of his property, including his guns. Officers placed him under arrest, despite his possession of the note, which allegedly made it clear that he was a tenant at the house and had been locked out by the landlord over a rent dispute. The officers found his driver's license, which gave the house as his residence, and one of the officers ran his social security number and a dispatcher responded with the house's address as the arrestee's residence. The officers allegedly refused to look at the landlord's note, which the arrestee claimed made it clear that he was a renter at the home.

The burglary charges were later dropped after the arrestee entered an agreement to pay the landlord \$400 in restitution. He then sued the officers for violation of civil rights and false arrest.

A federal appeals court found that there was a genuine dispute of material fact that would permit a reasonable jury to find that the officers lacked probable cause to arrest the plaintiff for burglary. Under the terms of a rental agreement, a tenant is entitled to entry and use of the premises, and cannot be a trespasser, a necessary element of burglary.

State law expressly forbids "self-help" evictions of tenants by landlords. His tenancy was therefore only ended if he had vacated the apartment of his own accord, abandoning the tenancy. In this case, the evidence showed, viewed in the most favorable light, that the plaintiff had paid most of the rent for that month, and was using the residence at that time to house his personal possessions, clothing and furniture, making him a current tenant with the right to enter and occupy the premises, who could not, therefore, be found liable for either criminal trespass or burglary.

In this case, a reasonable jury could find that the officers relied solely on the landlord's representations concerning the plaintiff and his status as a "burglar," and ignored substantial exculpatory evidence, including their own prior knowledge of the existence of a dispute between the tenant and landlord, and his valid driver's license giving the house as his address.

Following a trial, however, a jury resolved the factual disputes in favor of the officers, determining that they had probable cause for the arrest after all. The appeals court upheld

that result on further appeal. <u>Radvansky v. City of Olmsted Falls</u>, #06-3357, 496 F.3rd 609 (6th Cir. 2007). While the officers ultimately prevailed, it was not until after a complicated litigation process.

There may be emergency circumstances where the law authorizes the removal of a tenant from premises without the usual court-based eviction process. In one such case, the court ruled that city code enforcement officers were not liable for federal civil rights violations for evicting two elderly residents from their home without a pre-eviction hearing. The officers had the legal authority to issue emergency vacate orders, and had grounds to do so in light of the residents keeping 33 dogs and four birds in the two bedroom house, which was allegedly in an unsanitary condition. Sell v. City of Columbus, #03-4654, 127 Fed. Appx. 754 (Unpub. 6th Cir. 2005).

Other surrounding circumstances may also have an impact on the reasonableness of an officer's actions in a landlord-tenant dispute. In White v. City of Markham, #01-2034, 310 F.3d 989 (7th Cir. 2002), the court reasoned that even if an officer "seized" a tenant in ordering him to vacate his home upon threat of arrest after a landlord told the officer that he wanted the individual removed, the seizure was reasonable under circumstances where the tenant had no written lease and did not pay rent, the house was under construction at the time, and the level of the dispute between the landlord and tenant was serious enough that the tenant had called the police. Even if the officer acted unreasonably, however, he was entitled to qualified immunity.

What about when the shoe is on the other foot, i.e., the landlord seeks but is refused an officer's assistance? In <u>Trask v. City of Chicago</u>, #06-4237, 2007 U.S. App. Lexis 21051 (Unpub. 7th Cir.), a federal appeals court ruled that a landlord's rights were not violated by the alleged refusal of police officers to enforce a court order she obtained to oust a squatter from her property. The landlord did not show that she was legally entitled to police assistance in enforcing an eviction order issued by the courts, and she could not show a violation of equal protection, as there was no claim that the officers refused to carry out the eviction on the basis of her race or gender.

Sometimes particular persons may not have the type of possessory interest in a premises to qualify as tenants as defined by state law. In Thomas v. Cohen, #05-5072, 453 F. 3rd 657 (6th Cir. 2006), the court found that three homeless women, evicted from a homeless shelter by police without legal process at the request of the shelter's director were not "tenants" under Kentucky law. They had no property interest in the premises, and, therefore, the officers' actions did not violate their due process rights. This was the case even though the women asserted that they paid rent, since a state statute governing tenants' rights expressly excluded residence at an institution, public or private, if incidental to

detention or the provision of medical, geriatric, educational counseling, religious, or similar service.

The shelter's programs were designed to help homeless women become financially independent members of mainstream society, the appeals court stated, and the plaintiffs resided there only as a result of their participation in the shelter's programs. The environment at the shelter and its location in a residential neighborhood did not diminish the "primary social services character" of the shelter. The shelter did not provide housing to the general public who would not participate in, or benefit from, its primary social service program, the court concluded.

The fact that a landlord-tenant dispute may be present does not alter the applicability of general criminal law. Police can proceed to make arrests for criminal acts of violence, theft of property, trespass, and other crimes, given the proper circumstances, and based, at times, simply on a complaint from a purported victim, including a landlord or tenant. In Fielding v. Tollaksen, #06-5393, 2007 U.S. App. Lexis 28939 (Unpub. 2nd Cir.), police officers who arrested a tenant on the basis of signed complaints from landlords had probable cause for the arrest, and were properly granted qualified immunity. Prosecutors in the case were entitled to absolute prosecutorial immunity, and the landlords, who were private persons, did not act under color of state law, so they could not be defendants in a federal civil rights lawsuit.

Similarly, on search and seizure issues involving law enforcement access to a premises, the power to consent or object depends on who has privacy rights. In <u>Vincennes v.</u> <u>Emmons</u>, #42S02-0504-CV-131, 817 N.E. 2nd 155 (Ind. 2006), the court stated that a city's ordinance authorizing warrantless inspections of rental units unless tenants object did not violate the constitutional rights of landlords, as landlords had no reasonable expectation of privacy in units rented to either residential or commercial tenants. In instances where the landlords are themselves the tenants, the ordinance would be interpreted as also requiring their consent or a warrant.

In <u>Harvey v. Plains Township</u>, #04-1148, 421 F. 3rd 185 (3d Cir. 2005), the court held that a police officer who ordered a landlord to open a door to an apartment so that a woman's ex-boyfriend could retrieve his possessions was not entitled to qualified immunity on a woman's claim that he violated her Fourth Amendment rights by becoming actively involved in an ex parte private repossession.

In this case, after a woman's relationship with her boyfriend deteriorated, she obtained an order of protection granting her exclusive right of possession of their apartment. Pursuant to that order, the boyfriend was required to immediately retrieve all of his belongings. The trial court denied a request that he be allowed to return to pick up furnishings and other items that would be difficult to remove during his first trip.

The man's attorney sent a letter to the woman informing her that he would go to the apartment at a particular time to retrieve his remaining belongings. A copy of the letter was sent to the woman's landlord and to the local police department. A police officer was sent to the apartment at the time designated in the letter in order to "keep the peace" at the repossession, and the landlord was also present at that time. The woman, who claimed never to have received the letter, was not there.

The officer allegedly directed the landlord to unlock the door so that the man could retrieve his property. After this was done, and when the woman returned, she found the apartment in "disarray," and claimed that many items were missing, including some not included in the ex-boyfriend's list of his property.

On appeal, the federal appeals court reversed the summary judgment in favor of the officer, holding that a police officer actively involved in an ex parte private repossession of property may be engaged in state action in violation of the Fourth Amendment. It agreed, however, that the landlord, who opened the door at the direction of the officer, was not engaged in state action, and upheld the result as to the remaining defendants.

The appeals court rejected the officer's argument that his conduct was not state action and that he was "merely" present at a private repossession. There was evidence, including the testimony of the landlord, that the officer directed the opening of the door, and that she never would have opened it without the officer's instructions. If this was true, the officer played a "principal role" in the entry and seizure of the property, and a reasonable jury could conclude that he used his public authority to help the ex-boyfriend gain entry and take the property from the apartment. The record supported a finding that he was not a "mere spectator."

Additionally, the law was "unquestionably clear" at the date of the incident, September 1999, that the Fourth Amendment prohibited unreasonable searches and seizures of a person's home by the police without a warrant. The court also found that if the officer concluded that the woman had consented to the repossession merely on the basis of a copy of the letter, to which the woman did not respond (and which she claimed she never got) that was not reasonable. "A reasonable officer at least would have refused to assist with opening the door until he was satisfied that consent was given."

In some instances, cities have attempted to make use of the landlord-tenant relationship for crime control and prevention purposes. In one case, however, the court found that the city had gone too far. In <u>Cook v. City of Buena Park</u>, #G031326, 2005 Cal. App. Lexis 105

(Cal. 4th App. Dist. January 28, 2005), the court ruled that a city's ordinance requiring a landlord to institute eviction proceedings against a tenant when the chief of police has a suspicion that the tenant engaged in or permitted illegal drug or gang activity was an unconstitutional violation of procedural due process rights.

The case involved a landlord who filed a lawsuit challenging a city ordinance which requires the commencement of eviction proceedings against "all occupants" of a rental unit when the chief of police suspects that the tenant has engaged in or permitted illegal drug activity, gang-related crime, or a drug-related nuisance in or near the rented property.

The court found that the ordinance exposed landlords to a "substantial risk" of the erroneous deprivation of property rights through compelled eviction litigation, unwarranted fines and penalties, and counter-suits by tenants, violating procedural due process.

The court found that the ordinance's procedures were "constitutionally infirm" in three ways. First, in that the notice requiring the landlord to institute the eviction proceedings provided landlords with insufficient information to successfully prosecute such a case. Second, the ten-day period stated within which the landlord is required to begin the eviction proceedings was found to be too short. And finally, the ordinance improperly required the landlord to prevail in the eviction action or else face fines, penalties, a lien on his or her property, or even punishment for a misdemeanor offense.

The plaintiff landlord had rented an apartment to an individual, and after three years of tenancy, city police cited the tenant's roommate for possession of drug paraphernalia. The roommate subsequently participated in a drug treatment diversion program under the terms of which his plea of guilty is not considered a criminal conviction "for any purpose." Following that, the landlord received a letter from the city's police chief giving him ten business days to institute eviction proceedings against the tenant, and to "diligently prosecute" the eviction, as required by the city's ordinance, the "Narcotics and Gang-Related Crime Eviction Program."

The landlord appealed the notice to the city manager within ten days of receiving it, as provided by the notice. The city manager denied the landlord's appeal, and the landlord filed suit in state court challenging the constitutionality of the ordinance.

In upholding the injunction against the enforcement of the ordinance, the appeals court acknowledged both the landlord's important property interests in collecting rent, and the city's interest in combating criminal activity, especially drug and gang related crimes.

But in this case, the court found, the notices required to be sent did not contain enough specific information to aid the landlord in the eviction action, but instead only the alleged

offender's identity, apartment number, and the mere dates and times of the alleged criminal activity or arrest.

The court stated that it was not suggesting that due process required that the city's allegation of illegal conduct had to be documented by the observations of a law enforcement officer, but "rather, the documented observations of any witness willing to testify, such as a neighbor or an informant, would supply probable cause for the landlord's unlawful detainer action and give the landlord a chance at success in the action."

The ten-day time period in which to initiate the eviction proceeding was "not nearly enough time" for the landlord to "bolster his evidence" or otherwise investigate the matter and develop his case.

Further, under the ordinance, if the landlord fails to prevail in the eviction action, even if this is the result of "inadequate documentation" provided by the city, the penalties under the ordinance included fines of up to \$500, misdemeanor punishment for a fourth violation, and a lien against the property and a civil penalty if court action is required to enforce the ordinance.

The court rejected the city's defense of its procedures, which was based on the fact that the landlord is allowed to appeal to the city manager the police chief's determination that the ordinance applies. "But the ordinance provides no guidance to the city manager regarding the adequacy of the police chief's notice and, in any event, the landlord who does not succeed in a court of law would take little comfort from the city manager's contrary assessment of the merits."

A concurring opinion by one judge on the three judge panel agreed that the ordinance violated procedural due process but he expressed his misgivings that the ordinance might also suffer from "other, more fundamental" constitutional problems, including "its sweeping requirement that all occupants of the premises must be evicted for the sins of one, its disparate treatment of property owners and renters (our record reflects no nuisance abatement efforts against the owners of property for similar crimes), and the Damoclean substantive due process issue which hangs over this statutory scheme."

Other cases of interest include:

Grimm v. Sweeney, #01-431, 249 F. Supp. 2d 571 (E.D. Pa. 2003), in which a fire chief was held entitled to qualified immunity for issuing a citation against the owner of rental properties for refusal to consent to a warrantless inspection of tenants' apartments. The alleged right of the owner, under the Fourth Amendment, to refuse to consent to the warrantless inspection intended to protect the tenants' safety, was not clearly established,

so that a reasonable building or fire code enforcement official could have believed that the landlord had no right to refuse entry, so that he could be cited for obstructing access.

- * Loudes v. City of Minneapolis, Minn., #00-1210, 233 F.3d 1109 (8th Cir. 2000), finding that an officer was not liable for the detention of a landlord, which allegedly caused his collapse because he needed access to his oxygen and medical equipment to prevent reoccurrence of a recent stroke, when the officer had no information concerning the landlord's medical condition when she detained him while attempting to resolve a landlord-tenant dispute over tenant property.
- * Ryan v. Mary Immaculate Queen, #98-3849, 188 F.3d 857 (7th Cir. 1999), ruling that apartment tenants had standing to challenge an allegedly unconstitutional search of a rented premises when their landlord, who wanted to evict the tenants, did not have a valid order granting him exclusive possession at the time deputy sheriffs allegedly engaged in a search.
- * <u>Kalmas v. Wagner</u>, #64206-1, 943 P.2d 1369 (Wash. 1997), stating that a deputy sheriff's brief, invited entry into the tenants' residence to assist a landlord's agent in showing the premises to potential new tenant, even if it constituted a search, was reasonable, based on the deputy's "community caretaking" function. The deputy acted with a motive to keep the peace in a dispute between tenant and landlord.
- * Osipova v. Dinkins, #92 Civ. 8959, 907 F. Supp. 94 (S.D.N.Y. 1995), concluding that a police officer was entitled to qualified immunity for a warrantless entry into an apartment when the landlord told him that water was leaking into the premises below, interfering with the provision of heat and hot water for whole building.
- * <u>Craig v. Krzeminski</u>, #88-159764 F. Supp. 248 (D. Conn. 1991), in which a mere denial by a landlord that he had harassed a tenant did not eliminate the officer's probable cause to arrest him based on the tenant's complaint.

In summary, some points to remember:

- Do not carry out or aid in carrying out an eviction unless there is a verifiable court order. Doing so without an order may be a Fourth Amendment violation. Even when a lease states that a landlord has the right to "retake" the premises under certain conditions, almost every jurisdiction requires legal process and an eviction order.
- There are some particular rules that apply to <u>Section 8</u> federally subsidized housing concerning evictions, drug activities in the rented premises, etc. Before taking any action, you may want to check with the local agency administering the program concerning how these apply.

- When officers respond to a complaint about the presence of a trespasser, they should inquire as to the reason the person is there. The answer to that question may provide probable grounds for an arrest. Many laws concerning trespass, however, require that, prior to an arrest, a person is asked to leave and is given an opportunity to comply. Make sure officers are familiar with state statutes and/or local ordinances bearing on this question.
- It is not the job of an officer to resolve landlord tenant disputes. Whether the rent was fully paid, or whether the landlord broke a promise to paint the living room, are civil disputes, and the parties can be reminded that there are courts to resolve those disputes. Officers can, of course, stand by while landlord-tenant disputes are going on, but should not take part on either side. They may, of course, take appropriate action if an offense occurs.
- In emergency situations, such as indications of a person in danger or distress, officers can make warrantless entry into premises without consent,

3. Resources

The following are some online resources related to the topic of this article. Inclusion does not necessarily imply agreement with the views expressed.

- City of Chicago Residential Landlord and Tenant Ordinance.
- City of Philadelphia, Pa, Police Department <u>Citizen Information Bulletin on Landlord-Tenant Disputes</u>.
- New York Police Department Patrol Guide Procedure No. 117-11, <u>Illegal Evictions</u>.
- <u>Website</u> of the International Crime Free Association, an organization working to keep illegal activity off rental property.
- Police Response in Illegal Eviction and Other Tenant/Landlord Situations.
 Excerpted From:
 Vermont State Police Training Bulletin 93-1.
- Basalt, Colorado Police Department <u>page on landlord-tenant disputes</u>.
- Suffolk County, N.Y. Police Order Number 88-19 Willful Eviction Violations.
- <u>Description</u> of Hollywood, Florida Police Department's Landlord Workshop.

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