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ILLEGAL SELF- HELP EVICTIONS

A landlord who wishes to evict a tenant may not take the law into his or her own hands and use what are euphemistically called “self-help eviction” procedures. Under California landlord/tenant law, landlords must follow a strict legal process to evict a tenant which includes giving proper notice and, in Berkeley, having “just cause” to terminate a tenancy. A landlord who unlawfully evicts a tenant by pursuing or engaging in one of the actions laid out below, is liable in a civil action suit for actual and punitive damages.

LOCK-OUTS AND UTILITY CUT-OFFS

When undertaken by a landlord with the intent to terminate occupancy of a rental unit, the following actions are illegal under California Civil Code 789.3:

1. Cutting off or interrupting a tenant’s utility service: the utilities covered by this statute include, but are not limited to water, heat, light, electricity, telephone, gas, elevators, and refrigeration, regardless of whether the landlord or tenant pays for the service, and regardless of whether the landlord cuts off the utility directly or indirectly (e.g. by not paying the utility bill).
2. Preventing a tenant from gaining reasonable access to his/her rental unit by changing the locks or using a bootlock, or by any other similar method or device. (Tenants who live in residential hotels are also protected against lockouts: California Code of Civil Procedure Section 1159; California Civil Code Section 1940).
3. Removing outside doors or windows on a tenant’s unit.
4. Removing a tenant’s personal property or furnishings without the tenant’s prior written consent, except after an abandonment of a unit by a tenant.

The acts in (3) and (4) above, are crimes so a tenant may also call the police or the district attorney’s office.

REMEDIES

Actual damages for which a landlord is liable in a civil damages suit could include compensation for food which has spoiled in the refrigerator after the electricity was turned off or hotel expenses incurred by a tenant when he/she was forced to leave a unit because of a utility cut-off/lockout.

A landlord may also be liable for an amount not to exceed \$100 for each day or partial day that the landlord remains in violation of Civil Code 789.3. However, in no event shall less than \$250 be awarded to the tenant for each separate cause of action.

In addition, a tenant may seek injunctive relief to prevent continuing or further violation of the statute while a damages suit is pending. The statute also authorizes an award of a "reasonable attorney's fee" if the tenant wins the suit.

FORCIBLE ENTRY AND FORCIBLE DETAINER

Landlords are also prohibited, under California Civil Procedure Section 1159 (Forcible Entry), from enacting the following self-help procedures:

1. breaking open doors, padlocks, windows, or other parts of a unit, or bringing about any kind of violence or terror to induce a tenant to vacate the premises; or
2. after peaceably entering the tenant's unit, turn out the tenant by force or menacing conduct.

Using a pass key to enter a unit is considered "forcible entry" and is also prohibited under California Code of Civil Procedure Section 1159.

CCP Section 1160 (Forcible Detainer) similarly prohibits the unlawful holding possession of a rental unit at night or while the tenant is absent, and refusing to surrender for five days after a demand to do so.

REMEDIES

In the event of a forcible entry or a forcible detainer, a summary court proceeding for possession of the rental unit is available to the tenant. The tenant may also seek actual and punitive damages, if malice is alleged and proven.

CONCLUSION

The only legal action a landlord may take if he/she desires to evict a tenant is to go to court and bring an action called an "unlawful detainer". The only person who can forcibly remove a tenant from his or her rental unit is the sheriff after a court judgement in the landlord's favor.

Actual Text of Civil Code 789.3

(a) A landlord shall not with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his residence willfully cause, directly or indirectly, the interruption or termination of any utility service furnished the tenant, including, but not limited to, water, heat, light, electricity, gas, telephone, elevator, or refrigeration, whether or not the utility service is under the control of the landlord.

(b) In addition, a landlord shall not, with intent to terminate the occupancy under any lease or other tenancy or estate at will, however created, of property used by a tenant as his or her residence, willfully:

(1) Prevent the tenant from gaining reasonable access to the property by changing the locks or using a bootlock or by any other similar method or device;

(2) Remove outside doors or windows; or

(3) Remove from the premises the tenant's personal property, the furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Chapter 5 (commencing with Section 1980) of Title 5 of Part 4 of Division 3.

Nothing in this subdivision shall be construed to prevent the lawful eviction of a tenant by appropriate legal authorities, nor shall anything in this subdivision apply to occupancies defined by subdivision (b) of Section 1940.

(c) Any landlord who violates this section shall be liable to the tenant in a **civil** action for all of the following:

(1) Actual damages of the tenant.

(2) An amount not to exceed one hundred dollars (\$100) for each day or part thereof the landlord remains in violation of this section. In determining the amount of such award, the court shall consider proof of such matters as justice may require; however, in no event shall less than two hundred fifty dollars (\$250) be awarded for each separate cause of action. Subsequent or repeated violations, which are not committed contemporaneously with the initial violation, shall be treated as separate causes of action and shall be subject to a separate award of damages.

(d) In any action under subdivision (c) the court shall award reasonable attorney's fees to the prevailing party. In any such action the tenant may seek appropriate injunctive relief to prevent continuing or further violation of the provisions of this section during the pendency of the action. The remedy provided by this section is not exclusive and shall not preclude the tenant from pursuing any other remedy which the tenant may have under any other provision of law.