

EVICTION OF TENANTS AND GUESTS: WHEN POLICE ACTION MAY BE TAKEN

Police officers frequently are called to disturbances arising out of landlord and tenant disputes. Landlords usually take a strong position regarding their legal rights in these disputes, and may often demand that the responding officers take some action, usually eviction of the tenant. It is important that officers faced with these situations have a general knowledge of what action, if any, officers can take.

The Florida Residential Landlord and Tenant Act governs most of the traditionally recognized rental arrangements for dwellings, such as those for apartments, town homes, duplexes, and single family housing units. 83.40-83.682, Fla. Stat. In tenancy situations covered by the Act, the only means by which a landlord can legally recover possession of the dwelling unit without the consent of the tenant (evict the tenant) is to maintain an action for possession in the county court of the county where the premises is located. 83.59, Fla. Stat. If this action is successful, a writ of possession will be issued to the sheriff, who is authorized to put the landlord in possession after a prescribed notice period. 83.62, Fla. Stat. A lawful eviction can be accomplished only by a law enforcement officer acting pursuant to a civil writ of possession. Any other action by law enforcement that causes the ouster of a tenant, whether it involves physical removal or causing the tenant to leave out of fear of arrest, is likely to be considered wrongful eviction.

There are three categories of residential or sleeping accommodations from which persons may be removed by law enforcement officers after they have been told to leave by the operator of the premises. The first class involves hotels and motels. 509.141, Fla. Stat. The initial determination that a law enforcement officer should make is whether the premises concerned qualify as the type of premises to which the laws authorizing arrest under Florida Statutes 509.141 apply. If a landlord claims that the premises qualify as a public lodging establishment (hotel or motel), the premises must consist of any unit, group of units, dwelling, building or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. 509.013(4)(a), Fla. Stat. This definition of public lodging establishment specifically excludes dormitories, hospitals, nursing homes, sanitariums, or places renting four units or less, unless advertised as regularly rented to guests. Other exclusions apply as well. 509.013(4)(b), Fla. Stat.

If the premises clearly qualifies under the applicable law, a law enforcement officer should next consider the relationship between owner/operator and the person whose arrest and removal is sought. If the guest is in transient occupancy, both parties (the owner/operator and the guest) must intend that the occupancy was to be temporary. 509.013(12), Fla. Stat. There is a rebuttable presumption that a tenancy is a transient occupancy if the dwelling unit occupied by the guest is not the sole residence of the guest.

Conversely, there is a presumption that a guest is not in transient occupancy if the dwelling unit is the sole residence of the guest. For example, even if an establishment qualifies as a public lodging

establishment, if the dwelling unit is the sole residence of the guest, as evidenced by lack of a permanent address elsewhere, receipt of mail at the address of the dwelling unit, or identification such as a driver license reflecting the address of the dwelling unit, the guest is not in transient occupancy, and the provisions authorizing the arrest and removal of undesirable guests from such establishments do not apply. Such facts indicate a landlord/tenant situation, which must be resolved with a civil action for eviction.

When the tenancy of the guest meets the transience requirements, an arrest can be made for refusing to vacate the premises after properly being directed to do so by the owner. There must be probable cause that the premises involved and the particular guests status both qualify under the applicable provisions, and that the guest refused to depart after being notified by the owner/operator. If an officer cannot determine and articulate facts that establish that all of the foregoing factors are satisfied, no probable cause for an arrest pursuant to Florida Statutes [509.141](#) exists.

The second type of living arrangement from where law enforcement officers may remove persons are residency facilities, whether public or private, when the occupancy is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services. 83.42(1), Fla. Stat. When making an arrest, the appropriate charge at such locations is [810.08](#), Trespass After Warning. If the situation is resolved with no arrest (*i.e.*, the person leaves the premises after the officer gives a warning), a police report should still be completed. The report should not be titled Eviction.

Recreational vehicle parks are the third and final type of residential or sleeping accommodations from which persons may be removed by law enforcement officers. 513.13, Fla. Stat. For a premises to qualify as a recreational vehicle park, it must be set aside and offered for the parking of five or more recreational vehicles or tents. 513.01(10), Fla. Stat. If the premises qualifies, a similar analysis to that described above must be conducted to determine whether an arrest is authorized under Florida Statutes 513.13.

Remember, the point at which a guest ceases to be a transient visitor and becomes a resident, requiring the management to utilize the eviction process, is not clearly defined. Therefore, a careful examination of the particular lodging establishment and the living arrangement in question should be made to determine whether any action should be taken by law enforcement or whether the situation must be handled in civil court with an action for eviction. Before taking action, be sure that enough articulable facts exist to justify a probable cause arrest. It may be advisable, instead, to write a police report and advise the complainant to ask the State Attorneys Office to file the case rather than to risk a bad arrest.

Law enforcement officers are also encouraged to consult a Legal Advisor if in doubt as to whether an arrest is appropriate since the specific facts in each situation can result in a complicated analysis. Officers must be aware that potential liability exists when an arrest is made in what should be a civil matter governed by the Florida Residential Landlord and Tenant Act.