

Daytona Beach Police Department



LEGAL BULLETIN 06-01

TO: All Sworn Personnel

FROM: Greg McDole, Police Legal Advisor

SUBJECT: **Landlord/Tenant Issues:** Refresher

DATE: January 11, 2006

Only one-third of dwelling units in the City are owner-occupied. As a result, the Police Department faces, on a daily basis, problems with ejections and evictions.

In a nutshell, police may assist in an “ejection” of a transient guest. Daytona Beach police officers may not “evict” a tenant. Because the eviction process can be lengthy and expensive, landlords sometimes call DBPD to circumvent their legal obligation to “evict” under the landlord/tenant law (Chapter 83, Part II, Florida Statutes) by claiming the occupant is a “transient guest” under Chapter 509, F.S. In cases where police are called and asked to “eject” or “trespass” an occupant of a housing unit or motel unit, they must first determine if the occupant is a “tenant” or “transient guest.”

Section 509.013(12), F.S. defines a transient occupancy. It provides that “there is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.” There is a rebuttable presumption the occupancy is transient when the guest has another residence. This definition is the starting point for an investigation into whether an occupant can be ‘ejected’ from a hotel/motel establishment or whether an ‘eviction’ is necessary. The following inquires should be made, when the issue is not clear.

1. Does the establishment have a license from the State of Florida to operate a hotel/motel to qualify for Section 509.141, F.S. ejection assistance from a LEO?
2. What local ties does the occupant have? Local job, local bank account, car registered in Volusia County, Florida D/L, children in school, all of occupant’s worldly belongings in the room/apt, indicate the person is a “tenant” rather than a transient guest.
3. If there is written rental agreement, how is the rent paid (daily, weekly, monthly); who pays utilities? A daily rent may indicate a transient occupancy. An occupant who pays utilities is generally a tenant.
4. What does the “guest” registration show as the occupant’s (home) address? If

another "home" address is shown, this is evidence that the unit occupied is not occupant's "sole residence."

If the status of the occupant is unclear, a supervisor should be consulted prior to taking action to eject the occupant.

If you have any questions, you may call me at extension 5114.

Ref: Legal Bulletin 99-07; 85-3.

GJM/esl

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