



VSP-TRAIN-1068

93-1 Landlord/Tenant Law - Repossession of Motor Vehicles

Summary

The U.S. Supreme Court has recently ruled that the presence of law enforcement officers, together with their inaction during an illegal eviction violated the Fourth Amendment's prohibition against unreasonable seizures and may lead to liability under federal civil rights law. In this case, law enforcement officers who were present at an eviction at the request of the landlord, refused to take the tenant's complaint for criminal trespass or otherwise interfere with the eviction. The officers informed the tenant that "it was between the landlord and the tenant". Soldal v. Cook County, Illinois, U.S. Supreme Court, 61 LW 4019 (1993). In making the ruling, the Supreme Court expressed confidence that "police will not often choose to further an enterprise knowing that it is contrary to state law."

Now, it is more important than ever, that officers responding to landlord/tenant disputes have a basic understanding of the state law which controls this relationship. The following guidelines should be used when responding to landlord/tenant complaints.

A number of reoccurring questions arise which surround the issue of landlord/tenants' rights and police duties. Frequently the landlord or the tenant will call a police agency during a dispute and you are then put in the unenviable position of determining what course of action, if any, to follow. The rights and responsibilities of landlords and tenants are specifically set out in Vermont statutes; therefore violation of these statutes may result in criminal violations of Title 13. Merely because it is a "landlord/tenant dispute" does not always mean that it is a "civil matter" and that you should not become involved. In fact, failure to act may result in civil liability.

Evictions

Vermont law prohibits a landlord, under any circumstances, from entering an apartment and evicting the tenant. 9 V.S.A. § 4468 states that if a tenant remains in possession of an apartment against the wishes of the landlord, the landlord must bring an action for a writ of possession under 12 V.S.A. Chapter 169, §§ 4851-4856.

Once a writ of possession is granted to the landlord, 12 V.S.A. §4854 mandates that "the writ shall direct the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, no sooner than five days after the writ is served, to put the plaintiff into possession."

Under this procedure, a landlord may not enter an apartment and move a tenant out. An eviction must proceed through the court system and the writ allowing for eviction must be served by the sheriff; furthermore, the tenant must be actually moved out of the apartment by the sheriff.

Abandonment

The only exception allowing for the landlord to enter the apartment without going through the procedure outlined above occurs when the apartment has been "abandoned" by the tenant. 9 V.S.A. §4462(a) states that a tenant has abandoned a dwelling unit if:

- There are circumstances which would lead a reasonable person to believe that the dwelling unit is no longer occupied as a full-time residence;
- Rent is not current; and
- The landlord has made reasonable efforts to ascertain the tenant's intentions.

Rule of Thumb

- **If the sheriff is not participating in the eviction, it is most likely an illegal eviction, a violation of Title 13 and you should not allow it to proceed.**
- **If a landlord, without the assistance of a sheriff, enters an apartment in order to evict a tenant, the landlord is in violation of 13 V.S.A., §3705(d), unlawful trespass.**

Suggested Course of Action

- **Freeze the scene, maintain the "status quo", do not allow the landlord to remove any property or to enter the tenant's apartment.**
- **Explain the requirements necessary for an eviction to the landlord and refer both the landlord and the tenant to the appropriate referrals contained in the Support Services Directory.**
- **If this is not an "innocent" mistake on the part of the landlord, issue a citation. If the landlord persists contrary to your directions, make an arrest.**

"Lock Out" of the Tenant

In addition to the prohibition of an actual eviction by the landlord, unless the steps noted above have been taken, Vermont law also prevents a landlord from turning off utility services to an apartment or padlocking or changing the lock to an apartment in order to prevent a tenant from entering the apartment or gaining access to their property. 9 V.S.A. §4463 states as follows:

(a) No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant, except for temporary interruptions for emergency repairs.

(b) No landlord may directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, except through proper judicial process.

(c) No landlord may directly or indirectly deny a tenant access to and possession of the tenant's property, except through proper judicial process.

Rule of Thumb

- Because it is illegal for a landlord to "lock out" a tenant without judicial authorization, a tenant who is required to use reasonable force to re-enter the apartment has not committed a crime under Title 13.

Suggested Course of Action

- Freeze the scene, explain the prohibitions of Sec. 4463 to the landlord; if the landlord does not relent and allow the tenant to enter the apartment, then your duty is to maintain the peace and allow the tenant to gain entry to the apartment.

Entry by the Landlord in a Non-Emergency Situation

9 V.S.A. §4460 states as follows:

(a) A landlord may enter the dwelling unit with the tenant's consent, which shall not be unreasonably withheld.

(b) A landlord may also enter the dwelling unit for the following purposes between the hours of 9:00 A.M. and 9:00 P.M. on no less than 48 hours' notice:

- (1) when necessary to inspect the premises;
- (2) to make necessary or agreed repairs, alterations or improvements;
- (3) to supply agreed services; or
- (4) to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(c) A landlord may only enter the dwelling unit without consent or notice when the landlord has a reasonable belief that there is imminent danger to any person or to property.

Rule of Thumb

- **Because a landlord may not, without the consent of a tenant, enter an apartment except as outlined above, an entry in violation of this section meets the criteria for violation of 13 V.S.A. §3705(d) - Unlawful Trespass.**

Suggested Course of Action

- **In response to a trespass complaint from a tenant, proceed in the same manner as any other criminal complaint. Interview the complainant and the accused and refer the case to your State's Attorney for prosecution.**

Theft or Destruction of the Rental Property by the Tenant

9 V.S.A. §4456(c) states:

the tenant shall not deliberately or negligently destroy, deface, damage, or remove any part of the premises or its fixtures, mechanical systems or furnishings, or deliberately or negligently permit any person to do so.

Although a security deposit may be used to offset the loss of the property to the landlord, intentional destruction of property or removal of property by the tenant is not necessarily a "civil matter". Intentional destruction of rental property meets the criteria for violation of 13 V.S.A. §3701 - Unlawful Mischief. (property is defined under this section as both real and personal property. Sec. 3701(e).) Removing fixtures or furnishings from the apartment with the intent to permanently deprive the owner of possession meets the criteria for a violation of 13 V.S.A. §2501 or §2502 - Larceny.

REPOSSESSION OF MOTOR VEHICLES, BOATS, etc. 9A V.S.A. §9-503

At times a creditor may attempt to repossess a motor vehicle owned by an individual who has defaulted on the loan used to purchase the vehicle. The individual leaving with the vehicle is confronted by the owner and the police thereafter receive a complaint of a breach of peace or larceny of the vehicle. Again, you are put in the unenviable position of determining what course of action, if any, to follow. The following guidelines should be used in responding to situations involving repossessions of motor vehicles, boats, etc.

- **Repossession of Vehicles without a Court Order**
Under Vermont law a creditor who has a lien on a motor vehicle, boat, RV, etc. may, on default of the loan repossess the property without a court order if the repossession can be done in a peaceful manner. This is true only if the creditor has a legally recognizable lien on the property. 9A V.S.A. §9-503 states as follows:

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace...

If the consumer disputes the creditor's right to take the vehicle and there is danger of a breach of the peace if the repossession continues, the creditor must obtain a court order before taking the property. However, if the repossession has already occurred and the consumer is calling to report a larceny or to demand

return of the vehicle, the vehicle is then legally in the possession of the creditor and the consumer must apply to the court for assistance in regaining possession of the car.

Rule of Thumb

- **If you respond to a situation where the consumer still has possession of the property and the creditor is demanding possession by insisting on the keys or hooking up a tow truck to the vehicle, and a breach of the peace appears imminent you should preserve the status quo and inform the creditor that he is not entitled to the repossession without obtaining a court order.**
- **In no event should you assist in the repossession or allow even your presence to assist the creditor in the repossession. If in doubt inform the creditor that he must obtain a court order. This policy will avoid physical confrontations between the consumer and the creditor and avoid the dilemma forced upon you of having to make a hurried legal decision as to who is entitled to possession of the property.**

If you are called to a situation in which the creditor has already taken possession of the property and a lien exists on the property, then the creditor now has legal possession of the property; it is not stolen. Explain the provisions of Sec. 9-503 to the consumer and refer her to the Consumer Assistance Line operated by the Attorney General's Office. The number is contained in the Support Services Directory.