State of Rhode Island and Providence Plantations

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GUIDANCE FOR LAW ENFORCEMENT OFFICIALS

TO: Chiefs of Police

FROM: Peter F. Neronha, Attorney General

DATE: April 6, 2020

SUBJECT: Landlord-Tenant Disputes and Law Enforcement

The COVID-19 pandemic presents an unprecedented threat to the health, safety, and welfare of our communities. Every day, law enforcement officers are on the front lines of the fight against the outbreak and, like so many others, have continued to adjust to the state's changing needs and priorities. I remain grateful for everything you do and for your continued partnership during these challenging times.

While our collective mission remains one of public safety, our enforcement priorities need to account for the fact that our best strategy to combat the threat of COVID-19 is to keep people in their homes and to prevent and/or limit opportunities for direct, physical contact among individuals within our communities. To that end, I am sharing information about potential unlawful conduct that could undermine our shared public safety and health goals.

On March 17, 2020, Rhode Island Supreme Court Chief Justice Suttell issued Executive Order No. 2020-4 in response to the COVID-19 pandemic. The Court's order suspended all non-emergency matters – including evictions – until at least April 17, 2020. Practically speaking, the Court's order means that almost all new eviction proceedings are stayed, and there is not a lawful means by which landlords can evict their tenants.

Following the issuance of the Court's order, this Office received reports of an increase in what are known as self-help evictions – evictions in which landlords circumvent the usual court process and attempt to forcibly remove their tenants, prevent their tenants from accessing the property, or reduce or discontinue essential services like water or electricity in order to force their tenants to move out. This conduct is unlawful. We are asking for your assistance to both prevent and deter it for the benefit of our communities.

While ordinarily most landlord-tenant disputes are handled by the civil court system, some could involve conduct that may be criminal. In those instances, law enforcement officers may play an important role in protecting the public safety and welfare of Rhode Islanders. The attached guidance document attempts to address the types of complaints that are most likely to call for police action.

Although local law enforcement is typically responsible for investigating and prosecuting the misdemeanor criminal offenses that are likely to arise from self-help evictions, this Office is prepared to prosecute these matters in the District Court if that is the municipality's preference. This Office is also prepared to provide guidance to you and to city and town solicitors.

Case specific questions can be directed to Stephen Dambruch, Criminal Chief, at [redacted] Of course, you are always welcome to contact me directly, either here at the office, at extension [redacted] or on my cell phone.

GUIDANCE FOR LAW ENFORCEMENT OFFICERS ON LANDLORD-TENANT DISPUTES

Are eviction matters currently being heard by state courts?

No. On March 17, 2020, Rhode Island Supreme Court Chief Justice Suttell issued Executive Order No. 2020-04 to respond to the public health crisis arising from the COVID-19 pandemic. The Court's order suspends non-emergency court matters, including evictions, until April 17, 2020.

Are self-help evictions, where the landlord attempts to take matters into his or her own hands, unlawful?

Yes. Under the Residential Landlord and Tenant Act, the landlord may not attempt to recover or take possession of a rental unit outside the court process. The landlord is further prohibited from shutting off or causing the interruption of the tenant's heat, water, electric, and gas services. R.I.G.L. § 34-18-44.

Is there a criminal statute that applies to unlawful entry?

An unlawful entry may constitute a willful trespass under R.I.G.L. § 11-44-26, which is a misdemeanor punishable by a fine not to exceed $1,000 and a prison term not to exceed one year. If the landlord enters or remains in a rental unit after being asked not to enter or to leave by the tenant, this may constitute a willful trespass, provided that none of the circumstances permitting entry without the tenant's consent apply.

You should use your discretion and consult your city or town solicitor or this office in deciding whether to charge a landlord with willful trespass. In many cases, by the time police arrive, the violation will have already occurred, and the landlord will no longer be present on the property. If no damage was done to the tenant's possessions and you believe that the landlord did not understand the law, it may be sufficient to inform the landlord of the law and warn him or her against future violations. Charges should be considered for a landlord who ignores warnings and repeatedly engages in willful trespass.

Are there civil or criminal statutes that apply if the landlord attempts to remove the tenant's property?

If, during a self-help eviction, the landlord maliciously damages or causes the tenant's property to be destroyed, this may constitute vandalism under R.I.G.L. § 11-44-1, which is a misdemeanor punishable by a fine not to exceed $1,000 and a prison term not to exceed one year. If the landlord willfully breaks a lamp or window, that is also a criminal offense punishable by a $200 fine. R.I. Gen. Laws §11-44-14.

When is entry by the landlord to a rental unit unlawful?

Under the Residential Landlord and Tenant Act, the landlord may not enter the tenant's unit without the tenant's consent, except in limited circumstances.

These limited circumstances are:

- In cases of emergency
- With a court order
- During any absence of the tenant in excess of 7 days, if reasonably necessary for the protection of the property.
- If the tenant has failed to maintain the rental unit in a manner materially affecting health and safety and (1) an emergency repair or replacement is necessary or (2) 20 days after written notice from the landlord
- The tenant has abandoned or surrendered the premises

Entry by the landlord, without the tenant's consent, for any other purpose is unlawful.

Are there other limitations on landlord entry?

Yes. In addition to needing the tenant's consent, for the landlord's entry to be lawful the landlord must:

- Provide notice to the tenant: the landlord must give the tenant at least 2-days' notice of his or her intent to enter, except in case of emergency or unless it is impracticable to do so.
- Enter at reasonable hours: the landlord may only enter the unit at reasonable times.
- Avoid harassing the tenant: the landlord cannot abuse the right of entry or use the right of entry to harass the tenant.

Even if the landlord gives reasonable notice, the tenant must still consent to the entry. However, a tenant may not unreasonably withhold his/her consent for the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors. R.I.G.L. § 34-18-26. R.I.G.L § 34-18-26.

If the tenant won't let the landlord in, what is the landlord supposed to do?

The Residential Landlord and Tenant Act requires the tenant not to withhold consent unreasonably. If the tenant unreasonably refuses to let the landlord in, the landlord may go to court to get a court order and may have grounds to evict the tenant for violation of the lease or the Act. R.I.G.L. §§34-18-26, 34-18-5.

Are there other ways to stop a self-help eviction?

Yes. If the landlord attempts to remove the tenant without a court order, the tenant may seek a court order enjoining or stopping the landlord. R.I.G.L. § 34-18-44. In addition to informing a landlord that entry on to a tenant's property to accomplish a self-help eviction may be criminal, you can advise the tenant to contact Rhode Island Legal Services ((401) 274-2652.) or the Center for Justice (401-491-1101).

Appendix of Relevant Laws

Residential Landlord and Tenant Act

§ 34-18-44. Self-help recovery of possession prohibited.
A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electric, gas, or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

§ 34-18-26. Access.
(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(b) A landlord may enter the dwelling unit without consent of the tenant in case of emergency, or, during any absence of the tenant in excess of seven (7) days, if reasonably necessary for the protection of the property.

(c) A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least two (2) days' notice of his or her intent to enter and may enter only at reasonable times.

(d) A landlord has no other right of access except:

(1) Pursuant to court order;

(2) As permitted by § 34-18-39; or

(3) Unless the tenant has abandoned or surrendered the premises.

§ 34-18-5. Administration of remedies – Enforcement.
(a) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages and injunctive relief, including temporary restraining orders, as set forth in § 34-18-6. The aggrieved party has a duty to mitigate damages.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

Criminal Offenses

§ 11-44-26. Willful trespass – Remaining on land after warning – Exemption for tenants holding over.
(a) Every person who willfully trespasses or, having no legitimate purpose for his or her presence, remains upon the land of another or upon the premises or curtilage of the domicile of any person legally entitled to the possession of that domicile, after having been forbidden to do so by the owner of the land or the owner's duly authorized agent or a person legally entitled to the possession of the premises, shall be punished by a fine not exceeding one thousand dollars ($1,000), or imprisonment for a term not exceeding one year, or both.

(b) This section shall not apply to tenants or occupants of residential premises who, having rightfully entered the premises at the commencement of the tenancy or occupancy, remain after that tenancy or occupancy has been or is alleged to have been terminated. The owner or landlord of the premises may recover possession only through appropriate civil proceedings.

(c) Where the provisions of The Domestic Violence Prevention Act, chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.

§ 11-44-1. Vandalism – Obstruction of lawful pursuits.

(a) Every person who shall willfully and maliciously or mischievously injure or destroy or write upon, paint, or otherwise deface the property of another, or obstruct the use of the property of another, or obstruct another in the prosecution of his or her lawful business or pursuits, in any manner, the punishment of which is not specifically provided for by statute, shall be guilty of a misdemeanor and shall be fined not exceeding one thousand dollars ($1,000) and/or be imprisoned not exceeding one year, and shall be liable to make restitution for the injury or damage caused. Every person convicted of a first offense under this section shall be required to perform up to one hundred (100) hours of public community restitution work, and for a second or subsequent conviction shall be required to perform up to two hundred (200) hours of public community restitution work. Provided, further that every person who shall willfully and maliciously or mischievously injure or destroy or write upon, paint or otherwise deface government property, or obstruct the use of that property, shall be punished in accordance with this statute. Jurisdiction for matters involving government property shall be concurrent with the district court or the respective city or town police or municipal court.

(b) Where the provisions of The Domestic Violence Prevention Act, chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.