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When in Doubt, Stay Out! (Self-Help Evictions)

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You've got a problem. Your tenant is behind in her rent – way behind. You know that the eviction process is costly and time consuming and you wonder if there isn't a better way. You take a quick look at your tenant's lease and notice a clause that gives you the right of reentry upon breach of the lease and a lien upon the tenant's personal effects, furniture and baggage in the tenant's apartment to secure the rents and other charges.

OK, you figure, the lease says I can reenter the apartment if the tenant breaches and take a lien against her personal property. Sounds like a quick and easy solution to the problem. You unlock the door of her apartment, enter and remove her furniture to a warehouse. When she returns and requests entry to the apartment, you point out the relevant portion of the lease to her. She'll have to go elsewhere – immediately.

Let's look at a leading case in California on the subject. The case was decided in April 1961, nearly 40 years ago. But, it remains one of the preeminent decisions in this area of the law – in fact, the California Court of Appeals in another case cited it as recently as February 2000. In *Jordan v. Talbot* (55Cal2d597), the California Supreme Court held that a landlord committed forcible entry and detainer because he entered the tenant's apartment without her consent and refused to allow her to reenter her apartment in violation of California Code of Civil Procedure Sections 1159 and 1160. Guess who was on the losing side of this decision?

The Court said that even though the lease allowed for a right of reentry by landlord, absent a voluntary surrender of the premises by the tenant, a landlord can enforce his right of reentry only by judicial process, not by self-help. "Self-help" refers to actions taken by a landlord outside of the normal legal processes, such as removing a tenant's personal belongings and changing the locks, even though the tenant is still in legal possession of the property. Regardless of who has the right to possession, orderly procedure and preservation of the peace require that the actual possession shall not be disturbed except by legal process.

The original forcible entry and detainer statute, enacted in England in 1381, provided criminal sanctions for its breach. The purpose of the statute was to preserve the peace by preventing disturbances that frequently accompanied struggles for the possession of land. This early prohibition against self-help extended to persons having a right to possession and thus fostered recourse to orderly court process (See 1 Harper and James, *The Law of Torts*, 260). The prohibition against self-help has been further extended in California by the enactment of the unlawful detainer statutes that are meant to replace the common law remedy of self-help. A landlord who resorts to self-help eviction commits a forcible entry and detainer, and is liable for actual and punitive damages, regardless of any lease provision giving the landlord the right to reenter on default or any lien the landlord may wish to exercise.

Some other examples of forcible entry and detainer are use of a passkey and wrongly acting under color of law. As an example, in another case, a landlord obtained an unlawful detainer

judgment and a writ of possession of the premises. That judgment was then set aside. Without telling the marshal of this fact, the landlord had the marshal execute the writ by forcibly entering the premises and evicting the tenant. The court held that these actions could constitute a forcible entry and detainer even though, after the dispossession by the marshal, the landlord had obtained a second, valid judgment for possession (Bedi v. McMullan, 1984, 160CA2d272). Other examples include entry through a window in tenant's absence, entry by fraudulent pretenses, entry by unlocking door in tenant's absence, removal of lock in tenant's absence, entry through open window in tenant's absence and use of locksmith to open door during tenant's absence.

California law has further extended the concept by prohibiting the shutting off of utilities by a landlord (Civil Code Section 789.3). The utilities covered by CC 789.3 include, but are not limited to, water, heat, light, electricity, gas, telephone, elevator, and refrigeration, whether or not they are under the direct control of the landlord. The same code section also prohibits the changing of locks or blocking entry to prevent tenant access to the premises, removing outside doors or windows, and removing the tenant's personal possessions without written permission.

These cases and statutes are California's answer to self-help by landlords. So, the next time you have a non-paying tenant, don't be tempted to take a short cut – it can cost you! Consult with competent legal counsel to be sure you are not unnecessarily exposing yourself to potential legal liability.

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