



CONSTRUCTIVE EVICTION IS ILLEGAL



WHAT IS CONSTRUCTIVE EVICTION?

Constructive eviction includes any attempt by a landlord to remove a lawful tenant without resorting to the mandated unlawful detainer court process. The unlawful detainer process requires that an unlawful detainer complaint be filed in the Superior Court, followed by properly serving the summons and complaint on the tenant. Physical removal of the tenant can only be carried out after a judgment is issued by the court, and only by the local Sheriff's Department.

Any effort to bypass the unlawful detainer procedures is an illegal "constructive" or "self-help" or "lock-out" eviction. A landlord who illegally evicts a tenant may be liable for several civil penalties including \$100 a day under Civil Code Section 789.3(c), as well as a one-time penalty of \$2000 under Civil Code Section 1940.2, and any additional damages the tenant may suffer such as relocation or temporary housing expenses.

Typical illegal eviction tactics include:

- Physically removing the tenant or the tenant's possessions
- Changing the locks to the unit or blocking the tenant's access, for example by locking the driveway
- Cutting off the tenant's utilities or other essential services
- Verbally or physically harassing the tenant
- Any other action that effectively prevents the tenant from using the rental property

ARE THERE ANY EXCEPTIONS?

These rules do not apply to a person living in a rental unit who is not a tenant, for example a trespasser or guest. However, any adult living in a rental unit more than 30 days with the permission or knowledge of the landlord or the other tenants, is treated as a tenant under California law. Such a person is a tenant even if he or she is not paying rent and regardless of whether there is a written rental agreement.

These rules do not apply to persons removed pursuant to a legitimate restraining order issued by a proper court, for example in cases of domestic violence.

If there is persuasive evidence that a tenant has abandoned the rental property, a landlord may re-take possession without using the unlawful detainer process. However, if a court subsequently determines that the tenant had not truly abandoned the unit, the landlord will be responsible for the resulting damages.

A person renting in the status of "single family lodger" is subject to a different removal process. The landlord must give a 30-day written notice of termination, but if the lodger does not voluntarily comply, he or she becomes a trespasser, and may be removed pursuant to the criminal trespass statute, if the local police or other law enforcement agency is willing to take action. Many local law enforcement agencies won't become involved, in which case the landlord must resort to the usual unlawful detainer process, rather than using any constructive eviction tactics such as changing the locks. The single family lodger rule only applies to an owner of a single family residence who personally also occupies that residence and rents a room to only one lodger, and who retains access to that room.

For Assistance call 408-720-9888

To request alternate format to participate, please email scottrell@housing.org or TTY 7-1-1