

## LANDLORD LAW REPORT

### Landlord Liable for Wrongfully Removing Woman from Apartment

Connecticut: An appellate court awards a total of \$1 in nominal damages to a woman removed from an apartment by the police at the landlord's request. (Yes, that's one dollar!)

An elderly tenant and another man leased an apartment from their landlords. The older tenant's daughter was a frequent guest at the apartment from 1993 to 1997. The tenant's daughter moved into the apartment with her father and the other tenant without the landlord's permission in November 1997. In 1998, the older tenant moved into a nursing home and his daughter stayed in the apartment with the other tenant.

The woman sued the police officers for violating her constitutional rights and she sued the landlords for violating the state's entry and detainer statute.

In May 1998, one of the landlords called the police on the tenant's daughter because she was intoxicated and disruptive. The landlords told the police when they arrived that she was merely a guest in the apartment even though she had been living there for more than seven months by that time. The other tenant told the police the same thing and they asked the police to remove her from the property because she was drunk.

The woman agreed to leave and the police escorted her out of the apartment. The police arrested her for swearing at the landlords and for breaching the police but they did not arrest her for trespassing. The other tenant bailed her out of jail and brought her back to the apartment with him.

The landlords called the police again the next day because the woman was causing a disturbance in the apartment again. The police arrived and the landlords told the officer she was not a tenant and asked him to remove her from the apartment. The woman initially agreed to leave but instead locked herself in the bedroom and refused to go. Another officer arrived and they arrested her and charged her with criminal trespass and disorderly conduct.

The woman sued the police officers for violating her constitutional rights and she sued the landlords for violating the state's entry and detainer statute.

The case against the police officers was dismissed when the court determined they were immune from liability for their actions because they were performing a governmental duty when they arrested her for trespassing. The trial court ruled that the landlords did not violate the entry and detainer statute and dismissed the case. The woman appeals the trial court's decision to dismiss her case against the landlords.

The appellate court reverses the lower court's decision and holds that the landlords did violate the entry and detainer statute and awards the woman one dollar in nominal damages. The appellate court says she is not entitled to additional damages because she failed to prove she suffered any actual or measurable damages as a result of being removed from the apartment at the landlord's request.

A claim for violation of the state's entry and detainer statute is an action by which a person in possession and enjoyment of any land, tenement or dwelling unit, who has been deprived of possession, may be restored to the possession and enjoyment of that property or receive damages as a result of being unlawfully removed from the property. In order to prevail in a claim for unlawful entry and detainer, the plaintiff must show that he or she was in actual possession at the time of the defendant's entry and detainer of the property.

Even a person in illegal possession of property may be deemed to be in "actual possession of the property" and may commence an action in entry and detainer. The woman, in this case, was in actual possession of the apartment from November 1997 until she was removed by the police the second time in May 1998, the appellate court rules.

The landlords, by asking the police to remove her on their second visit to the property, "held and detained the premises with force and strong hand" in violation of the entry and detainer statute.

The appellate court awards her \$1 in nominal damages because she failed to prove she suffered any actual damages as a result of being removed from the property.

***Lesson: Landlords should not resort to “self-help” measures to remove their tenants or unwanted non-tenants from their rental units. As this case illustrates, the landlords removed a trespasser and had to pay her nominal damages because they violated a state statute. If the woman could have proven she suffered actual damages (if she was injured or lost her personal property) as a result of the landlords’ unlawful entry and detainer, the court would have awarded her actual damages. Most states have streamlined procedures in place to speed along eviction cases and the amount of time saved in a “do-it-yourself-eviction” may not be worth the amount of damages awarded to a person wrongfully “evicted.” Sylvia Fleming et al., v. City of Bridgeport et al., 2005 CT App. LEXIS 500.***

*Landlord Law Report is written by a practicing landlord-tenant attorney and contains quick-reading highlights of recent federal and state court decisions on fair housing, premises liability, rent control, lease enforcement, drug use, eviction, handicapped accessibility, building security, lead paint/asbestos, and Section 8 tenants, plus summaries of HUD rulings. Each issue is filled with advice on how multifamily property owners and managers can be better prepared to protect themselves from expensive and time-consuming litigation.*

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