



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
HOUSING PROTECTION UNIT

To: New York State Law Enforcement Departments
From: New York State Office of the Attorney General
Date: May 4, 2020
Re: Unlawful Evictions under RPAPL § 768

UNLAWFUL EVICTIONS (RPAPL § 768)

New York's Housing Stability and Tenant Protection Act of 2019 created new protections for tenants, including a new provision that makes it a Class A misdemeanor for a person to either evict an occupant from their home without a court order, or to fail to restore an occupant who was evicted without court order. (RPAPL § 768)

Unlawful evictions are now **criminal** matters and law enforcement should play an active role in enforcing the law.

This memorandum is intended to provide guidance to law enforcement departments throughout New York State in handling claims that someone has been illegally removed from their home. Ultimately, the goal of any intervention by law enforcement should be to have the person returned to their home, if legally warranted. Swift action on the part of law enforcement will help ensure that people are not removed from their homes without due process.

In responding to a call about an unlawful eviction, law enforcement officers should determine:

1. Is the complainant a person entitled to protections under the law?
2. Who can be arrested for unlawful eviction?
3. Is the dwelling covered by the law?
4. Is the complained-of act one that violates the law?

Is the complainant a person entitled to protections under the law?

Law enforcement should determine if the occupant lawfully entered into the dwelling unit, and if so, whether the occupant has a lease or has been in occupancy for more than 30 days.

Under RPAPL § 768, the following individuals are protected from unlawful evictions:

1. Any occupant who occupies a dwelling unit pursuant to a **written or oral lease**; and
2. Any occupant who has **lawfully** occupied a dwelling unit for at least 30 days¹

To assess whether a complainant is protected by the law, law enforcement officers should determine:

- How the occupant gained possession; and
- Whether the occupant has a lease (written or oral); or
- Whether the occupant moved in 30 or more days ago.

How the occupant gained possession

Lawful occupants are protected from unlawful evictions. Other than squatters or trespassers, almost all other occupants will be considered lawful if the landlord, owner or other person authorized to allow them in (e.g. managing agent, tenant) gave them permission to enter the dwelling unit.²

Occupants who occupy a dwelling unit pursuant to a written or oral lease

Leases do not need to be in writing to warrant protection under the law. Oral agreements to occupy premises for a month or longer trigger the law's protections. Generally, people occupying a premise pursuant to an agreement will have proof of rent payments as evidence that an agreement exists, but text messages, emails or other communications referring to the agreement may also be sufficient.

¹ In New York City, RPAPL § 768 also protects any occupant who occupies a dwelling unit within a hotel subject to rent stabilization who has resided in the dwelling unit for less than 30 days and has requested a lease pursuant to the provisions of the rent stabilization laws.

² In addition to RPAPL § 768, other lawful occupants (i.e. those who have been in occupancy for less than 30 days) may not be removed by force. These occupants can only be removed so long as the removal is not forcible and does not breach the peace. However, even if the occupant is removed without force, the occupant cannot be kept out with force or when it would breach the peace.

For instance, a tenant changes the locks on a guest who has been in their apartment for only 10 days while the guest is out getting groceries. This removal is legal because it was not forceful nor breached the peace. However, when the guest returns, it would be illegal for the tenant to keep the guest out with force or where keeping the guest out would breach the peace.

Unlawful occupants of a dwelling unit (i.e. trespassers and squatters) are not entitled to be restored to possession if evicted without court order, although other penal laws, such as assault, may apply to the situation.

Example

A landlord and tenant enter into an oral agreement for a month-to-month rental. After 15 days, the landlord locks the tenant out of their apartment. This tenant has been unlawfully evicted under the law.

Occupants who have lawfully occupied a dwelling unit for at least 30 days

In addition to tenants who occupy their premises pursuant to a current lease, anyone who has lawfully occupied premises for 30 days is entitled to protection from unlawful eviction, including:

- Tenants whose leases have expired;
- Family members who have been in the dwelling unit for at least 30 days; and
- Roommates or other licensees of tenants and occupants who have been in the dwelling unit for at least 30 days.

Example 1

A tenant and his roommate have been living together in an apartment for 1 year. The tenant moves out of the apartment and leaves his roommate behind. Instead of going to court, the landlord locks the roommate out of the apartment. The roommate has been unlawfully evicted under the law.

Example 2

The owner of a single-family home allows his nephew and nephew's girlfriend to live in his basement. The basement does not have a kitchen or a separate entrance. After six months, the owner gets into a fight with his nephew and locks both the nephew and girlfriend out of the home. The nephew and girlfriend have been unlawfully evicted.

Example 3

A tenant gets a roommate but doesn't inform the landlord. The landlord tells the tenant that they do not want the tenant to have a roommate. The landlord throws the roommates belongings into the street. The roommate has been unlawfully evicted.

How to determine if a complainant is covered by the law

If the occupant's lawful occupancy is disputed, law enforcement officers can ask for the following proof:

- A written lease;
- Communications between the parties indicating an intent to create a rental agreement;
- Proof of rent payments;
- Utility bills proving occupancy;
- Mail with the dwelling unit's address that is dated more than 30 days prior; and/or
- Other documents that show that the occupant has been living in the dwelling unit.

Be mindful that many of these documents may be inside the dwelling unit. In addition, many people don't have traditional documentation. This should not be a barrier for them to receive the same protections as other occupants with more traditional living situations.

Who can be arrested for an illegal eviction?

RPAPL 768 does not limit criminal liability to only owners or landlords.

RPAPL 768 states that “**Any person** who intentionally violates or assists in the violation of any of the provisions of [RPAPL 768] shall be guilty of a class A misdemeanor.” (Emphasis added). Therefore, the owner or landlord **or any of their agents** (e.g. managing agent, friend) can be liable of a crime if they engage in any of the activities considered an illegal eviction under the law. In addition, a tenant or other occupant who allows another occupant (such as a roommate, family member or guest) to live with them could be arrested for an illegal eviction.

Law enforcement officers should be aware that in certain situations, the person who is removing the occupant may be doing so for their own safety. Accordingly, law enforcement officers should assess whether domestic or intimate partner violence is involved and follow department protocol for such situations. For further information, please visit the New York State Office for the Prevention of Domestic Violence at

https://opdv.ny.gov/professionals/criminal_justice/index.html

Is the dwelling covered by the law?

Most residential buildings are covered by the law

Section 4 of the Multiple Dwelling Law defines a dwelling as “any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings.”

A dwelling unit is any portion of a dwelling and can include an apartment, a basement, a room or even a bed.

In contrast, a commercial space would not be covered by RPAPL 768 unless it is being used as a residence. Hospitals, monasteries, and public institutions are not considered dwellings.

Is the complained-of act one that violates the law?

An unlawful eviction can be affected by an act of force but can also be affected by cutting essential services or changing the locks.

Refusing to restore an occupant after an unlawful eviction is also a criminal act.

Under RPAPL 768, it is an unlawful eviction if a person evicts or attempts to evict a person by:

- Using or threatening the use of force; or
- Interrupting or discontinuing essential services (i.e. heat, water, electricity); or
- Removing the occupant's possessions from the dwelling unit; or
- Removing the door at the entrance to the dwelling unit; or

- Removing, plugging or otherwise rendering the lock on the entrance door inoperable; or
- Changing the lock on an entrance door without supplying the occupant with a key; or
- Any other action which prevents or is intended to prevent the occupant from the lawful occupancy of the dwelling unit; which interferes or intended to interfere with the occupant's use and occupancy of the dwelling unit; or induces the occupant to vacate. For example:
 - Repeatedly calling the occupant at all hours;
 - Repeatedly banging on the doors;
 - Yelling at the tenant; or
 - Repeated demands to get out.

The law also requires an owner of the dwelling unit to take all reasonable and necessary actions to restore an occupant of a dwelling unit who has been unlawfully evicted to their dwelling unit. As an alternative, the owner can also provide the occupant another habitable unit within the dwelling. For the owner to be criminally liable, the occupant must first request to be restored or request another dwelling unit and the owner must comply if:

- the owner committed the unlawful eviction; or
- the owner knew or had reason to know of the unlawful eviction; or
- the unlawful eviction occurred within seven days prior to the occupant's request without regard to what the owner or its representative knew or should have known.

Each violation of the law is a separate and distinct crime. For instance, there would be three charges of unlawful eviction if an owner changes the locks of an apartment while threatening the occupant and then refused to restore the occupant after the occupant requested to be restored.

Evictions that are pursuant to court order or are through a Government order to vacate are considered lawful evictions and not covered by the law. Law enforcement officers should not be involved with the execution of a warrant of eviction by a Marshal, Sheriff or City Constable. Instead the law enforcement officer should only be available to assist to keep the peace.

Conclusion

When legally warranted, law enforcement officers should use this new law to assist tenants and occupants be restored to occupancy. Officers will also want to become familiar with local resources for occupants who cannot be restored to occupancy due to the condition of the property. In addition, law enforcement officers are encouraged to direct people to the local court if further assistance is needed.

The Office of the New York State Attorney General is available to assist local law enforcement departments in developing guidance for their officers when encountering unlawful evictions.

