

Landlord/Tenant and Roommate Disputes: When is Criminal Trespass the Correct Charge?

Recently, there has been an increase in the number of calls for service involving disputes between tenants and landlords, and disputes between roommates. These disputes usually involve one of the following scenarios:

- 1) Tenant has not paid rent and landlord wants tenant out;
- 2) Landlord says tenant's lease has expired and tenant will not move out;
- 3) Tenant (who is on lease) wants roommate (who is not on lease) to move out; or
- 4) Family member wants member of family removed from the property.

In each of these scenarios, someone is asking the police to resolve a dispute and to have someone arrested and/or removed from the property. In which of these scenarios, if any, is it proper to utilize the charge of Criminal Trespass? In order to prevent misinforming the public, or making incorrect charging decisions, it is important to know how to adequately handle each of these types of calls. Therefore, each of these situations will be discussed in detail.

The Criminal Trespass statute is found at Ark. Code Ann. §5-39-203, and states:

5-39-203. Criminal trespass.

(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:

- (1) A vehicle; or
- (2) The premises of another person.

(b) Criminal trespass is a:

- (1) Class B misdemeanor if the vehicle or premises involved is an occupiable structure; or
- (2) Class C misdemeanor if otherwise committed.

Scenario #1: Tenant has not paid rent and landlord wants tenant out.

In this scenario, Landlord calls the police and says, "I have been renting this property to Mr. and Mrs. Smith. They have not paid me rent and they won't move out. Will you please remove them from my property and arrest them for trespassing?"

Is Criminal Trespass an option? No. The fact that the tenants have not paid rent and refuse to move out does not constitute the offense of criminal trespass. The tenants may possibly be prosecuted for "refusal to vacate", and the landlord should be referred to the City Attorney's Office for details. However, the case law in Arkansas has made it clear

that the criminal trespass statute does not apply to this situation. See *Williams v. City of Pine Bluff*, 284 Ark. 551, 683 S.W.2d 923 (1985), as an example of fact Scenario #1. Furthermore, in Arkansas, a landlord must go through the civil eviction process in order to have a tenant legally removed from the property.

Scenario #2: The lease has expired, but tenant will not move out.

In this scenario, Landlord calls the police and says, "I have been renting this property to Mr. and Mrs. Smith. Their lease ended at the end of last month and they have not paid me rent and they have not moved out. Will you please remove them from my property and arrest them for trespassing?" This is the classic "holdover tenant" situation.

Is Criminal Trespass an option? No. The fact that the tenants have stayed beyond the end of their lease, have not paid rent, and refuse to move out does not constitute the offense of criminal trespass. The case law in Arkansas has made it clear that the criminal trespass statute does not apply to this situation. See *Polk v. State*, 28 Ark. App. 282, 772 S.W.2d 368 (1989), for the proposition that the criminal trespass statute does not apply to holdover tenants. Just like in Scenario #1, the tenants may possibly be prosecuted for "refusal to vacate", and the landlord should be referred to the City Attorney's Office for details. Furthermore, in Arkansas, a landlord must go through the civil eviction process in order to have a tenant legally removed from the property.

Scenario #3: Tenant (who is on lease) wants roommate (who is not on lease) out.

In this scenario, Officer Jones is shown a lease with O.J.'s name on it as tenant. O.J. says, "I've been letting M.J. stay here for a couple of months. He ain't on the lease and I want him out. I'm tired of his lazy butt being in my apartment eatin' all my food and playin' all my video games. Will you please remove him from my property and arrest him for trespassing?" M.J. says, "I ain't goin' nowhere, I pay part of the bills here."

Is Criminal Trespass an option? Yes. In this scenario, since M.J. has no leasehold interest (his name is not on the lease), if M.J. does not leave the premises when asked to do so by O.J., M.J. would be subject to valid arrest under the criminal trespass statute. A recent Attorney General's Opinion has made it clear that the criminal trespass statute does apply in this situation. See Attorney General's Opinion 2009-154, issued on December 10, 2009. In this scenario, it does not matter if M.J. has remained on the property one hour or one year. If M.J. is not on the lease, O.J may request the assistance of the police in removing M.J. from the property.

Does it make a difference if M.J. paid part of the rent, utilities, groceries, or other bills for the property? No. According to Attorney General's Opinion 2009-154, the fact that the person has paid part of the costs of occupancy does not mean that the person has any legal status to be on the property.

Obviously, an officer has discretion whether or not to actually make an arrest in this situation, but the intent of this article is to point out that an arrest in this situation would be lawful.

Scenario #4: Family member wants member of family removed from the property.

In this scenario, Officer Jones makes contact with Mr. Andrews, who says that his 25 year old son, Marvin, has been living with him "off and on" for 3 years, and now he wants him out. Andrews tells Officer Jones that Marvin has no ownership interest in the property, nor is there a lease.

Is Criminal Trespass an option? Yes. In this scenario, since Marvin has no legal ownership interest in the property, if Marvin does not leave the premises when asked to do so by his father, Marvin would be subject to valid arrest under the criminal trespass statute. See *Yocum v. State*, 325 Ark. 180, 925 S.W.2d 385 (1996), as an example of fact Scenario #4. In addition, a recent Attorney General's Opinion has made it clear that the criminal trespass statute does apply in this situation. See Attorney General's Opinion 2009-154, issued on December 10, 2009. This opinion pointed out that the criminal trespass statute would apply in a situation where an adult child has "overstayed their welcome" with a parent, provided that the parent did not otherwise have a legal obligation to support the child (for example, if the child was disabled).

Would it make any difference if Marvin paid part of the rent, utilities, groceries, or other bills for the property? No. According to Attorney General's Opinion 2009-154, the fact that the person has paid part of the costs of occupancy does not mean that the person has any legal status to be on the property.

Obviously, an officer has discretion whether or not to actually make an arrest in this situation, but the intent of this article is to point out that an arrest in this situation would be lawful.

NOTE: Refusal to Vacate. This article references the criminal offense of "refusal to vacate" as an option available to a landlord dealing with a tenant that will not pay rent. Though not an actual "eviction" procedure, the filing of "refusal to vacate" charges against a tenant most often results in the tenant vacating the property. In 2009, the City Attorney's Office filed refusal to vacate charges against 53 tenants.

Refusal to vacate charges are brought pursuant to Ark. Code Ann. §18-16-101, which provides, in relevant part:

If, after ten (10) days' notice in writing shall have been given by the landlord or the landlord's agent or attorney to the tenant to vacate the dwelling house or other building or land, the tenant shall willfully refuse to vacate and surrender the possession of the premises to the landlord or the landlord's agent or attorney, the tenant shall be guilty of a misdemeanor.

The City Attorney's Office has prepared a "landlord packet" that outlines the specifics of a refusal to vacate prosecution, and also contains a sample ten (10) day notice to vacate for use by the landlord. This packet is available upon request from the City Attorney's Office, and is also available online at the City Attorney's website (www.springdalear.gov/cosa).

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