



LEGAL BULLETIN #2003-09 OFFICE OF LEGAL AFFAIRS

EVICCTIONS FOR UNLAWFUL USE OF PREMISES

Legal Flag: A tenant engaged in a pattern of “controlled substance violations” on or about his leased premises may be evicted from his dwelling irrespective of a conviction.

This LEGAL BULLETIN discusses the Chicago ordinances which authorize the eviction of a tenant engaged in a pattern of illegal narcotics activity on or about the leased premises.

THE ORDINANCE

Chapter 8-30 of the Municipal Code, “Evictions For Unlawful Use Of Premises,” subsections 010 and 020, permit the City to seek an eviction of any tenant when the tenant or anyone on the premises with the tenant’s permission commits two or more “controlled substance violations” anywhere in the building containing the rented unit or the adjacent public ways within a 6 month period. Upon proof by a preponderance of the evidence, an order shall be issued by the Department of Administrative Hearings terminating the rights of the tenant to use or occupy the leased premises.

Definitions

“Controlled substance” means any substance included within the Schedules of Article II of the Illinois Controlled Substances Act, and cannabis as defined within the Cannabis Control Act.

A “controlled substance violation” means any occurrence of unlawful possession, delivery,

distribution, manufacture or cultivation of a controlled substance. (Note that a violation merely requires proof by a preponderance of an occurrence; it does *not* require a conviction for the prohibited activity. Thus, for example, if a possession case is lost at the preliminary hearing stage, it nonetheless can be proven to be an occurrence of a “controlled substance violation.”)

“Pattern of controlled substance violations” means two or more controlled substance violation incidents involving the same dwelling unit and occurring on two or more separate days within any six month period during the tenancy of any tenant of that dwelling unit. Violations will be considered involving the same dwelling unit if they: (1) occur in the dwelling unit, in the structure containing the dwelling unit, or any other structure, land or public way appurtenant thereto; and (2) are committed by a tenant of the dwelling unit or by an individual who is on the premises with the permission of the tenant. (It is important to understand that the ordinance does not limit its applicability to acts committed within the four walls of a tenant’s apartment. Acts occurring within the superstructure of the apartment, upon the surrounding land, and upon an adjacent public way, may constitute a violation. In addition, note that a tenant is liable for eviction for those violations committed by his family members,

roommates and guests.)

“Premises” means the dwelling unit and the structure of which it is a part, and facilities and appurtenances therein, and grounds, areas and facilities held out for use of tenants. (As explained in the immediately preceding definition, acts occurring outside a tenant’s four walls may constitute a violation. Thus, hallways, stairways, garages and similar areas designated for use by any tenant, are considered a tenant’s premises for purposes of this ordinance.)

“Tenant” means a person entitled by written or oral agreement, subtenancy approved by the landlord or by sufferance, to occupy a dwelling unit to the exclusion of others.

Eviction

Upon cause to believe a tenant has engaged in a pattern of controlled substance violations, the City may seek an eviction order from the Department of Administrative Hearings. If so proven by a preponderance of the evidence, an eviction order shall be issued against those tenants found to be in violation. The *landlord* shall be liable for the cost of the eviction proceeding, service and enforcement in an amount not to exceed \$5,000.

If the tenant does not vacate the premises by the time specified within the eviction order, the landlord is authorized under 2-14-200 of the Municipal Code to enter the premises, remove all personal property of the tenant from within and dispose of the property as provided within the Code. The tenant may also be subject to arrest, in accordance with section 2-14-100, “Violations of orders.” Possible sentences upon conviction include: (1) a fine of not less than \$200 nor more than \$500 for each offense; (2) incarceration for not more than 180 days for each offense; and/or (3) an order to preform community service for a period not to

exceed 200 hours for each offense. Note that each day of a violation of the order shall be considered a separate offense of this section.

ROLE OF THE DEPARTMENT

While the ordinance is potentially invaluable in eradicating problem tenants, it has an inherent weakness: while an eviction order may be initiated by the City, there is no mechanism within the ordinance which mandates notification of “controlled substance violations.” Given that landlords are often reluctant to notify the City of tenants engaged in illegal narcotics activity, the most reliable method of notice is via notification by Department members.

Members with knowledge of incidents which are addressed by this ordinance should forward copies of all case and arrest reports to the CAPS office within the district of occurrence, and be prepared to articulate their knowledge, if necessary, at the eviction proceedings, which are prosecuted by the Department of Law, Municipal Prosecutions Unit. In addition, advising landlord and tenant groups of the ordinance may be warranted.

SUMMARY

As explained above, a tenant engaging in a “pattern of controlled substance violations” on or about his leased premises may be subject to eviction, and in addition may be so subjected for violations committed by his guests, family members and others present with his permission. Recall that as defined within the ordinance, a tenant’s “premises” may include common areas such as hallways, stairways, porches, etc., as well as the surrounding land and adjacent public way. Note that while a “controlled substance violation” does not require a conviction of the underlying narcotics offense, all such offenses should nonetheless be fully documented; upon development of a “pattern” as

defined within the ordinance, Department members should submit the supporting documentation to the CAPS office within the district of occurrence.

This Bulletin was prepared by Legal Officer Gary Feffer, an attorney with the Office of Legal Affairs and Lawrence Rosenthal, Deputy Corporation Counsel for the City of Chicago.

©Chicago Police Department November 2003