

Illegal Lock Out!
Getting back in and getting your property
by Ken Volk

Our office has recently noticed a spike to landlords illegally locking tenants out of their rental units. This can be a terrifying experience, especially when one is separated from personal property and pets.

Except for surrender of the dwelling by the tenant, there are only two circumstances when a landlord can take back the property: (1) abandonment; and (2) eviction through court action. Abandonment is a very specific circumstance, and requires a five-day notice by the landlord to the tenant. Rent must have been not paid, the tenant must not be around, and there are two factors regarding time frames of absence depending on whether or not there is any personal property remaining in the dwelling. Check out A.R.S. § 33-1370.

Assuming there has not been any abandonment, or allegation of abandonment, the first thing one should do, in this circumstance, is check with the local justice court to see if the landlord had filed an eviction action, and if there has been a judgment in favor of the landlord. If so, then the landlord is entitled to execute a "writ of restitution" whereby the constable changes the locks. There are a whole series of steps in the eviction process, including notice of violation, issuance of a court summons and complaint, service of the summons and complaint, a court hearing, and then a time frame to vacate prior to the writ be executed. Check out A.R.S. §§ 33-1368, 33-1377, and 12-1178.

If you have been evicted through court action behind your back, without legal notice, contact an attorney.

Okay, say your research finds there was no court action, and you did not abandon the premises, but you are locked out anyway. Then the landlord violated the law, specifically A.R.S. § 33-1374. It is called an illegal ouster. In fact, an illegal ouster may include a landlord turning off services, such as electrical or water, even though the tenant is still living in the place.

Your job, then, is to document what the SOB has done. You need a witness. I like using cops as witnesses, because they are presumed to be more truthful than the average Joe (of course, we all know that cops lie just like everyone else, all the damned time). So see if you can entice the cops to come over and observe that you are locked out. You might need a good story, such as hearing sounds in your place and being fearful of intruders. Then, the cops might even contact your landlord to confirm that the lock-out occurred. Bingo, you got that bastard landlord right where you want him. Get the cop's name and badge number, and report number if there is one, and then file a lawsuit for illegal ouster. Check out A.R.S. § 33-1367.

If pets are involved, the humane society might be a good ally and witness. The courts may hate tenants, but animals are often treated better.

What next? Maybe you got the "cojones" to actually go back into the dwelling, though a window or whatever. If my ex weren't on my case all the time for every little thing she can find, I would do that. After all, if the landlord has not taken the proper legal steps to secure possession, then the tenant legally still has possession. Now, if you have to actually break in, just be sure to immediately fix whatever you broke in the process.

Should a tenant continue living in the place after going back? That's a topic for another day. One thing to consider, though: If a landlord tells you to leave, without cause, absent any kind of mutually agreed document signed by all parties, you would likely be held liable if you complied. In other words, rarely in landlord-tenant is anything what it seems. Conventional wisdom is out the window.

I would like to hear what others have actually experienced in these type of circumstances. Did you ever sue your landlord after an illegal ouster? What were the results? Were you able to get witnesses, such as cops, to take the stand on your behalf? Were you able to recover your personal property?