

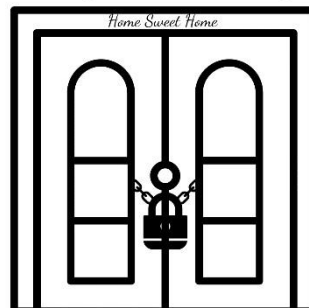
ILLEGAL EVICTIONS IN SUFFOLK COUNTY

AND HOW TO STOP THEM

Sometimes, landlords will try to make a tenant move by doing things that are illegal, for instance:

1. Throw furniture and belongings in the street
2. Remove the doors
3. Padlock the doors
4. Change the locks
5. Turn off the heat or electricity
6. Turn off the water
7. Keep your belongings
8. Threaten to use, or actually use violence

ILLEGAL LOCKOUT



There is only one legal way for the landlord to force a tenant to –HE MUST FIRST TAKE THE TENANT TO COURT AND, IF HE WINS, HE MUST STILL GET THE SHERIFF TO CARRY OUT THE ACTUAL EVICTION.

Attached are copies of the laws (summarized below) and a Suffolk County Police Department Directive that will help a tenant enforce his/her rights. Tenants should show the laws to the landlord or the police if an illegal eviction is threatened or being carried out.

1. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SEC. 711

This says that as a tenant or lawful occupant, (in an apartment, house, or rooming house), you cannot be evicted unless the landlord takes you to court and wins. Even then, it is only the sheriff who actually evicts you, not the Landlord or one of the landlord's friends.

2. REAL PROPERTY LAW SEC. 235

This says that it is a criminal violation for your landlord to evict you in any way: by changing locks, shutting off the utilities, throwing out your furniture, etc. He must take you to landlord/tenant court- and, even then, if you lose only the sheriff actually carries out the eviction.

3. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SEC. 853

This says that if your landlord does manage to illegally evict you, you can sue him for three times the damages you suffer. BE SURE TO MAKE A POLICE REPORT, TAKE PICTURES OF THE SCENE, AND KEEP RECEIPTS FOR

ILLEGAL SHUTOFF



THE EXTRA EXPENSES YOU INCUR. (Cost of eating-out, transportation, value of items damaged or lost, cost of finding a new place to live, etc.) If no heat, document temperatures for inside and outside and keep records for each day of no heat.

4. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW SEC. 768 (New Section added under the Statewide Housing Security and Tenant Protection Act of 2019)

This section provides that it is unlawful to attempt to evict a legal occupant by using or threatening force to induce that occupant to vacate. Makes the proscribed behavior a class-A misdemeanor, and provides for civil penalties of \$1,000.00 to \$10,000.00 for each violation, in addition to \$100.00 a day if the landlord fails to restore you to possession.

WHAT TO DO

If the landlord tries to illegally evict you, you must immediately call or go to the police. Hopefully the police will intervene, as outlined in the "Suffolk County Police Order Number 92-1". As this order distinguishes between those with "written evidence" of their tenancy and those who do not... we urge tenants who suspect that their landlord will act illegally to keep with them at all times copies of rent receipts and a copy of their lease, the real estate agent's agreement, or the landlord's statement from the welfare department.

SAVE RENT RECEIPTS



POLICE REPORT



Unfortunately, though, there are still police officers who continue to believe that illegal evictions are "civil matters" and refuse to do anything at the scene. If this is the case, you should demand to file a police report, get the name, and badge number of the responding officers, and arrange to go as soon as possible to the local police precinct. You must show

them the new section of law – Real Property Actions and Proceedings Law Sec. 768 (Unlawful Evictions) making an unlawful eviction a potential class-A misdemeanor and the police directive and work up the chain of command there until someone does something.

Naturally, the tenant should also call Law Services if they live west of Route 112(631232-2400), or east of 112 (631-369-1112) and arrange for emergency housing and storage through the Department of Social Services.

In the case of a utility shut-off by the landlord, the tenant can also call the Suffolk County Department of Health Services (631-852-5900) or their local town building department and ask them to intervene.

AFTERWARDS

If the landlord pulls off an illegal eviction, the tenant can sue for three times the damages he/she suffers (RPAPL 853, attached). Despite the crisis situation he/she is in, the tenant should be careful to keep proof of his/her damages—pictures of the destroyed property; receipts for additional expenses incurred; witnesses; police or health department reports, etc.

If the damages are less than \$5,000, the tenant can sue the former landlord in small claims court. If the damages are more than \$5,000, the tenant will have to get a private attorney to take his/her case on a contingency-fee basis. This means that the attorney will require no money down, but will take one third of what is won. For assistance with your Small Claims Court matter, you can call NYPIRG (516-222-0086).

Furthermore, under the recently enacted Statewide Housing Security and Tenant Protection Act of 2019, RPAPL Sec. 768 provides that you may be able to seek to have your landlord arrested (class A misdemeanor) and/or sue your landlord for damages ranging from \$1,000.00 to \$10,000.00 for the illegal eviction, and an additional \$100.00 a day for damages until your landlord restores you to the premises. If the landlord pulls off an illegal eviction, the tenant can sue for three times the damages he/she suffers (RPAPL 853, attached). Despite the crisis situation he/she is in, the tenant should be careful to keep proof of his/her damages—pictures of the destroyed property; receipts for additional expenses incurred; witnesses; police or health department reports, etc.

THE LAW



REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

§768 Unlawful eviction

1.(a) It shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer or who has entered into a lease with respect to such dwelling except to the extent permitted by law pursuant to a warrant of eviction or other order of a court of competent jurisdiction or a governmental vacate order by:

(i) using or threatening the use of force to induce the occupant to vacate the dwelling unit;
or

(ii) engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit, to induce the occupant to vacate the dwelling unit including, but not limited to, the interruption or discontinuance of essential services; or

(iii) engaging or threatening to engage in any other conduct which prevents or is intended to prevent such occupant from the lawful occupancy of such dwelling unit or to induce the occupant to vacate the dwelling unit including, but not limited to, removing the occupant's possessions from the dwelling unit, removing the door at the entrance to the dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable, or changing the lock on such entrance door without supplying the occupant with a key.

(b) It shall be unlawful for any owner of a swelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a swelling unit who either vacates, has been removed from or is otherwise prevented from occupying a dwelling unit as the result of any of the acts or omissions prescribed in paragraph (a) of this subdivision and to provide o such occupant a dwelling unit within such dwelling suitable for occupancy, after being requested to do so by such occupant or the representative of such occupant, if such owner either committed such unlawful acts or omissions or knew or had reason to know of such unlawful acts or omissions, or if such acts or omissions occurred within seven days prior to such request.

2. Criminal and civil penalties. (a) Any person who intentionally violates or assists in the violation of any of the provisions of this section shall be guilty of a class A misdemeanor. Each such violation shall be a separate and distinct offense.

(b) Such person shall also be subject to a civil penalty of not less than one thousand nor more than ten thousand dollars for each violation. Each such violation shall be a separate and distinct offense. In the case of a failure to take all reasonable and necessary action to restore an occupant pursuant to paragraph (b) of subdivision one of this section, such person shall be subject to an additional civil penalty of not more than one hundred dollars per day from the date on which restoration to occupancy is requested until the date on which restoration occurs, provided, however, that such period shall not exceed six months.

Added under the Statewide Housing Security and Tenant Protection Act of 2019, eff June 14, 2019.

NOTE: This says that if your landlord behaves in a way that threatens or actually illegal evicts you from your lawful occupancy of the premises the police may arrest the landlord and charge him/her with a class A misdemeanor, and you can sue the landlord in a civil action for damages ranging from \$1,000.00 to \$10,000.00 for each violation. Additionally, if the landlord does not then take reasonable and necessary steps to restore you to the premises after such illegal eviction, you may be able to sue in a civil action for damages of \$100.00 per day from the date you requested to be restored until the date that you are restored.

§853. Action for forcible or unlawful entry or detainer; treble damages

If a person is disseized, ejected, or put out of real property in a forcible or unlawful manner, or, after he has been put out, is held and kept out by force or by putting him in fear of personal violence or by unlawful means, he is entitled to recover treble damages in an action therefor against the wrong-doer.

Added from Real Property Law §835: amended by Laws 1981, Ch. 467, eff July 7, 1981, adding references to unlawful entry, Detainer or means.

NOTE: This says that if your landlord does manage to illegally evict you, you can sue him for three times the damages you suffer. BE SURE TO MAKE A POLICE REPORT AND KEEP RECEIPTS FOR THE EXTRA EXPENSES YOU INCUR. YOU CAN ALSO TAKE PICTURES.

REAL PROPERTY LAW

§235. Willful violations.

1. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, the lease or rental agreement whereof by its terms, expressed or implied, requires the furnishing of hot or cold water, heat, light, power, elevator service, telephone service or any other service or facility to any occupant of said building, who willfully or intentionally fails to furnish such water, heat, light, power, elevator service, telephone service or other service or facility at any time when the same are necessary to the proper or customary use of such building, or part thereof, or any lessor, agent, manager, superintendent or janitor who willfully and intentionally interferes with the quiet enjoyment of the leased premises by such occupant, is guilty of a violation.
2. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, who willfully or intentionally acts to prevent or obstruct the delivery of fuel oil ordered in compliance with either section three hundred two-c of the multiple dwelling law or section three hundred five-c of the multiple residence law or the refiring of an oil burner after such a delivery shall be guilty of a violation.

Added by Laws 1965. Ch. 1030 and Laws 1967. Ch. 680. eff. Sept. 1967; Amended by Laws 1980 Ch. 85. eff April 28, 1980. By adding section 2.

NOTE: This says it is a criminal violation for your landlord to evict you in any way: by changing the locks, shutting off the utilities, throwing out furniture, etc. He must take you to district court – and even then, if you lose, only the sheriff actually does the evicting.

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW

§ 711. Grounds where landlord-tenant relationship exists

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer; No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. A special proceeding may be maintained under this article upon the following grounds:

1. The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.
2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made, with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises,

has been served upon him as prescribed in section seven hundred thirty-five of this article. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

5. The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.

NOTE: **This law says, that as a tenant (in an apartment, house or rooming house) you cannot be evicted unless the landlord takes you to court and wins. Even then, it is only the sheriff who actually evicts you.**

POLICE ORDER



RULES AND PROCEDURES

CHAPTER 9: TITLE: PATROL OPERATIONS

SECTION 7: TITLE: WILLFUL EVICTIONS VIOLATIONS

I. PURPOSE

To provide procedures for use in handling incidents involving willful eviction violations.

II. POLICY

On occasion, complaints are received from tenants claiming an illegal eviction by their landlord which may constitute an offense under the real property law. The procedures and guidelines enumerated in this section will assist members of the Force in determining the proper course of action.

III. DEFINITIONS

N/A

IV. REFERENCES

New York State Real Property Law, Section 235.1

V. RULES AND REGULATIONS

A. Officers will not physically aid landlords with evictions or physically aid tenants in gaining reentry.
B. Officers will not ask tenants to pay rent or in any way act as an intermediary in any legal or financial settlements as enumerated in chapter 2 of the Rules and Procedures.

VI. PROCEDURES

A. Situations Where a Written Rental Agreement Exists

- When a member of the Force responds to a situation where an eviction has taken place or is taking place, and the landlord or anyone acting as his agent or representative has not

obtained a court ordered warrant of eviction (which can only be executed by a member of the Sheriff's Department), the landlord/ agent has violated Section 235.1 of the Real Property Law and the responding member of the Force will proceed as follows:

1. If a member of the Force responds to a scene and determines a willful (illegal) eviction is taking or has taken place and a written lease agreement exists and the landlord/agent is still on the premises, the officer should advise the landlord/agent that he is in violation of Section 235.1 of the Real Property Law.

- a. Where the eviction is in progress and has been completed, but the landlord/agent allows the tenant to reenter the premises, a Field Appearance Ticket for the violation may be issued at the discretion of the investigating officer.

b. In instances where an eviction has been completed and the landlord/agent is present and refuses to allow the tenant reentry, a Field Appearance Ticket will be issued to the landlord/ agent who is present.

c. Summary arrests for this violation should not be made. If there is an escalation of the original landlord/tenant dispute to the point where a separate penal law offense is committed, the investigating officer may make an arrest for the penal law offense and prepare an additional information for the violation of Section 235.1 of the Real Property Law.

2. If a member of the Force responds to a scene where an apparently willful (illegal) eviction has already occurred but the landlord/agent is no longer present, the officer will refer the evictee to the Precinct Crime Section. The Crime Section, upon determining the name and address of the landlord and establishing that a violation has in fact occurred, will prepare and have the evictee sign an information which will be forwarded to the District Court requesting that a criminal summons be issued for the violation of Section 235.1 of the Real Property Law and the summons be sent to the landlord.

B. Situations Where an Oral Rental Agreement Exists -

When a member of the Force responds to an eviction situation where an oral rental agreement is in effect; and

- the situation can not be resolved at the scene, and -
the aggrieved tenant wishes to pursue the violation in criminal court;

Regardless of whether or not the landlord is present, the member of the Force will direct the evictee to respond to the Precinct Crime Section with any

evidence (e.g., check stubs, receipts, etc.) indicating payment for residence at the incident location.

1. The Precinct Crime Section will investigate the complaint and upon determination of its validity, submit a criminal summons request to the appropriate court.

C. Attempts to Evict by Interference with Services -

When a member of the Force responds to a landlord/tenant dispute where services such as heat, electric, water, or other services, which the landlord is required by agreement, whether expressed or implied, to provide and/or pay for, and there is cause to believe that it is a willful interruption, the complainant will be directed to respond to the Precinct Crime Section where an investigation will be initiated. If a violation of Section 235.1 is found to have occurred, that unit will submit a criminal summons request to the court.

D. Responding Officer's Guidelines - In instances of willful (illegal) evictions, officers should adhere to the following guidelines:

1. Both the landlord and the tenant should be advised of additional civil recourse for damages the tenant may have as a result of an illegal eviction.
2. If a legal eviction has been executed by the Sheriff's Department a sticker will usually be attached to the door of the premises, so indicating.
3. Requests for emergency housing will be made to Social Services if the evictee receives Social Services assistance. If the evictee is not receiving Social Services assistance he must be told that the Police Department has no facilities and assumes no responsibility for evicted persons or their possessions. Officers should, however,

make themselves aware of local churches or charitable organizations in their surrounding areas that might be of some assistance and provide that information to the evictee.

4. All reports prepared relating to any and all violations of Section 235.1 of the Real Property Law will be done in conformance with these Rules and Procedures regarding the reporting of police activities.

VII. ACCREDITATION STANDARD REFERENCES

A. CALEA

B. NYSLEAP

VIII. INDEX

N/A

END