

Landlord's and Tenant's Guide to Unlawful Evictions In Ohio

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Important Disclaimer:

You should be advised that by purchasing this work, you have not hired either Eric E. Willison nor Andrew J. Ruzicho II, as your attorney. The purpose of this work is to provide you with information about the law of Ohio, but it is not legal advice. As everyone's situation is factually different, and as no fixed work such as this can ever contemplate all possible factual situations, you would be unwise to rely upon the information in this work alone. This work is not a substitute for the advice of an attorney certified to practice in Ohio, and you should seek out such a person if you are interested in legal advice.

Chapter 1: The Statutory Eviction Process

I. Description of the Lawful Eviction Process

In Ohio, landlords wanting to get rid of tenants must do so via the statutory eviction process laid out in Ohio Revised Code Section 1923.04. Directly below you will find a brief overview of the legal eviction process so that you can understand the difference between it and an unlawful eviction, often called a "self help" eviction.

The first thing that has to happen is that the landlord must put a three day notice to vacate upon your door. This three day notice to vacate is of vital importance to later proceedings, because it is what gives the Court the jurisdiction to hear a case of eviction. Without this three day notice, or if the three day notice is defective or was waived, then the Court is without jurisdiction to hear the matter and any decision that it comes to is null and void.

Once the landlord has stuck this notice on your door, you will have three days to move out. Weekends, holidays, and the day the notice was posted don't count, so if your landlord posts the notice on Friday, he must wait through Monday, Tuesday and Wednesday and come back Thursday morning to see if you are still at the Apartment before he can file his motion for forcible entry and detainer.

If the landlord comes back after the end of the third day and finds that you are still there, he can go down to the Court and file a Forcible Entry and Detainer Action against you. This is basically a lawsuit in Small Claims Court alleging that he has the right to have you removed from the premises. A hearing date will be set for you and the landlord to come in and argue it out in front of the Court. You can present witnesses and other evidence in your favor, as can the landlord.

If your landlord loses, then his Forcible Entry and Detainer Action will be dismissed, and he will have to wait until you breach the lease again before he can start the eviction process anew with another three day notice. If he tries to evict you again for the same thing, you can show the Court a copy of your previous decision and argue that it is Res Judicata. Res Judicata means that once an issue has been decided, that is the end of it, and the Court will not let the landlord have another chance at the same dispute.

But I am going to assume that your landlord won at Court (so that we can move on through the eviction process) and that the Judge issued a decision in his favor. Just getting a decision from the Judge is not sufficient. We are now at the point wherein the landlord will want to convert the Judgment Entry in his favor to that of a Writ of Restitution (also known as a red tag).

Once this Writ of Restitution is placed upon your door, you will have about five days from the time it was filled out to get out. If you do not leave at that point, the landlord can schedule a time to meet with a Sheriff's deputy or a Court Bailiff (this is done through a Praecipe for Set Out), travel to the Apartment, forcibly enter it, and remove you and your possessions to the curb.

It is possible for a tenant to mistake a lawful eviction for an unlawful one. This often happens when the tenant goes out of town for three months and forgets to pay the rent. The eviction papers are posted on the door, but the tenant, being out of town, never sees them. The hearing is set and the tenant never shows, not knowing of the action. The landlord gets a decision and a writ of restitution, sets the stuff out and changes the locks.

The tenant returns weeks later to find his apartment locked and all his stuff gone. He may think that he is the victim of an unlawful eviction, but in reality, the landlord may well have gone through the required process. The best way to tell is to contact the local court which handles evictions in your area and ask if there were any cases filed against you recently. The eviction action should pop up on their computers.

II. Commercial v. Residential Distinction

There is a very important distinction in Ohio law between the way that landlords can get rid of commercial as opposed to residential tenants. Residential tenants have the protection of the Ohio Landlord Tenant Act of 1974's Chapter 5321.15 which prohibits self help evictions on the part of landlords.

Commercial tenants (those using the rented premises for other than residential purposes, do not have this protection. Landlords are allowed to seize possession of the rented premises by simply locking the tenant out. The only restriction upon landlords here is that this dispossession must be done without a breach of the peace. But we are going to concentrate here on residential tenants.

Chapter 2: Protections of Residential Tenants

A. Common Law v. Statutory Protections

In Ohio, there are two remedies that a tenant has when he is injured by the misdeeds of the landlords. The first arise out of common law, and the other arises out of statutory law. We all know what statutory law is. That is when the legislature gets together and enacts a statute for all residents of the state to obey.

But before there is a statute covering a certain area though, there is the common law. Common law refers to court decisions covering that situation. Long before there was a statutory law saying that landlords could not simply enter into your rented apartment and remove your stuff, there were cases which made certain deeds legally actionable wrongs. In the absence of statutory guidance, courts tended to follow what other courts have already decided. They do this for reasons of consistency. Here are the common law claims that a tenant would have against a landlord who unlawfully entered the apartment and removed the tenant's belongings:

1. Conversion

Conversion is the wrongful control or exercise of dominion over property belonging to another inconsistent with or in denial of the rights of the owner. Tabar v. Charlie's Towing Serv., Inc. (1994), 97 Ohio App.3d 423 at 427. In order to prove the conversion of property, the owner must demonstrate that he demanded the return of the property from the possessor after the possessor exerted dominion or control over the property, and that the possessor refused to deliver the property to its rightful owner. Id. at 427-428.

Wrongful purpose or intent is not a necessary element of conversion; thus, a defendant is liable even if he is acting under a misapprehension or mistake. Fulks v. Fulks (1953), 95 Ohio App. 515 at 518-519. But wrongful intent can be a factor if the court is thinking about awarding punitive damages because of the conversion. Baltimore & Ohio Ry. Co. v. O'Donnell (1892), 49 Ohio St. 489, paragraph five of the syllabus; Gordon v. Morris, 2001 Ohio App. LEXIS 338 (February 2, 2001) Greene Co. App. No. No. 2000-CA-69, unreported.

2. Trespass to Chattels

A trespass to chattels is the little brother of a conversion action. It can best be described as a temporary conversion. Let's illustrate this by way of example. You are walking down the street and a thief runs up and steals the bag you are carrying. You chase after him, write down the license plate of the car he jumps into, and then you call the police. The police catch him three days later and you get back all of the stuff in the bag undamaged.

What the thief did was to deprive you of the use of these items for three days, and that is an actionable claim at law. So you can recover as actual damages the value of the use of those items over the three day period the thief had them. If the thief had sold or damaged the items, then you would have a conversion on your hands, and you would get the whole value.

In the self help eviction context, perhaps the landlord only locked you out and kept you from your possessions for three days. But when you got back in, everything was there, and undamaged. You would not likely have a claim for conversion, but you would have one for trespass to chattels.

3. Trespass

The essential elements necessary to state a cause of action in trespass are: 1) venue (meaning the court in which you bring the action is the proper court), 2) an intentional act by defendant whereby defendant enters upon land in the possession of another or causes a thing or person so to do, 3) such act being unauthorized, the defendant having no express or implied permission to enter the property of the possessor, nor any easement, license, right-of-way or other grant of ownership permitting the entrance in question. Blashinsky v. Topazio, 1987 Ohio App. LEXIS 6445 (April 17, 1987) Lake Co. App. No. No. 11-113, unreported.

4. Invasion of Privacy

A landlord's invasion of a tenant's privacy may result in a court awarding damages. The Ohio Supreme Court in Housh v. Peth (1956), 165 Ohio St. 35 held that an injured party may recover for an invasion of privacy if he can prove a wrongful intrusion into his private activities which would cause outrage, mental suffering, shame, or humiliation to a person of ordinary sensibilities. Ohio Courts have found that a self help eviction can constitute the tort of invasion of privacy. Meacham v. Miller, 79 Ohio App.3d 35.

5. Intentional Infliction of Serious Emotional Distress

A claim for intentional infliction of serious emotional distress requires proof of the following four elements: 1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff; 2) that the actor's conduct was so extreme and outrageous as to go "beyond all possible bounds of decency" and was such that it can be considered as "utterly intolerable in a civilized community," Restatement of Torts 2d (1965) 73 Section 46 comment d; 3) that the actor's actions were the proximate cause of plaintiff's psychic injury; and 4) that the mental anguish suffered by plaintiff is serious and of a nature that "no reasonable man could be expected to endure it, Restatement of Torts 2d (1965) 77, Section 46, comment j. Ashcroft v. ML Sinai Medical Ctr. (1990), 68 Ohio App.3d 359 at 366 quoting Pyle v. Pyle (1983), 11 Ohio App.3d 31 at 34.

The problem with this claim for relief is that it is difficult to prove, and that the damages are somewhat hard to calculate. At a minimum, the psychic damages you suffered must have at least resulted in your seeking some sort of medical attention or psychological counseling. The bill for such counseling would be good evidence of some of your damages under this claim for relief. But don't go into court thinking that you can just skate by simply by alleging this tort. You had better be prepared to back it up with evidence of serious mental distress necessitating more than just taking a day off work to "cope."