



# CMPD POLICE LAW BULLETIN

## A Police Legal Newsletter

November 2000

Volume 18, Issue 11

### TENANT OR GUEST – EVICTION OR TRESPASS?

This issue of the Police Law Bulletin is devoted primarily to the topic of how to respond to situations involving landlord/tenant and motel/guest relationships. Over the years, the Police Attorney's Office has developed the following examples in order to provide guidance to officers in dealing with such situations. Other factual situations may also arise in which the principles discussed below may be helpful. Officers are encouraged to contact the Police Attorney's Office with any questions they may have in this area.

#### **SITUATION #1 – Motel vs. Overnight or Short-Term Guest**

The manager of a motel attempts to remove a guest for a violation of the rooming agreement, such as non-payment, noise, too many people in the room, etc. (The rooming agreement will often provide that the guest is not entitled to a refund under such circumstances). However, the guest refuses to leave the property even after the manager has offered to return or has returned the guest's money and ordered him to leave the premises. Officers of the Charlotte-Mecklenburg Police Department can make a warrantless arrest for trespassing if the manager has offered to return (and the guest refuses to accept the refund) or has returned the money to the guest and the guest refuses to leave after having been ordered to do so. Of course, the guest also should be given an opportunity to retrieve personal belongings. If the manager has refused to return the money, the officer should advise the manager to go to the Magistrate's Office and attempt to obtain a trespassing warrant.

#### **SITUATION #2 – Motel vs. Long-term Guest**

An individual has been renting a motel room on a week-to-week basis and has stayed in the same room for several months. He is employed as a construction worker by a contractor that is working on a new building uptown and according to the motel manager, the individual occasionally goes back on weekends to his permanent home in West Virginia, where he intends to return after the job is finished. The room consists of one room with no kitchen facilities. The motel provides daily maid service and all the furnishings in the room are the property of the motel. In addition, many of the people who stay at the motel are transient guests. The manager decides he does not want the individual staying in the room any longer simply because he is obnoxious and unpleasant. The manager attempts to remove him but the guest refuses to leave, stating that the motel is his home. This does not appear to be a landlord/tenant relationship because of the room set-up (one room, no kitchen, daily maid service, furnishings belong to the motel), because the individual is staying in the motel on a temporary basis and has a permanent residence elsewhere, and because many of the guests rent the rooms on a day-to-day basis. Therefore, if the manager orders the individual to leave in the officer's presence, and he refuses

Published by Office of the Police Attorney  
Charlotte-Mecklenburg Police Department  
Mark H. Newbold • J. Bruce McDonald  
Judy C. Emken • Simone F. Alston  
John D. Joye

to do so, the officer could arrest the individual without a warrant for trespassing. Before doing so, the officer should attempt to verify with the individual the fact that he has a permanent residence elsewhere, rather than simply relying on the manager's statement. In addition, before the officer makes an arrest, if the guest has paid for the week in advance, the motel manager must refund to the guest any portion of the money that applies to the remainder of the week that the guest will not be on the premises. If the officer is unsure whether the relationship is that of landlord/tenant or motel/guest, the officer should advise the manager to go to the Magistrate's Office and attempt to obtain a trespassing warrant.

### **SITUATION #3 – Motel vs. Tenant**

A property owner converts his efficiency apartments into a motel by obtaining a motel license. The property owner does not make any other changes in the living arrangements with the residents. The residents pay what is referred to as "rent" on a weekly basis, there is no daily maid service, and all of the units have a kitchen, a separate sitting area, and a separate bedroom. The property owner has twelve units and the majority of the units are occupied by residents who have lived on the premises for over a year. The property owner decides that he wants to remove one of the residents who has been living in the motel for six weeks because the resident has been late in paying his weekly "rent." The resident refuses to leave the unit claiming that the owner must evict him because he has a week-to-week tenancy. The property owner calls for police assistance in removing the resident. The responding officer should not assist the property owner in removing the resident. Based on the factors listed above, the relationship appears to be that of landlord/tenant which requires formal eviction procedures. No warrantless arrest should be made by the officer.

### **SITUATION #4 – Tenant vs. Freeloader Guest**

One individual has his name on the lease (the "tenant"); the other individual does not. The other individual is simply living there and is not paying anything such as rent or utilities, nor is there any other type of agreement between the parties. The tenant can put the other one out of the dwelling without going through formal eviction procedures. If the officer concludes that the other individual is merely a non-paying guest of the tenant and the tenant orders the guest off the premises in the officer's presence, the officer may make a warrantless arrest for trespassing if the guest refuses to leave. The person whose name is on the lease should allow the guest to retrieve his personal property before the officer takes any enforcement action. Officers should not become involved in the division of personal property between the individuals. On the other hand, if the officer is unsure whether the individual is a guest or a tenant, the officer should advise the person whose name is on the lease to go to the Magistrate's Office and attempt to obtain a trespassing warrant. No warrantless arrest should be made under these circumstances, unless it is otherwise justified under N.C.G.S. §15A-401(b).

### **SITUATION #5 – Homeowner vs. Paying Guest/Occupant**

Two individuals are living together in a house. One person is the owner of the house and is paying the mortgage. The other person helps out by paying the utilities, etc. The owner of the house wants the other individual put out of the house. This is an implied lease/tenancy situation. The owner of the house should be advised to go through formal eviction procedures. (Note: The same rule would apply if the parties were living in an apartment or some dwelling other than a house).

## **SITUATION #6 – Homeowner vs. Paying Occupant – No Probable Cause for Warrant**

The owner of a house has obtained an arrest warrant for trespassing or misdemeanor breaking or entering against an individual who is living in the house pursuant to some type of rental agreement. The officer has knowledge that this is, in fact, a landlord/tenant situation and the address for the defendant on the warrant is the same as the owner's address. In this situation, the officer should not serve the warrant because the officer does not have probable cause to support the offense set forth in the warrant. Instead, he or she should contact the District Attorney's Office and request that the warrant be dismissed. Note that the officer is not protected from civil liability simply because an arrest warrant has been issued

## **SITUATION #7 – Landlord vs. Leftover Occupant**

An individual who is renting an apartment or house has another person living there whose name is not on the lease. The lease agreement provides that only those individuals whose names are on the lease are authorized to occupy the premises. In addition, the agreement prohibits the tenant from assigning or subletting the lease. The individual whose name is on the lease moves out and the other individual remains there. The landlord has ordered the remaining person to leave and he has refused to do so. As strange as it may seem, in this situation, the landlord is required to follow eviction procedures to have the remaining individual removed from the premises. Depending on the particular facts of the situation, the landlord may have to pursue eviction against the original tenant or the leftover occupant. Therefore, officers should inform the landlord that it would probably be a good idea to obtain legal advice as to the best way to proceed. Officers should not make an arrest or advise the landlord to go to the Magistrate's Office to obtain a trespassing warrant.

## **SITUATION #8 – Landlord vs. Banned Guest**

As a general rule, a lawful guest of a tenant under a standard lease agreement is not a trespasser even if the landlord does not want the guest visiting the tenant. However, some lease agreements have a provision that gives the landlord the right to control the guests invited onto the property by the tenant. If that is the case, the landlord may, in effect, ban the guest from the premises. Officers responding to this type of situation should complete an offense report for trespassing if the guest refuses to leave the premises or leaves and returns without the permission of the landlord. The landlord can take the report to the Magistrate's Office and attempt to obtain a trespassing warrant.

## **SITUATION #9 – Domestic Situation**

The husband/boyfriend has been put out of the apartment through a 50B Order, some other type of court order, a separation agreement, or by mutual agreement. The husband/boyfriend comes back to the parking lot or other common area of the apartment complex and is causing problems. However, assume in this case that his mere presence there does not violate the terms of the 50B Order. What options does the officer have? If the husband/boyfriend is intoxicated and causing a disturbance by cursing, etc., he could possibly be charged with intoxicated and disruptive in public. If he is not intoxicated, but is causing a disturbance that meets the elements of disorderly conduct, he could be charged with that offense. In such a situation, it is preferable, but not necessary, to have a complaint by a resident of the complex. If possible, the apartment representative or resident manager should ban the husband/boyfriend from the property. If that occurs, he may then be charged with

trespassing if he refuses to leave or returns after having been banned. However, the husband/boyfriend is not a trespasser if he is on the premises to visit another tenant or to visit his children pursuant to the terms of the 50B Order, separation agreement, or other court order.

### **SITUATION #10 – Domestic Situation**

The husband/boyfriend has been removed from the dwelling through a 50B Order, some other type of court order, a separation agreement, or by mutual agreement. It is permissible for the husband/boyfriend to go and visit (or even live) with the wife/girlfriend's relatives at a different location, if they permit him to do so, as long as the wife/girlfriend is not living there. If the husband/boyfriend is at the relatives' house and the wife/girlfriend comes over, she is the one creating the contact and the officer should take no enforcement action against the husband/boyfriend simply because of his presence there.

### **SITUATION #11 – Parent vs. 17-Year Old Child**

Parents contact the police wanting assistance in putting their 17-year old deadbeat child out of the house. Parents are obligated to support their children until age 18. Therefore, the child's presence at the home does not constitute trespassing and no enforcement action should be taken. However, if the child is 18 or older and is not paying anything to the parents, such as rent or utilities, or there is no other agreement between the parties, then the parents may treat the child as a trespasser.

### **SITUATION #12 – Landlord vs. Tenant – Eviction Pending**

The tenant moves the majority of his belongings out of the leased premises and lives elsewhere prior to the expiration of the lease. The tenant also stops paying rent. The landlord takes steps to have the tenant formally evicted and obtains an order of eviction from the magistrate. The tenant then attempts to move back into the premises during the ten days he has in which to appeal the eviction order. Can the landlord keep him out? Should the police get involved? No, the tenant has a right to stay until the eviction order is final and the sheriff has padlocked the premises. Thus, the tenant's presence on the premises during the ten-day period does not constitute trespassing.

### **SITUATION #13 – Forcible Entry by Tenant**

The landlord has obtained a judgment of eviction against the tenant, but the judgment has not been executed on and the sheriff has not yet padlocked the premises. The landlord decides to change the lock on the apartment door since he has already been to court, even though the tenant still has personal belongings in the apartment and still has the right to possession of the premises (See Situation #12, above). The tenant comes back to the apartment and breaks the lock on the door in order to retrieve his personal property. The landlord calls the police and wants the tenant arrested for breaking or entering, trespass, and/or damage to property. In this situation, the tenant has the right to re-enter because the eviction order is not final and the sheriff has not padlocked the premises. Therefore, a criminal charge against the tenant (for breaking and entering, trespassing, and/or damage to property) is not appropriate. Of course, the tenant does not have the right to damage the premises to a degree beyond that necessary to gain entry.

## **SITUATION #14 – New Owner vs. Tenant**

A tenant is living in a house and paying rent to the owner pursuant to an oral lease. The owner eventually sells the house to another party. The new owner wants the tenant to leave, but the tenant refuses to do so. The new owner then calls the police and wants the tenant arrested for trespassing, claiming that there is no lease agreement between the parties. In this situation, officers should not take enforcement action and should advise the new owner that he will need to initiate formal eviction procedures to remove the tenant. Although the new owner may not have entered into a lease agreement, he purchased the property subject to the oral lease between the tenant and the previous owner and must, therefore, legally evict the tenant.

---

As illustrated by the examples above, landlord/tenant and motel/guest relationships may involve complex legal issues. Officers should always, as much as possible, verify the facts of the situation with both parties. In those cases in which the officer feels that an individual is being or has been wrongfully (but, otherwise peacefully) evicted, he or she can advise the individual to contact Legal Services of the Southern Piedmont, Inc., 1431 Elizabeth Avenue, Charlotte, N.C. (704) 376-1600. Of course, the individual must meet certain financial guidelines.

---

## **ENFORCEMENT – HANDICAPPED PARKING VIOLATIONS**

Effective immediately, officers should **not** write handicapped parking violations on city parking tickets (“small tickets”). Instead, **all** such violations should be written on a uniform citation (\$100.00 fine plus the costs of court), charging the violator under the state statute (G.S. 20-37.6).

The reason for the change is that questions have been raised regarding the City Of Charlotte’s authority to have a handicapped parking ordinance when the same violation is covered by a state law. As a general rule, cities and counties are preempted from having a local ordinance that prohibits the same conduct as that of a state statute.

The Police Attorney’s Office and the City Attorney’s Office are planning to have a bill introduced when the legislature convenes in January that would amend the City Charter to specifically authorize a local handicapped parking ordinance. Officers will be notified if and when the legislation passes.

In the meantime, when enforcing the state statute, officers should **not** issue the citation in the name of the registered owner of the vehicle and leave the citation on the windshield, as this can create a number of legal and practical problems. Admittedly, this may significantly reduce the volume of citations written. Supervisors may want to provide some guidance to officers as to whether or not they should “stake out” vehicles in order to issue citations. Hopefully, the legislative solution will be in place early next year.

Questions have been raised as to why these violations are now going to be handled differently than fire lane violations, which may be enforced on a city parking ticket. In 1997, the City charter was amended by the state legislature to provide for a local fire lane ordinance and to allow fire department personnel to enforce such an ordinance. A similar solution is now being sought for handicapped parking violations

---

## CITY CODE AMENDMENT – TRUCKS ON RESIDENTIAL STREETS

On November 13, 2000, the City Council adopted an amendment to Section 14-183.1 of the City Code, which deals with large commercial vehicles on residential streets. The amendment allows the City Department of Transportation (“CDOT”) to prohibit such vehicles from traveling on designated thoroughfares in residential areas.

Under the ordinance, a large commercial vehicle is one that has all of the following characteristics:

- 1) exceeds thirty (30) feet in length or eighty (80) inches in width, and
- 2) has a commercial license plate as required by DMV, and
- 3) has three (3) or more axles, and
- 4) is a property-carrying vehicle licensed for a gross vehicle weight of 32,000 pounds or more

Prior to the amendment, such vehicles were allowed to travel on designated thoroughfares in residential areas (examples: Colony Road, Park Road – between Pineville-Matthews Road and Carolina Place Boulevard, and Sharon View Road). Now, CDOT can post signs prohibiting large commercial vehicles from traveling on such thoroughfares and CMPD officers can take enforcement action in the restricted areas. Criteria that CDOT will use to determine if signs should be posted include road classification, traffic volumes, and the availability of nearby truck routes or thoroughfares where truck traffic is more appropriate. If officers have any questions about particular streets, they should contact CDOT at (704)336-3893.

In enforcing C.O. 14-183.1, officers have the option of either issuing a twenty-dollar (\$20.00) parking ticket (“small ticket” – write in under “21. Other”) or a uniform citation (waivable upon payment of a ten-dollar (\$10.00) fine plus the costs of court; eligible for driving school).

Please note that C.O. 14-183.1 still does not apply to a large commercial vehicle that enters upon a residential street for the sole and exclusive purpose of:

- 1) loading or unloading materials; or
- 2) performing work of a temporary nature; or
- 3) gaining access to other streets in the area for the above two purposes; or
- 4) actively engaging in a governmental or public purpose in carrying out its activities.

