

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. NYSLEA

P

VIII. INDEX

N/A

END