

How Do You Deal With... The Guest From Hell?

With ever increasing frequency, we hear landlords complaining about the consequences of dealing with “problem guests” of your tenants. These are the friends or relatives of your tenants who come to the property, park in someone else’s space, act inappropriately, and generally disrupt the lives and lifestyles of the other tenants.

The first option available to a landlord is to bar that individual from coming on the property again by issuing a Notice of Criminal Trespass which can be served by you or your attorney. The notice advises the individual that they are no longer welcome on the premises and that if they are seen there again you will seek to have them arrested for trespassing. Copies of these notices should be given to the local police or sheriff’s department. If the individual comes on the property again, the law enforcement agency can be called.

It is the position of this firm that while the tenant may have exclusive use and occupancy rights of the apartment itself, they do not exercise control over the common areas. Therefore, the landlord has the right to bar from those areas any individual or individuals they wish. Although this argument has convinced some law enforcement officers to enforce our Notices of Criminal Trespass, many continue to refuse. In 1995 Maine Supreme Judicial Court held: “the right of a tenant to have visitors in their homes at reasonable times and for reasonable purposes, however, is so fundamental it requires no statutory authority”. *Maine v. Decoster*, 653 A.2d 891 (Me. 1995). We believe that the *Decoster* case is, however, distinguishable based on the fact that while the guest in that case was there to help the tenant assert their rights as employees and create a union, there is no “reasonable purpose” if the guest is simply there to make a nuisance of themselves.



The good news in all of this is that you have some options. At the very least, we recommend that your lease contain a provision whereby the tenant agrees that the landlord has the authority to bar

from the premises any individual that in the landlord's discretion has been causing a nuisance or other problem that is tantamount to a lease violation. Such a clause would allow the landlord to argue that although the tenant has contractual rights to use the premises, including the common areas, they have contracted away the authority to determine who can be on the premises and therefore the right to possession and use is not exclusive. The lease clause should further indicate that a visitor or a guest on the premises who is causing a nuisance is not on the premises for "reasonable purpose".

If local law enforcement is still reluctant to pursue the trespass claim, then the landlord is left with the final option of threatening to evict the tenant. Such an eviction would be based on the tenant's guest acting in such a manner as to disturb the "rights of quiet enjoyment" of other tenants. It would not be based solely on the guest's presence at the property. The threat of eviction itself will often be sufficient to convince the tenant to sign a statement that the particular individual will no longer be at the property at the invitation of that tenant. At that point, unless the guest knows other tenants, this should be enough to convince law enforcement to arrest the individual for trespassing.

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