

LEGAL EASE Non-Tenants and Illegal Activity:

*Are you doing enough?
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Most landlords, once they have police reports or other sufficient evidence, act quickly to rid their communities of residents who are engaging in illegal activity in their apartments or in the common areas. But what about non-residents who are hanging out in the common hallways, courtyards or parking lots of a property and selling drugs, carrying guns, or just harassing residents? These individuals may be total strangers, but often are the adult children of residents who have gotten older and moved out. What obligations does a landlord have to rid its property of these non-residents, and what steps can a landlord take?

In a recent case involving the New Bedford Housing Authority, the Massachusetts Supreme Judicial Court shed some light on a landlord's obligations in such instances. Several residents had sued the Housing Authority, claiming that, while there had been some attempts to evict residents who were engaging in illegal activity, not much had been done about non-residents who were coming on the property and dealing drugs. A lower court had dismissed the residents' case prior to trial. The Supreme Judicial Court stated that under Massachusetts General Laws Chapter 186, section

14, the "quiet enjoyment" statute, residents have a right to be protected against a serious interference with their tenancy and the character and value of the leased premises. If a landlord takes little or no action to remove individuals who are engaging in illegal activities in the common areas, and the result is that the residents are unable to use those areas as the landlord had originally promised, then the landlord is probably breaching the covenant of quiet enjoyment.

The Court also cited the public trespass statute, Massachusetts General Laws Chapter 121B. One section of the law allows residents to sue their landlord to force him/her to take action against non-residents who are causing problems at subsidized properties. The Court held that the New Bedford residents could have valid arguments against the Housing Authority under both the covenant of quiet enjoyment and the public trespass statute, and ordered that the case proceed to trial.

The ruling in the New Bedford case is applicable to any subsidized landlord, and not just housing authorities. It underscores the fact that landlords must deal aggressively to not only rid their developments of residents who are engaging in illegal activity,

but also to do everything possible to rid the property of non-residents who are engaging in the same type of activity.

What can a landlord do about these non-residents? First, the manager must know the name and address of the individual. If it is impossible to get the address, sometimes the troublemaker is staying at least part of the time with a resident, so he/she can be served there. Other times it may be possible to have the constable serve him/her in hand as he/she is hanging out on the property. Next, the manager needs evidence to present in Court. Arrest records are good, but these may not be available. Perhaps a security guard, group of residents, or neighbor is willing to come to court and describe what they have seen.

Once there is sufficient evidence, the landlord can file an application for a preliminary injunction in the Housing Court of Superior Court. If granted, the injunction would prohibit the individual from coming on the property. If he/she does come on the property thereafter, he/she can be arrested on the spot. An action under the public trespass statute can also be filed at the same time seeking a similar order. If the individual spends much time in a particular resident's apartment, the landlord can bring an eviction action against the resident. Whichever approach is taken, one thing is clear: landlords must deal aggressively with non-residents who are engaging in illegal activity on their property.