

Bornstein Law successfully uses a forcible detainer action to remove an occupant who overstayed her welcome



Attorney Daniel Cheung played an instrumental role in bringing a successful outcome for a client endeavoring to recover possession of a home they just purchased.

A seasoned attorney with Bornstein Law and native speaker of Cantonese, Daniel Cheung has deep roots in the Asian community with a proven track record of protecting the interests of rental property owners in court and before local rent boards with a specialty in unlawful detainer (eviction) actions.

Although moving in with your parents is often seen as a mark of irresponsibility, the pandemic has changed that stigma. Suspension of classes on college campuses and miserable economic conditions have led to a wave of young adults returning home. Still other people have been forced to bunk together in temporary living arrangements with friends.

With such a large-scale reshuffling of people between homes and rental units, what happens when family members and other housing mates refuse to leave when it is time to go?

We resolved this delicate question in a case in which an East Bay homeowner welcomed his stepdaughter into his home with open arms when she fell on tough economic times.

After letting his stepdaughter stay for a generous period of time and facing economic challenges of his own, the time came when the stepfather kindly told her it was time to break the umbilical cord and search for alternative living arrangements. The stepdaughter insisted on staying implanted despite the homeowner's wishes.

At his wit's end when his stepdaughter refused to leave, the homeowner decided to sell the property. The new owners discovered that they were unable to recover possession of the premises because an unwanted occupant was living there. The new owners gave her seven days to move out, an ultimatum that came and passed without the occupant leaving.



Our goal is never to elongate a dispute ... the objective always is to resolve disputes in as little time as possible, taking into account time, risk, and attorneys' fees.

~ Daniel Bornstein

That's when the new homeowners turned to Bornstein Law to effectuate a vacancy.

At first, we kindly but firmly reached out to the stepdaughter informing her that while the previous owner allowed her to occupy the home in a short-term arrangement, there was no tenancy established and that the license to reside in the home was revoked. Still, as we said in the eventual lawsuit, the defendant "by force, unlawfully holds and [kept] the possession of the subject premises thereby excluding plaintiff."

Through "discovery" - the process to begin preparing for trial by exchanging information between the parties about witnesses and evidence that will be presented at trial - we asked the defendant to produce any documentation or other proof that she was a tenant.

The defendant, lounging comfortably in the home she was illegally occupying, could not volunteer any evidence to support a claim that she was a tenant entitled to possession of the premises. Except for a brief period when the unwanted occupant was assisted by an attorney in responding to a series of requests for answers, the defendant remained silent and obstructed the discovery process.

The defendant was so emboldened, she demanded a lump sum of tens of thousands of dollars to voluntarily vacate the premises.

Sometimes, a tenant's surrender of possession (also known as a "tenant buyout agreement") is a viable tool to effectuate a vacancy,

In this instance, Bornstein Law could not entertain the defendant's offer because it was our position - with the court later agreeing - that the defendant was not a tenant but a licensee who no longer had permission to occupy the premises.

Our client's hands remaining tied with the defendant still hunkering down and by a breakdown in communication,

Guests are considered to be licensees and are not entitled to the same rigorous set of rules and eviction protections as bona fide tenants.

Bornstein Law had no other option but to move forward with a lawsuit on behalf of the owners.

The result? Our clients were able to transition the occupant out and regain possession of the home they had purchased.

Moreover, they were awarded attorneys' fees and the defendant was required to pay \$200.00 for each day she was in unlawful occupancy of the premises.

Since the finality of the case was a summary judgment, our clients achieved a positive outcome without the costs and morass of a trial.

For founding attorney Daniel Bornstein, it was a relief to avoid trial. "Our goal is never to elongate a dispute," Bornstein says. He points out that in every case, the objective is to "resolve disputes in as little time as possible, taking into account time, risk, and attorneys' fees."

Some takeaways

Out of compassion or obligation, when an owner opens the door to someone in their residence, there is a license to occupy the premises which can be revoked.

An easy example to conceptualize this is when a guest is invited over for dinner. They can enjoy the meal and stay as long as their host allows them to.

Yet, the guest must leave when asked to - the guest certainly cannot stay indefinitely and cannot claim that they now are residing in the dwelling or carve out a living space.

They are an invitee and how long they linger is decided by whoever invited them over for the dinner date. This analogy can be used to explain a forcible detainer action.

A forcible detainer lawsuit may be the appropriate legal vehicle to remove an occupant when no tenancy is recognized under law. Asking a family member or close friend to move on may

For informed advice, get in touch.

Reach out to the boutique law firm specializing in representing rental property owners in thorny landlord-tenant disputes and complex real estate litigation



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be a difficult but necessary conversation to broach. Removed from the emotional fray, Bornstein Law can assist in removing a tenant who has a limited license to stay.

If the occupant had permission to lay their head in the premises, he or she is considered a licensee and the owner (licensor) can at any time say, "time is up." If the now-unwelcome guest continues to stay against the wishes of the owner, he or she is guilty of holding and keeping possession of the property.

Since the forcible detainer action at hand was commenced in Alameda County, landlords should be encouraged that the courts are open to hearing eviction cases other than nonpayment of rent. Although Alameda County and some of its local jurisdictions have stringent eviction moratoria, there is still recourse available for rental property owners, with proper counsel, to pursue an unlawful detainer action on grounds unrelated to missed rent payments.