



## CASE STUDY

# Bornstein Law secures a judgment in a forcible detainer action

When there is no tenancy established, occupants who are given a temporary place to stay must leave when the owner asks them to.

## OVERVIEW

Whenever a property owner allows a family member or anyone else to stay in their residence rent-free and there is no landlord/tenant relationship, the guest must leave whenever he or she is asked to by the property owner.

When the unwanted guest refuses to vacate, a forcible detainer action can be commenced.

Our hard-won experience has shown that many individuals who exploit the good will of owners are extraordinarily dependent on their current living situation and have not saved enough money to transition on to new housing opportunities.

Why would they leave on their own volition if they have no obligation to pay rent? The unfortunate answer is, in many parasitic instances, they won't.

Defendants in a forcible detainer action, then, tend to strenuously fight the lawsuit and concoct ludicrous defenses in a desperate attempt to cling onto their free place to live. This action is a case in point.

When you or your clients have occupants who have egregiously overstayed their welcome, read on. If "tough love" fails and the guest remains implanted, our office can assist in effectuating a vacancy.

## UNDERLYING CIRCUMSTANCES

After his father passed away, our client was appointed as the Personal Representative and the Administrator of his father's estate. This means our client was authorized by the probate court to wind down the earthly affairs of his father and take control of the estate's assets.

The defendant was provided historic permission to stay in the estate home, although there was no rental agreement or rent exchanging hands. Hence, no tenancy existed. There was a license for the guest to dwell on the property for the time being, but this limited license could be rescinded at any time.

It's analogous to inviting over someone for dinner. Once the meal is finished and the dinner guest is asked to leave, he or she must go. The guest cannot assert a tenancy and certainly would be unable to argue that they are entitled to "just cause" eviction protections in order to be escorted out of the residence.

### **Yet some guests stay implanted**

Our client wanted to sell the property vacant so he kindly asked the defendant to leave. The defendant did not comply with this request. After the defendant continued to occupy the premises against our client's wishes, Bornstein Law was retained to effectuate the removal of the wayward occupant.

Our office served proper notice rescinding the right to occupy but the person was adamant about staying in the home. The matter was escalated to trial.

## **FAST FORWARD TO THE TRIAL**

In San Francisco Superior Court, the defendant contested that our client's father did not own the property but it was instead owned by someone else. If that were true, our client would exert no control over the estate. Dubious evidence was offered in support of this preposterous claim.

The court reviewed the letters of administration and was tasked with deconstructing the ownership of the property, taking into account a 1977 deed of trust, as well as a mortgage taken out by our client's father.

With the defendant casting doubt on the authenticity of this notarized paperwork, the court compared the property owner's handwriting and signatures to various documents, finding the similarities to be uncanny.

A look at property tax records also revealed that our client's father was the individual who paid the taxes, leaving no doubt as to ownership.

## **THE SUCCESSFUL OUTCOME**

After overwhelming evidence presented in a contentious court trial, the Honorable Jeffrey S. Ross granted an entry of judgment and authorized a writ to be issued through a Sheriff eviction.

**BORNSTEIN LAW**  
BAY AREA REAL ESTATE ATTORNEYS

