

*“Did You Know there are 3 Ways to be Evicted from a Rental Property?”*

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

## Eviction Rights of the Landlord and Tenant

### Quiet Enjoyment v. Eviction: Actual / Partial / Constructive

The landlord has a duty to provide their tenants with quiet enjoyment of the rental property. Simply, this requirement attempts to prevent a landlord from interfering with their tenant's possession of the property. Generally, a landlord's interference with a tenant's right to possession will occur in one of three ways: 1) Actual eviction; 2) Partial eviction; or 3) Constructive eviction.

1) Actual eviction occurs when the tenant is prevented from accessing the entire leased premises. 2) Partial eviction occurs when the tenant is prevented from accessing a part of the leased premises. 3) Constructive eviction occurs when the landlord fails to provide a required service to the tenant regarding the leased premises.

### Tenant's Rights if Landlord causes a Wrongfully Actual Eviction

If a tenant suffers from a wrongful actual eviction initiated by the landlord or the paramount title holder, the tenant's obligation to pay rent terminates.

### Tenant's Right if Landlord causes a Wrongful Partial Eviction

If a tenant suffers from a wrongful partial eviction, their remedies are dependent on who initiated the eviction:

- 1) If the wrongful partial eviction is *caused by the landlord*, then the tenant no longer has an obligation to pay rent for the entire premises despite the fact that the tenant still inhabits a portion of the premises.
- 2) If the wrongful partial eviction is *initiated by a third party* who is the paramount title holder, then the tenant still has to pay rent, but only to the extent of the proportional amount of space they inhabit. For example, if the full rental payment is one thousand dollars and no/cents (\$1,000.00) a month but the tenant is only able to inhabit twenty percent (20%) of the property, the tenant need only pay two hundred dollars and no/cents (\$200.00) a month in rent. ( $\$1,000.00 \times 20\% = \$200.00$ )

### Tenant's Rights if Landlord causes a Constructive Eviction

If the landlord's intentional inactions or actions results in a constructive eviction (i.e. the landlord fails to maintain the premises forcing the tenant to leave because the property has become uninhabitable), the

tenant can terminate the lease as well as seek damages. However, in order for a tenant to receive damages, the tenant must prove:

- 1) The injury causing actions were caused by the landlord or their agent;
- 2) The premises are uninhabitable (i.e. a marginally operating air conditioning will not suffice); and
- 3) The tenant must move-out immediately (evidencing the premises are uninhabitable).

**IMPORTANT:** If the tenant does not move-out within a reasonable period of time under the circumstances, the tenant has effectively waived their rights to do so which will effectively prevent them from pursuing damages on the theory of constructive eviction.

### **Tenant's Rights if Landlord Breaches the Duty of Quiet Enjoyment**

If the landlord breaches their duty to provide quiet enjoyment to the tenant, the tenant has the right to vacate the premises immediately and provide the landlord in writing within fourteen (14) days of their vacating the premises their intent to terminate the rental agreement. A duty of quiet enjoyment includes the occurrence of a fire or casualty which causes damage to the tenant's dwelling unit to the extent the tenant's enjoyment of the dwelling is substantially impaired. Once the landlord has received the tenant's notice to vacate the premises, the rental agreement will terminate as of the date of the tenant's vacating and the tenant is entitled to their security deposit. Conversely, the tenant may decide to stay in the premises, if legal, and have the landlord reduce the rent proportionally for all portions the dwelling unit that was destroyed.

### **Landlord's Duty to Deliver Possession of the Property**

A landlord has a duty to provide their new tenants with exclusive possession of the rental property. This duty makes it the landlord's responsibility to remove any person who is unlawfully possessing or living in the rental property. This most commonly occurs when the previous tenant refuses to vacate the premises. Generally, this person is called a "holdover tenant."

### **Tenant's Rights if Landlord Fails to Deliver Possession of the Property**

If the landlord fails to deliver possession of the rental property to the new tenant, the new tenant will not have to pay rent for the portion of time they do not have exclusive physical possession of the property. In addition, the new tenant has the right to either:

- 1) Give the landlord five (5) days written notice of their desire to terminate the lease; or
- 2) Demand performance of the rental agreement.

If the tenant decides to terminate the lease, the landlord must return all of the tenant's prepaid rent and security deposits. However, if the tenant decides to demand performance of the lease, the tenant can sue either the landlord or the person(s) wrongfully in possession of the rental property to recover the damages incurred.

If the landlord's failure to deliver possession is willful and not in good faith, the injured tenant is entitled to damages which are equal to the greater of two (2) months rent or twice the actual damages. An example of actual damages could be the extra costs the tenant had to pay to find alternative housing.

**About the Author**  
**Scott F. Burns, Esq.**

Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information  
[www.B-BLAW.com](http://www.B-BLAW.com)

*Material presented herein are for informational purposes only and are not intended to constitute legal advice, to be a legal opinion or create an attorney client relationship for the reader or any specific person. Estate and Tax planning is fact specific and requires consultation with a tax or legal advisor before undertaking any course of action.*