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The San Diego County Law Enforcement Quarterly contains information of interest to law enforcement agencies. Included in the Quarterly are:

1. Feature Articles in Specific Areas of Law.
2. Summaries of Recent Cases with a Suggested Application for Use in the Field.
3. Point of Law, a Direct Answer to Your Question.
4. An Index for Easy Reference.

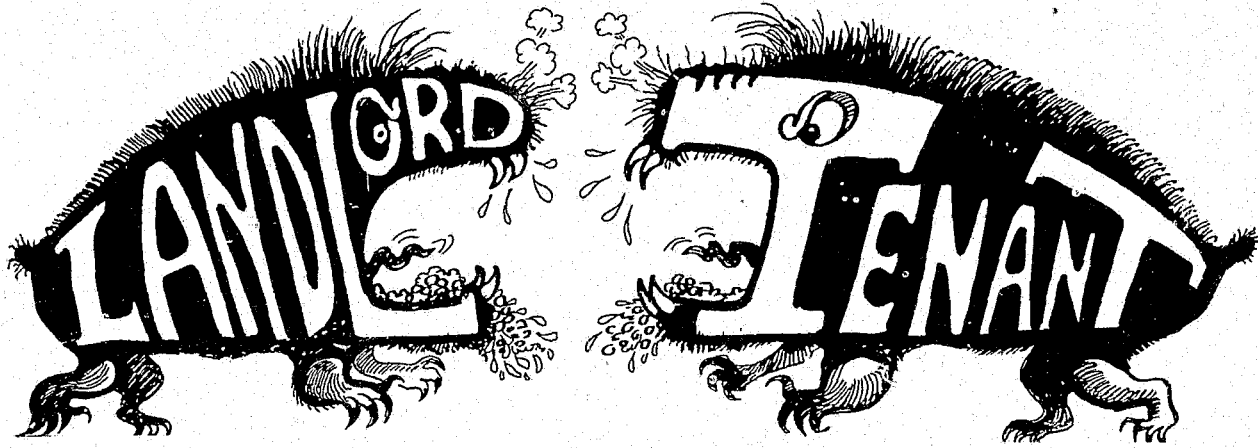
The purpose of this report is to provide the patrol officer with assistance to understanding rapidly changing aspects of the criminal law. Comments directed at improving this bulletin or making it more relevant to your use are welcome as it is our intent to make this report as useful as possible. Please address your questions or suggestions to:

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## Landlord-Tenant Disputes & The Police

*By Sgt. Wally Murker  
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The police officer's role as a keeper of the peace requires that he deal with all areas of human conflict, including the handling of landlord-tenant disputes. Although the traditional practice of police departments has been to regard landlord-tenant conflicts as civil only, very often such disputes involve a misdemeanor violation of the Penal Code or result in some type of violence. It is important, therefore, for police officers to be aware of both the practical and the legal issues involved in the typical landlord-tenant disputes in order to prevent these conflicts from escalating into violent confrontations. An officer who understands the basic civil and criminal law in this area can be effective in mediating landlord-tenant disputes without the occurrence of violence or the necessity for arrests.

### **PENAL CODE VIOLATIONS IN LANDLORD-TENANT DISPUTES**

Effective handling of landlord-tenant disputes requires an understanding of applicable Penal Code provisions. The police officer should try to avoid arrest and achieve a lasting solution to the dispute by explaining to the parties what conduct is not lawful and by suggesting alternative solutions that are lawful.

Reprinted from the Law Enforcement Legal Information Bulletin, published by the Office of the District Attorney of Los Angeles County. Updated by Robert M. Foster, Deputy Attorney General.

### **Unlawful Conduct by the Landlord**

#### *Tenant Lockout*

Very often when a tenant is behind in his rent, the landlord will jam or change the tenant's door lock in order to prevent the tenant's further use of the dwelling until the rent is paid. This lockout procedure is a misdemeanor prohibited by Section 418 of the Penal Code.

#### *Seizure of Tenant's Property*

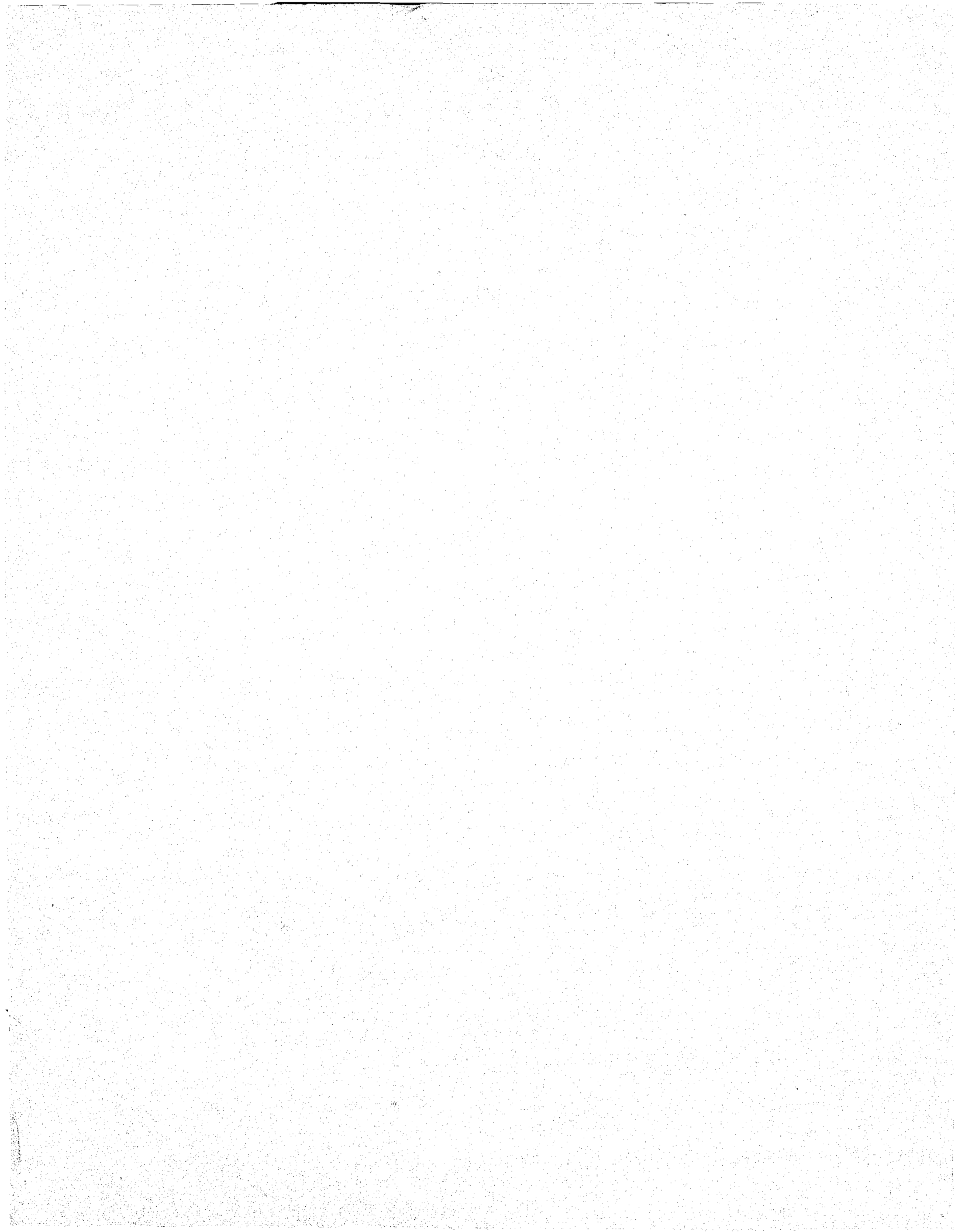
Sometimes a landlord will also seize his tenant's possessions as payment for past-due rent. A seizure also results when the landlord has locked the tenant out of the dwelling, since the tenant's possessions are thereby locked-in. The seizure of a tenant's property is a misdemeanor, prohibited by Penal Code Section 418. Generally, a landlord may not take possession of his tenant's property unless he first obtains a court order allowing him to do so. (Cal. Civ. Code 1861 (a) )

#### *Removal of Doors or Windows*

If the landlord removes the doors or windows to his tenant's dwelling in an attempt to evict the tenant, or in any other way destroys the tenant's property, he may be guilty of malicious mischief, in violation of Penal Code Section 594. Even though the landlord may thereby be destroying his own property, the courts have held that since a tenant has a property interest in the premises, any such acts of destruction by the landlord constitute malicious mischief against the tenant.

#### *Termination of Services*

Interference with the tenant's ability to obtain services such as gas, electricity and water is also a common practice of a landlord who desires to rid



himself of an uncooperative tenant. Such action is often a misdemeanor violation of local city ordinance. In addition, California Civil Code Section 789.3 makes a landlord liable in a civil action for (1) actual damages, (2) \$100 per day punitive damages, and (3) attorney's fees, if he willfully interrupts or terminates his tenant's utilities service.

#### *Trespass*

A landlord will often enter his tenant's premises without permission from the tenant. The law allows a landlord to enter the tenant's premises in the tenant's absence in a number of situations. In an emergency the landlord may enter without the tenant's permission. He may also enter to do repairs, alterations, etc., to which the tenant has agreed, and to exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

He may enter when the tenant has abandoned or surrendered the premises and also with a court order. In all of these instances except emergencies and abandonment by the tenant he may only enter during normal business hours. Further, in all instances except emergencies, abandonment and when it is impractical to do so he must give the tenant at least 24 hours notice of his proposed entry. These entries are not considered trespass. However, a landlord will often enter his tenant's premises without prior permission in order to harass the tenant or to snoop around. This conduct is considered to be a trespass and the landlord who engages in such conduct is guilty of a misdemeanor offense. (Penal Code Section 602.5)

#### **What Can the Officer Do?**

Even though the landlord may have proper legal grounds for evicting his tenant, it is unlawful for him to use any of the prior methods in an attempt to force the tenant to vacate the premises. Rather, he must bring a civil suit, called an "unlawful detainer" action, to have his tenant legally evicted. In the usual case, an officer will respond to a call from an angry tenant who has been locked out of his apartment. When the officer arrives on the scene he will be faced with a potentially violent confrontation between the landlord and the tenant.

Many times an officer will merely inform the parties that their dispute is a civil matter and leave. But if the officer understands basic legal principles, he can often resolve the dispute by informing the parties of their legal rights and obligations.

If the officer has responded to a tenant's complaint that his landlord has (1) locked him out, (2) seized his property, (3) removed the doors or windows to his premises, (4) interfered with the use of his utilities, or (5) unreasonably trespassed on his premises, the officer can often successfully resolve the dispute by:

1. Informing the landlord that he has probably committed a misdemeanor violation by his act, and
2. Briefly explaining to the landlord that if he has legal grounds for evicting his tenant, he should bring an unlawful detainer action against him.

Very often the landlord is unaware that his conduct is unlawful; that he has committed a misdemeanor. A simple explanation by the officer that the landlord's self-help measures are unlawful will often be enough to mollify him. If, however, the landlord is uncooperative (e.g., he refuses to replace the tenant's doors and windows), the officer can explain to him that criminal proceedings can be initiated by the tenant. This tactic usually insures his cooperation.

In addition, even though this approach may settle the immediate conflict (e.g., the tenant who has been locked out of his apartment can gain reentry), it will probably not resolve the problem permanently. The tenant may continue to remain behind in his rent and the landlord will try to get rid of the tenant in another equally illegal way. Thus, the officer should not only resolve the immediate conflict, but also aid the parties in achieving a long-range solution to their problem.

### **CIVIL LAW IN LANDLORD-TENANT DISPUTES**

If a police officer has a knowledge of the relevant civil law that may be involved in the typical landlord-tenant dispute, he will be better equipped to handle the immediate problems and suggest a permanent solution. For example, if a landlord has locked his tenant out for nonpayment of rent, the officer could briefly explain to the landlord how he could legally evict the tenant. Simply telling the landlord that lockouts are unlawful might get the tenant back into his apartment again, but that alone will not resolve the landlord's problem.

#### **Eviction**

The best legal way for a landlord to evict a tenant is by bringing an unlawful detainer action in court. There are several steps in this proceeding.

#### *Notice*

If the tenant has violated any of the conditions of his lease or rental agreement (e.g., he failed to pay his rent when it was due; he is keeping a pet when this is specifically prohibited), the landlord must give the tenant a three-day written notice to either correct the condition or move, prior to bringing an action in court to evict him. This means that if the tenant who is behind in his rent pays the total rent due within the three-day period, the landlord cannot have him evicted.

The landlord must give a copy of this notice to every adult to whom the premises were rented. In addition, the landlord must serve the tenant with a legally correct notice. Such forms are available at most large stationery stores.

In addition, a landlord has the right to terminate a month-to-month tenancy for almost any reason, even if the tenant has *not* violated any provisions of the rental agreement. To do this, the landlord must first serve the tenant with a written notice instructing him to vacate in 30 days. If the tenant fails to move within 30 days, the landlord must then bring an unlawful detainer action against the tenant.

#### *Unlawful Detainer Action*

If the tenant has been properly served with a

three-day or 30-day notice and he does not comply with it, the landlord can then bring court action to evict him. The landlord initiates this action by filing an "unlawful detainer" complaint with either the municipal or the small claims court.

• **Small Claims Court**

A landlord can bring an unlawful detainer action in small claims court and get a judgment of up to \$750 in back rent only when (1) the tenant is behind in his rent, (2) the tenancy is for no longer than month-to-month. No attorneys are allowed in small claims court, so each party must represent himself.

• **Municipal Court**

The municipal court can evict a tenant and give the landlord a judgment of up to \$5,000 in any case where the rental value of the premises is \$600 or less per month. Unlike small claims court which can hear an unlawful detainer action *only* when the tenant is behind in his rent, the municipal court can hear an eviction action based on (1) *any* violation of the lease or rental agreement (including nonpayment of rent), or (2) a month-to-month tenancy where 30 days notice has already been given.

While municipal court proceedings are more expensive because attorneys are necessary, an unlawful detainer action brought in that court is quicker. An eviction may take as little as 10 days in municipal court, whereas in small claims court it may take more than seven or eight weeks if the tenant stays until the last possible moment. If the landlord wants to bring his own action in small claims court, the clerk's office will assist him through the entire process.

**Who Wins What?**



**In Municipal Court**

If the landlord wins the unlawful detainer action he will be able to (1) get an eviction order so that the sheriff can move the tenant off the property if necessary, and (2) get a judgment for the unpaid rent. In addition, the landlord may be able to recover up to three times the amount of the unpaid rent if the tenant intentionally, in bad faith, refused to pay the rent. The landlord can also recover his court costs and often even his attorney's fees.

If the landlord is successful in the unlawful detainer action, the tenant has the right to appeal, but it's up to the judge as to whether the tenant can remain on the premises during the appeal period. If the tenant wins the case, he can have the landlord pay his court costs.

**In Small Claims Court**

If the landlord wins the unlawful detainer action, he can recover a judgment of up to \$500 in back

rent. The tenant may file an appeal with the superior court and have the action retried in the superior court.

During the time of the appeal, the small claims judgment *cannot* be acted upon. Thus, the tenant may remain on the premises during the course of the appeal. For this reason, many landlords prefer to bring their unlawful detainer actions in municipal court.

If the tenant wins the case, the landlord *cannot* appeal. The tenant may remain on the premises, and the only way for the landlord to evict him is by bringing a new unlawful detainer action based upon *other* grounds.

**WHAT ARE THE LANDLORD'S OBLIGATIONS?**

Landlords have a general legal obligation to keep the premises they rent in a condition fit for human occupancy and to repair all defects that make the premises uninhabitable. This means that the landlord must provide an apartment that has:

1. A structure that is weatherproof, waterproof and rodent-proof;
2. A workable plumbing system;
3. One working kitchen sink;
4. One working toilet, bathtub, and bathroom sink;
5. Adequate heating facilities;
6. Safe electrical wiring;
7. Adequate garbage and trash storage and removal facilities.

The landlord cannot waive these requirements by placing the burden to repair these facilities on the tenant as part of the conditions of the lease.



**WHAT CAN THE TENANT DO?**

If a landlord fails to perform his responsibilities of keeping the dwelling in good repair, the tenant should inform the landlord in writing of the problem. If the landlord fails or refuses to correct the problem after being notified of the defect, the tenant has several alternatives:

1. If the defective condition is a violation of the Housing Code, the tenant should consider reporting the violation to the housing authorities. They will investigate the defect and compel the landlord to correct it. If the problem is one that is not handled by the housing authorities, the tenant should consider calling the Bureau of Sanitation for help.

2. Sometimes the tenant is allowed to repair the defect himself and then deduct the repair costs from his rent. According to California Civil Code Section 1941, a landlord is required to keep his apartment house in good repair and fit for human beings to live

in. Another provision, Civil Code Section 1942, allows the tenant to have the repairs done himself and deduct the cost from one month's rent. It must be noted that the repair bill may *not exceed* one month's rent. Also, any agreement by the tenant to waive his Section 1942 rights is "void as contrary to public policy."

If there is a defect in the tenant's premises that qualifies for self-repair, he should notify his landlord and ask him to fix it. Such notice should be by letter. The tenant should make sure that: (1) the problem is serious; for example, the toilet fails to work, the roof leaks, the gas heater is unsafe, (2) the problem was not caused by the tenant's negligence, carelessness or failure to clean, and (3) he has not exercised his Section 1942 rights within the last 12 months.

The tenant should give the landlord a reasonable amount of time to fix the problem. What is reasonable will vary from problem to problem. If, after notice, the landlord doesn't make the repair, the tenant can have the defect repaired as long as the cost of repair does not exceed one month's rent.

3. The tenant can move out of the dwelling even if he has a lease. This procedure, known as a "constructive eviction," is allowed when the landlord has materially interfered with the tenant's use and enjoyment of the premises. If a tenant is constructively evicted he is no longer responsible for further rental payments.

4. Some California courts have held that tenants have an implied warranty from their landlords that the premises they have rented are completely habitable. If a material defect is discovered and the landlord refuses to repair it, these recent decisions may allow a tenant to *withhold* the rent *until* the

landlord repairs the defect. However, since this law is so new, tenants should be cautioned to get the help of an attorney if they want to withhold their rent in this way.

#### SUMMARY

The officer's objective, when confronted with a typical landlord-tenant dispute, is not to make or encourage an arrest but to try to achieve a lasting solution to the conflict by explaining to the parties what conduct is not lawful and by suggesting alternative solutions that are lawful.

If a tenant is locked out, the officer should:

1. Explain to the landlord that a lockout is unlawful, even if the tenant is behind in his rent, and
2. Suggest that the landlord have his tenant evicted by bringing an unlawful detainer action in the proper court.

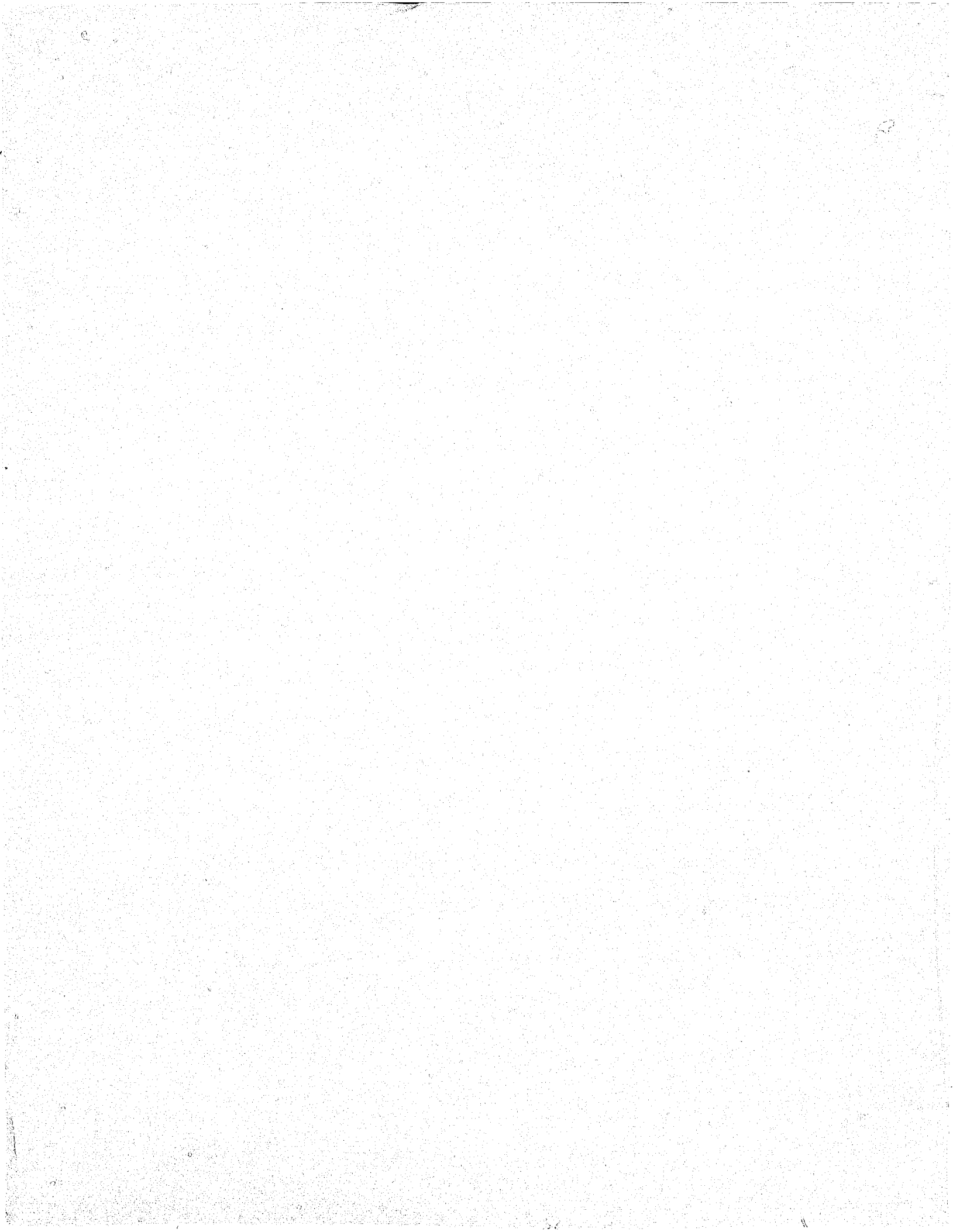
If a tenant has a defective facility in his apartment, he should explore the various legal alternatives open to him.

Officers should encourage landlords to operate in a businesslike manner by checking the credit of their prospective tenants and serving eviction notices as soon as their tenants are a few days delinquent in the rent. If the tenant is able to pay the rent within this notice period, the eviction proceedings can easily be dropped. Even though some landlords may be annoyed about the time and expense required in going to court to evict a tenant, officers can point out that this procedure is greatly preferable to the landlord's attempt at a private, often violent, settlement.

#### NOTE FROM THE EDITOR

The Law Enforcement Quarterly is published for the benefit of you — the reader. To serve you better I need to know what you like and dislike about the LEQ — and what subjects we can write about which are of particular interest to you. Let us hear from you.

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