

A.R.S. § 33-1378 Allows Landlords to Remove Roommates Without Going to Court
by Ken Volk

In 2015 A.R.S. § 33-1378 was enacted as part of the Arizona Residential Landlord & Tenant Act, allowing landlords to evict tenants' roommates who are not on the lease without any due process whatsoever, just by calling the police and having the roommates removed. This allows a landlord to bypass A.R.S. § 33-1368, which requires him to give his tenant who is violating the lease a 10-day opportunity to cure the breach, and then if the tenant doesn't do so, to take the tenant to court. Instead, a landlord can now simply call the police and have the roommate removed even if the roommate is paying rent! Under A.R.S. § 33-1378 landlords are not required to give any notice whatsoever for removing roommates who are not named on the lease, or for calling law enforcement to remove such roommates.

Even worse, the new law also applies to guests. It doesn't give any length of time for which a guest is allowed to stay. Thus, it could effectively permit your landlord to call the police on anyone he sees walking into your apartment whom he doesn't like. You should warn any guests stopping over for a cup of tea that they may be hauled off in bracelets by the police. A.R.S. § 33-1378 codifies the impermissibility of having guests, allowing the cops to abruptly swoop down and remove them. No more warnings, no more declaration of trespass. And under A.R.S. § 33-1378 any roommate who is not listed on the lease is afforded the same "courtesy," even if he has been paying rent for many months, receives mail at the property, and has contracted for utilities at the dwelling. This horrible new law, allowing dispossession bereft of a court hearing, is an end run around affording occupants, or their guests, due process protections.

Moreover, arbitrary police removal of a tenant's guests, merely on the landlord's say-so, deprives bona fide renters of their constitutional rights of association. Then, supposing the cops spot something in the dwelling of questionable legality, suddenly the tenant or occupant or guest could face criminal charges based on evidence seized without a warrant and without the tenant's permission to enter. This clearly is a violation of due process rights under the guise of landlord empowerment, giving new meaning to the term "police state." Notwithstanding the preceding, the terms of the lease can offer protection. If a tenant has a lease that allows an additional, identified occupant, then the previous rules remain in effect: the prime tenant is essentially in a landlord/tenant relationship with the subtenant (roommate), and the prime tenant, as well as the landlord, are required to use due process and go through the court system to evict the roommate.

The law definitely applies to all tenancies under a lease, but it is not so clear if it applies to other tenancies. Although it appears that A.R.S. § 33-1378 should be interpreted to exclude applicability to month-to-month tenancies, the language is a little vague and I could easily envision a Justice of the Peace concluding that the law allows ANY residential landlord to pull out a guest or (non-identified) resident using the police. I would like to be wrong, and certainly it is worth arguing that in an oral month-to-month tenancy the landlord has no say in how many tenants can be in the rental dwelling — that he gave up that right when he accepted rent without a contract.

What is so sad about this legislation is that it passed without the tenants' rights community being brought into the law development process. Unfortunately, the Arizona state legislators and their landlord allies make a point of keeping tenants in the dark about pending legislation.

In the 2011-2012 legislative session, Representative Steve Urie, himself a landlord, sponsored a bill (written by landlord attorneys Matthew Koglmeier and Denise Holliday) that penalized renters for lodging maintenance or service requests, by depriving them of advance notice of the landlord's entry. By the time I learned of the bill it had already passed the Arizona House of Representatives and was heading over to the Arizona Senate for review and votes. So I actually went and met Mr. Urie, face-to-face, who told me that he knew full well who I am and what ATA does. I then asked him: If that was the case, why did he not advise me of the legislation so I could provide input from the tenants' perspective, about this matter of statewide concern? He replied that he had intentionally failed to notify me or Arizona Tenants Advocates about the pending bill because he knew we would have opposed the bill. Thereupon, I and many other tenants made a valiant effort to derail the law's passage during hearings at the Arizona Senate, but we failed. The language is now enshrined in A.R.S. § 33-1343. When considered alongside A.R.S. § 33-1341(8), which requires a tenant to notify a landlord about maintenance or repair needs, A.R.S. § 33-1343 constitutes a punishment for doing just that, by depriving the tenant of privacy and security once such matters are brought to the landlord's attention. Damned if you do and damned if you don't.

By the way, following Mr. Urie's retirement from the House, his grateful landlord compatriots rewarded (read: campaign donations and support) his efforts by electing him as Justice of the Peace for the Highland Justice Court (Gilbert area). So for a number of years there was a landlord regularly presiding over landlord-tenant disputes, who by his own admission does not need to take tenant concerns into consideration. It is despicable.

But not hopeless.

In point of fact, my efforts in the Arizona tenants movement arose from a successful blockage of virulent anti-tenant legislation in 1993. We blindsided and foiled the landlord lobbyists; and with varying degrees of success, have been doing so ever since. Arizona Tenants Advocates, in various incarnations, was responsible for the creation of the Tempe Rental Code, and later played a role in formulating Glendale's rental ordinance. Other municipal ordinances followed in Tucson, South Tucson, Youngtown and Surprise. Tenants, when active and organized, can make a difference. We have helped prevent enactment of other negative laws (HB2128 from the 2011-2012 session), and been the impetus for new laws (modifications to A.R.S. § 33-1902, subsection C). In 2019 ATA members played a significant, if not decisive, role in defeating HB2115, which would have prevented cities and towns from adopting rental housing regulations. When I came to Arizona in 1988 after participating in social movements in New York State, there was no government or social service infrastructure to help tenants (except legal services organizations, limited to those whose incomes fall within poverty guidelines). When neighboring tenants knocked on my door and sought my help, it was the progenitor of the current incarnation of tenants rights and activism for Arizona. That movement is Arizona Tenants Advocates. We are an Arizona non-profit tenants union that is 100% membership-driven and funded. Join Arizona Tenants Advocates today and help keep tenants' rights at the forefront of struggles for social justice in Arizona.