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**Compelling landlords to evict drug dealers:
Cook v City of Buena Park, 2005
Roger Bernhardt**

City ordinance requiring landlord to prevail in unlawful detainer action against all occupants of rental unit when police chief suspects any tenant is involved in drug-related activity violated procedural due process.

Cook v City of Buena Park (2005) 126 CA4th 1, 23 CR3d 700

The City enacted a Narcotics Crime and Gang-Related Eviction Program ordinance giving the chief of police discretion to order a landlord to evict all tenants of a rental unit if the chief suspects that the premises have been used for any illegal drug activity, gang-related crime, or drug-related nuisance. Following the citation of a roommate of one of Cook's tenants for possession of drug paraphernalia, the police chief ordered Cook to evict the tenants of the rental unit or be held in violation of the ordinance. Cook sued, challenging the constitutionality of the ordinance. The trial court granted summary judgment for Cook and permanently enjoined enforcement of the ordinance, ruling that it violated substantive due process and was overbroad.

The court of appeal affirmed the result, but invalidated the ordinance on the grounds of procedural due process. The court recognized that Cook had a protected property interest—*i.e.*, the financial impact of the certain loss of rents under the terms of his lease with the tenant, the avoidance of fines imposed by the ordinance upon its violation as well as in the costs and expenses to be incurred in pursuing eviction proceedings. As for the ordinance, it is constitutionally deficient in three respects:

- The notice provided by the police chief is insufficient to permit the landlord a reasonable chance of prevailing in the unlawful detainer action, thus exposing the landlord to unjustified litigation costs and the possibility of a tenant countersuit for abuse of process, malicious prosecution, or forcible entry;
- The requirement that the landlord institute unlawful detainer proceedings within ten days from receipt of notice is onerous and unreasonable; and
- The requirement that the owner prevail in the unlawful detainer action, successfully evicting all residents of the premises or risking imposition of heavy fines, is inherently violative of due process.

THE EDITOR'S TAKE: If Buena Park's ordinance is flawed only for the three defects enumerated in the opinion, the city can probably fix them, enabling the law to survive future attacks.

First, the initial notice to the landlord could be made far more detailed and include all the items of information the court finds currently missing.

Second, the landlord could be given 30 rather than 10 days to begin eviction proceedings.

Finally, the demand that the landlord succeed could be replaced by a requirement that it make a good faith effort in that direction.

Given its energetic defense of the current ordinance, I do not doubt that the city will soon amend the law in order to remedy these perceived infirmities, if it has not already done so.

But, like the concurring judge, I hesitate to say that these three problems cover the entire array of difficulties this ordinance presents.

The concurring opinion adds concerns about the requirement that all occupants of a unit be evicted even though only one occupant may be misbehaving. Assuming that such a “zero tolerance” policy can pass constitutional muster (see *HUD v Rucker* (2002) 535 US 125, 152 L Ed 2d 258, 122 S Ct 1230, reported in 25 CEB RPLR 112 (Apr. 2002), I wonder whether a local community can require any single landlord to evict any of her individual tenants because of criminal misbehavior. Under the statutory pilot programs described in the opinion, some cities apparently can evict tenants on their own—and perhaps that can be justified under their delegated police powers. But how does that survive a Contract Clause challenge by a landlord unwilling to lose a rent-paying tenant who may not be disturbing anyone else in the building? And how, given those dangers, can a law-abiding landlady be compelled to evict a tenant against her will? How did CCP §1161(4), which authorizes bringing unlawful detainer against a tenant “using the premises for an unlawful purpose,” get to be a governmental mandate to do so? If the city itself either throws out a tenant or makes the landlady do so, does she have an inverse condemnation claim for lost rent if she can’t get a replacement?

Of course, this law doesn’t come close to answering my perennial question: How do evictions eliminate the underlying problems that trigger them? As I have elsewhere noted about vicious dogs and their dangerous fellow tenants, I do not see how putting misbehaving tenants—perhaps with their knives and drug paraphernalia—out of their apartments and onto the street reduces the risk of harm to third parties.— *Roger Bernhardt*