

TOWNSHIP OF OSCEOLA POLICE DEPARTMENT		POLICY: CRIMINAL TRESPASSING	
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CHIEF: DONALD M. COOK		DATE: 04/10/2022	

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I. PURPOSE:

The purpose of this policy is to establish procedures for the Township of Osceola Police Department to follow in the event a criminal trespass is reported.

II. POLICY:

It is the policy of the Township of Osceola Police Department that all employees adhere to these procedures in the event of a criminal trespass complaint.

III. DEFINITIONS:

**CRIMINAL TRESPASS:** Whoever intentionally enters or remains in the dwelling of another without the consent of some person lawfully upon the premises or, if no person is lawfully upon the premises, without the consent of the owner of the property that includes the dwelling, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor (§§943.14).

a.) Criminal trespass to a dwelling is not a lesser-included offense of burglary (Raymond v. State, 1972).

DWELLING: A structure or part of a structure that is used or intended to be used as a home or residence by one or more persons to the exclusion of all others. For the purposes of this section, a dwelling meets that definition regardless of whether the dwelling is currently occupied by a resident.

LEASE: An agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time.

PERIODIC TENANT: a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent.

PREMISES: The property covered by the lease, including not only the realty and fixtures, but also any personal property furnished with the realty.

RENTAL AGREEMENT: An oral or written agreement between a landlord and tenant, for the rental or lease of a specific dwelling unit or premises, in which the landlord and tenant agree on the essential terms of the tenancy, such as rent. "Rental agreement" includes a lease. "Rental agreement" does not include an agreement to enter into a rental agreement in the future.

TENANCY: Includes a tenancy under a lease, a periodic tenancy or a tenancy at will.

TENANT AT WILL: Means any tenant holding with the permission of the tenant's landlord without a valid lease and under circumstances not involving periodic payment of rent; but a person holding possession of real property under a contract of purchase or an employment contract is not a tenant under this chapter.

#### IV. INVESTIGATION OF CRIMINAL TRESPASS

- A.) When investigating a complaint of criminal trespassing, an employee of the department must keep in mind the following:
- 1.) Under Act 176, it is no longer required for the complainant to be on the premises when the trespass occurs, if it is under circumstances tending to create or provoke a breach of the peace.
  - 2.) If the complainant is not present, then the trespass is considered to be under circumstances that tend to create or provoke a breach of the peace.
  - 3.) Probable cause **prior** to removal from premises must be established with the following:
    - a.) The suspect is not a tenant

- b.) The suspect entered premises or remains on premises or in dwelling without consent of a tenant or landlord
- c.) That entry or remaining is tending to create or provoke a breach of the peace.
- 4.) Arrest is mandatory to remove the suspect from the dwelling and/or premises, but the Officer(s) has discretion whether to arrest after removal. Refer to Use of Force policy in regards to factors influencing the discretion at hand.
- 5.) This is not an “end run” around eviction proceedings. There is no probable cause violation if the suspect has a lease, is in a periodic tenant or tenant at will relationship, or a rental agreement with the complainant.

#### V. LANDLORD CONSIDERATIONS

- A.) As stated above, this is not to bypass eviction proceedings. Employees of the department should not be utilized to remove a subject who has a lease, is in a periodic tenant or tenant at will relationship, or a rental agreement with the complainant and/or landlord.
- B.) In regards to landlord-tenant law, the following should be considered:
  - 1.) Landlords can terminate tenancies, following certain rules, like providing NOTICE of the eviction proceeding.
  - 2.) Landlords can terminate the tenancy of one who fails to pay rent or commits another breach (Sec. 704.17).
  - 3.) Also, the landlord can terminate a tenancy of a tenant who:
    - a. Commits one or more acts, including verbal threats, that cause another tenant or child of that tenant, who occupies a dwelling unit in the same rental unit as the offending tenant;
    - b. The offending tenant is named the offender in an injunction, criminal complaint, or has a No Contact condition of release; and
    - c. The landlord gives the offending tenant 5-day written notice (Sec. 704.16(3)).
    - d. A landlord can terminate the tenancy of a tenant, upon a 5-day NOTICE, if the tenant/member of the tenant’s household/tenant’s guest or invitee of household ENGAGES IN ANY CRIMINAL ACTIVITY that threatens the health or safety or, or right to peaceful enjoyment of the premises by other tenants or persons residing in the immediate vicinity, or the landlord, or engages in drug-related criminal activity (704.17(3m)(b)).
      - i. DOES NOT APPLY to a tenant who is the VICTIM (defined in sec. 950.02(4)) of the criminal activity (Sec. 704.17(3m)(c)).

#### VI. TENANT CONSIDERATIONS

- A.) In regards to landlord-tenant law, the following should be considered:
  - 1.) Tenants have a right to exclusive possession of the premises until the end of a lease, or the termination of a periodic tenancy or tenancy at will, so long as the tenant is not in default. (Sec. 704.05(2))

- 2.) Tenants generally must be provided written notice by the landlord of termination of the tenancy, pursuant to time frames established by statute, and must be evicted through the civil court process.
- 3.) Domestic abuse protection to tenants (Sec. 704.14):
  - a. A tenant has a defense to an eviction action if the tenant can prove that the landlord knew, or should have known, the tenant is a victim of domestic abuse, sexual assault, or stalking, and the eviction action is based on conduct related to domestic abuse, sexual assault or stalking committed by either of the following: a person not the tenant's invited guest OR an invited guest, but the tenant has sought an injunction hearing barring the person from the premises, or provided a written statement to the landlord that the person is no longer an invited guest and the tenant has not subsequently invited that person to be a guest of the tenant. Sec. 704.14(1). Further, a residential tenant may terminate his/her tenancy and remove from the premises under circumstances of imminent threat of serious physical harm, as long as certain procedures are followed.

06-22-16

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Donald M. Cook  
Chief of Police

Date 04/10/2022