



The Bootleggers

by Zachary Lawrence JD

“**B**ootleggers” were criminals who smuggled illegal alcohol, especially during American Prohibition and other times and places where alcohol was illegal. It is believed that the term “bootlegging” originated during the Civil War, when soldiers would sneak liquor into army camps by concealing pint bottles inside their boots or trousers - sounds uncomfortable.

Today’s bootleggers are landlords who knowingly (or unknowingly) rent out portions of their property without a Certificate of Occupancy or the required building permits required by the Housing De-

partment.

I spoke about this subject with an attorney on how to address and correct issues deal-

What happens when a bootleg tenant discovers that the unit is unpermitted, and the landlord knowingly rented this unit?

ing with bootleg units. Below is the conversation.

Q: What exactly is a bootleg unit?

A: It’s a unit that is not permitted as a dwelling unit. It may be permitted as some-

thing else, like a storage room. However, it doesn’t have a permit as a dwelling unit and is not permitted for habitation.

Q: If I rent your home garage as an office only, is that a bootleg?

A: If it’s not permitted as an office, it doesn’t matter what I call it or what you use it for. It’s a bootleg. Structures that are used for offices, weight rooms, bonus rooms, art studios, etc., all have to be habitable. They must be permitted and comply with building codes. The issue here is whether the space is being used as a habitable space. A storage room is not consid-

ered a habitable space - an office is. Therefore, a permit is required for the office.

Q: Is it easier for a landlord to get a permit for a commercial space vs. a residential space?

A: Yes. The habitability requirements for a commercial space are much less than for residential spaces - for example, parking. A commercial space does not require covered parking. A residential space may or may not require covered parking. It depends on the zoning.

You may have a kitchen, to some degree, in a commercial unit. However, you can only have one kitchen

per unit in residential spaces. This impacts not only apartment owners but also owners of single family residences who convert a portion of their home, or their garage, into an additional unit.

Q: What happens when a bootleg tenant discovers that the unit is unpermitted, and the landlord knowingly rented this unit?

A: The landlord is charged with knowing whether the unit is legal or not. However, the landlord doesn’t always know. If the landlord knows, then he has a duty to inform the bootleg tenant that it’s not permitted. The tenant may then decide on whether to

stay or vacate. Most tenants have no idea if their unit is permitted.

Q: The landlord who is aware of the bootleg unit will often enter into a lease agreement with a tenant for that unit. Are there any civil or criminal penalties for a landlord to execute a lease when the landlord knowingly, (or unknowingly), rents a bootleg?

A: Any contract to rent out an illegal unit is void because the basis for the contract is illegal. And once the tenant learns that his unit is unpermitted, they usually ask for the return of all their

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back rent.

If the unit is unpermitted, the landlord may not ask for or accept rent. Nor may the landlord raise the rent. The tenant may also withhold rent and stop paying any further rent.

In the case of a non paying tenant living in an unpermitted unit, landlords will try to evict the tenant. However, the landlord will be denied any reimbursement of unpaid rent and be required to pay relocation fees to the tenant. And, even if the landlord pays the relocation fees, the tenant may slap the owner for a habitability lawsuit.

The tenant may claim that

the landlord has violated state law and is now entitled to back rent and damages. The tenant may also claim that

Usually, what happens is that someone reports the violation. In this case, the landlord will be cited and must then restore the unit to its last permitted condition.

the landlord has violated the LARSO (LA Rent Stabilization Ordinance) for various reasons, such as failing to register the unit. However, LARSO claims can usually

be defeated.

The fact is that many bootleg landlords know this, and continue to collect bootleg rent until they are ordered not to.

Q: May the landlord evict in order to bring the bootleg unit up to code?

A: Yes, however the landlord must pay the tenant a relocation fee before the tenant is evicted. There are also forms that the landlord must file with the City in order to evict this bootleg tenant.

Relocation fees for tenants in the City of Los Angeles, living in a RSO (Rent Stabilized) unit range from \$8,200.00 to \$20,450.00, per

unit (not per tenant). The amount depends on whether the tenant is considered "Eligible" or "Qualified".

A "qualified" tenant is a senior citizen (over 62), a disabled tenant or one who is responsible for a minor. Tenants that have occupied the bootleg for longer than three years will also receive more in relocation monies. Low-income tenants may also be treated as "qualified" and receive more relocation monies.

The Housing Department really doesn't care what kind of relocation deal is struck with your tenant. All they care about is that the landlord informs the bootleg tenant of

their rights under the law.

Q: If the landlord and tenant agree to relocation amounts lower than those stated, is this a valid agreement?

A: That would be up to the court. Did the tenant know about the legal amounts of relocation fees and decided to take less, or was the landlord trying to scam the tenant into taking less. Those are the issues for the court to decide.

Q: What is "Cash for Keys"?

A: The City Council approved an amendment to the RSO which requires that notice be given to the tenants prior to offering the tenant

cash to vacate the unit. This notice is a buyout notification form, informing the tenant of the amounts that he/ she is entitled to by law. Some owners, knowingly or unknowingly, fail to provide this disclosure.

Q: Does the consideration for a buyout have to be in cash? If you offer your bootleg tenant season tickets to the Lakers in exchange for an agreement to vacate, would that be a valid offer and acceptance for the purposes of relocation fees?

A: I believe it is likely that the Court would accept valuable consideration, other than cash. Again, as long as

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there is transparency and the tenant knows his rights under the law, the court is likely to accept the deal.

Q: What is a Voluntary Vacate Agreement?

A: It's a document which memorializes the terms of the relocation deal. The legal fees for an attorney to prepare such a document are anywhere from \$1,500.00 to \$2,500.00.

Q: The tenant of the unpermitted unit has now vacated. Does the landlord now have a duty to bring this unit up to code?

A: No. The landlord does not have a duty to bring an unpermitted (and vacant) unit up to code. The landlord has a

choice: Either restore it to its last permitted condition or get it permitted as habitable, as a dwelling or something else. If the unit is subsequently permitted and if the tenant vacates and was paid relocation monies, the landlord is under no duty to re-let this unit or offer it to the former tenant.

Usually, what happens is that someone reports the violation. In this case, the landlord will be cited and must then restore the unit to its last permitted condition. However, once the unit is permitted, the landlord is under no duty to re-let the unit or offer it to the former tenant.

Q: May the bootleg ten-

ant sue the landlord for back rent?

A: They often do.

Q: Will the tenant prevail?

A: In these lawsuits, the tenant will ask for not only back rent, but damages based on habitability. If the defendant (landlord) loses in court and has not paid relocation fees, the landlord will owe one and a half times the relocation fees plus the tenant's attorney fees. However, at this point in time, there is no specific provision (case law or statute) anywhere stating that the tenant is entitled to back rent.

Theoretically, the defen-

dant may argue that the lease is illegal and void, the contract should be rescinded, and that the parties should be put back in the position they were in prior to the agreement, meaning that back rent should be paid.


The fact is that this type of lawsuit exposes the landlord to thousands of dollars in legal fees. Therefore, he may simply pay the tenant to settle. This amount may or may not be equal to the amount of back rent. These cases usually settle in mediation. If I'm representing either party, I don't care if the settlement monies are designated as back rent. All I want is to get money for my

client. So to answer your question, a bootleg tenant can sue for back rent and may collect some monies in the process.

Q: If I were to survey 10 landlords in the City of Los Angeles, how many would you say have a bootleg unit?

A: I'd say about 40%.

Q: Any parting words for landlords with bootleg units?

A: My advice is to get your bootleg unit permitted and follow the law. 

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