

Effective Date: July 21, 2016

6/22/2016
6/13/2016

71-O-16

AN ORDINANCE

Amending City Code Title 5, Chapter 3 “Landlord and Tenant Regulations” to Add Tenant and Landlord Obligations for Criminal Activity at Residential Rental Properties

NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS THAT:

SECTION 1: Legislative Statement. This Ordinance gives rental property owners and managers a powerful tool to help reduce the chances of criminal activity in individual rented units. The amended language puts potential tenants on notice that they are liable for any criminal activity within their units. And if criminal activity does occur, the lease can be terminated and eviction action initiated.

Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164). Pursuant to 65 ILCS 5/1-2-1, the City may make all rules and regulations to carry into effect the powers granted to the City, such broad and general grant of authority complementing the City’s home rule powers. At meetings held in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*), the City Council considered this Ordinance, heard public comment, and made findings. It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213

Ill.App.3d 747(1991)) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124 (1995)).

This Ordinance is not intended to discourage crime victims, including victims of domestic violence and sexual violence, victims of child abuse, persons with disabilities, persons in legitimate need of police services, or a person coming to the aid of an individual in need of police assistance, from obtaining those services. This Ordinance does not affect a premise owner's and the City's duty to comply with the civil rights laws, nor does it affect a premise owner's duty to comply with all other laws governing residential tenancies. This Ordinance will enhance the public's safety, and promote the general welfare of City of Evanston residents and visitors alike.

SECTION 2: City Code Section 5-3-4 "Tenant Obligations" of the Evanston City Code of 2012, is hereby amended to add a subsection titled "5-3-4-5. *Prohibition Against Criminal Activity on Premises*" and read as follows:

5-3-4-5. – PROHIBITION AGAINST CRIMINAL ACTIVITY ON PREMISES.

(A) Tenant, any member of the tenant's household, Tenant's guest(s), and any person under Tenant's control must not engage in or facilitate criminal activity on the premises or on Landlord's property, which includes the premises as described in the rental agreement.

(B) Tenant, any member of the tenant's household, Tenant's guest(s), and any person under Tenant's control must not permit the premises to be used for, or to facilitate, criminal activity, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

(C) Tenant, any member of the tenant's household, Tenant's guest(s), and any person under Tenant's control must not engage in or facilitate any breach of the lease agreement that jeopardizes the health, safety, and welfare of the landlord, his or her agent, other tenant(s), or involves imminent or actual serious property damage.

(D) One or more violations of subsections (A), (B), or (C) of this Code Section constitutes a material noncompliance with the residential landlord-tenant ordinance and the rental agreement. Any such violation is grounds for termination of tenancy and eviction from the premises.

(E) Proof of violation will not require criminal conviction, but an arrest or citation (supported by admissible corroborating evidence that activity in violation of the above

provisions has occurred) for a described violation will be sufficient evidence of a violation constituting material noncompliance with the rental agreement and Code.

1. Any such violation committed by the Tenant or any member of the Tenant's household is grounds for Landlord to terminate the tenancy of that individual tenant or household member and to evict that individual from the leased premises. Any eviction action must be conducted in accordance with the statutory requirements stated in the Illinois Forcible Entry and Detainer Act, 735 ILCS 5/9-101 *et seq.*
2. As provided by Illinois law, Landlord has the power to bar the presence of a person from the leased premises who is not Tenant or a member of Tenant's household. A landlord bars a person from the premises by providing written notice to Tenant that the person is no longer allowed on the premises. That notice must be provided in accordance with the statutory requirements provided in Illinois law, 735 ILCS 5/9-106.2.

(F) For purposes of this Section, "criminal activity" includes any of the offenses below:

1. Homicide, 720 ILCS 3/0-1, *et seq.*;
2. Aggravated Assault, 720 ILCS 5/12-2;
3. Aggravated Battery, 720 ILCS 5/12-3.05;
4. Criminal Street gang recruitment, 720 ILCS 5/12-6.4
5. Unlawful contact with street gang members, 720 ILCS 5/24
6. Armed violence, 720 ILCS 5/33A-2
7. Kidnapping and related offenses, 720 ILCS 5/10-1, *et seq.*
8. Possession of Explosives or Incendiary Devices, 720 ILCS 5/20-2, *et seq.*
9. Any offense involving Deadly Weapons, 720 ILCS 5/24-1, *et seq.*
10. Mob Action, 720 ILCS 5/25-1, *et seq.*
11. Theft, 720 ILCS 5/16-1 *et seq.*

(G) A Tenant who is an innocent party or the victim of a crime, including but not limited to actual or threatened domestic violence, or sexual violence, will not be in violation of this Section or subject to eviction based on criminal activity. Nothing in this Section prohibits the Landlord from evicting only the perpetrator of the domestic violence, or sexual violence, or other criminal activity without affecting the tenancy of the remaining tenants in the unit.

(H) A Tenant will not be in violation of this Section or subject to eviction based on:

1. Contact made to police or other emergency services, if:
 - a. the contact was made with the intent to prevent or respond to domestic violence or sexual violence;
 - b. the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or
 - c. the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability.

2. An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises; or
3. Criminal activity or a local ordinance violation occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member or guest.

SECTION 3: City Code Section 5-3-5-3 "Maintain Fit Premises" under "*Landlord*

Obligations" of the Evanston City Code of 2012, is hereby amended to read as follows:

5-3-5-3. - MAINTAIN FIT PREMISES.

(A) The landlord shall maintain the premises in substantial compliance with the applicable codes of the city and shall promptly make any and all repairs necessary to fulfill this obligation.

(B) The landlord and tenant of any dwelling unit may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

1. The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration; and
2. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

(C) Landlord must address, which may include commencing eviction proceedings, with Tenant any and all violations of Section 5-3-4-5, *Prohibition against Criminal Activity on Premises*, to ensure other tenants and occupants of the Landlord's property have housing free from criminal activity.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 6: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 7: This ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law.

Introduced: June 20, 2016

Adopted: June 27, 2016

Approved:

July 11, 2016

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, Corporation Counsel