

Part IV -- Criminal damage to a landlord's property

Summary

A tenant who intentionally or recklessly damages the dwelling unit, the building or other parts of the premises is guilty of criminal damage of a landlord's property.

What statutes apply?

Damage to rented property may under some circumstances justify arrest for criminal mischief (General Statutes §53a-115 through §53a-117a) or other statutes. There are, however, three related statutes dealing explicitly with damage by a tenant to a landlord's property. They are General Statutes §53a-117e, §53a-117f, and §53a-117g. Those three statutes do not preclude arrest under any other statute.

Legal authority: General Statutes §53a-117e through §53a-117g.

When should conduct be treated as a criminal violation of those statutes rather than as a civil matter between the parties?

Claims of property damage are routinely dealt with in civil court after a tenancy ends, often in small claims court (which can award up to \$5,000 in damages), if the security deposit is insufficient to cover the landlord's loss. The general assumption should be that property damage claims are civil matters. When the damage is substantial and is either intentional or reckless, however, rather than merely negligent, it may be appropriate to treat a complaint criminally.

There are a number of reasons why it is preferable to handle ordinary property damage disputes civilly. Factual disputes between landlords and tenants about property damage are very common -- as to whether the "damage" exceeds normal wear and tear (normal wear and tear is not considered to be "damage" at all), as to the extent of damage and the measure of the dollar amount of the damage (for example, whether the recovery for a damaged ten-year-old rug is based on the replacement cost of a new rug or the market value of the damaged rug depreciated for age), or whether or not the tenant is responsible for the damage (for example, whether the damage preexisted the tenancy). The criminal statutes should not be turned into a substitute for the ordinary use of the landlord's civil remedy to recover damages. For that reason, General Statutes §53a-117e through §53a-117g are limited to cases in which the behavior of the tenant is either intentional or reckless. Stated differently, although malice is not a legal element of the crime, those statutes are for misconduct that is deliberate or has overtones of maliciousness or outrageous behavior. In addition, it may be difficult for you to determine who actually caused

How is intention proved?

In most cases, you will have no information from the tenant. You will therefore have to work with information provided by the landlord or from other sources. First, there must be probable cause to believe that the particular tenant, rather than someone else, committed the offense. The fact that the tenant's name is on the lease or that the tenant is otherwise in charge of the apartment, standing alone does not prove that he is the person who committed the offense. There should ordinarily be some other basis for believing that the misconduct is the conduct of that particular tenant. Second, in the absence of direct acknowledgement by the tenant, motive must be inferred from the conduct itself. Damage is intentional if it is unlikely that the type of damage would have occurred other than with the intent to cause the damage. If the damage is merely the result of negligence or carelessness by the tenant, the tenant may be civilly liable to the landlord but the conduct does not violate Sections 53a-117e through 53a-117g.

Are there other elements of the crime that must be established?

You must be satisfied that the accused is a "tenant" as that term is defined in General Statutes Section 47a-1, which defines "tenant" broadly. Because that definition includes any person who is a tenant "as otherwise defined by law," it includes "tenants at sufferance," who are persons who originally occupied the dwelling with consent, even though they have subsequently been asked to leave (or have been served with eviction papers). This is the same definition of tenant used in the criminal lockout statute (General Statutes §53a-214). Thus, if the occupant could not have been locked out but had to be evicted through judicial eviction procedures, then that person may also be arrested for prosecution under Sections §53a-117e through §53a-117g.

Legal authority: General Statutes §47a-1(l).

How is the dollar amount of damage determined?

The dollar amount of damage determines whether the offense is first, second, or third degree. Under the larceny statutes, which determine the severity of the offense by the dollar value of the property or services which were stolen, value is defined as "the market value of the property or services at the time and place of the crime" unless market value "cannot be satisfactorily ascertained," in which case "the cost of replacement of the property or services within a reasonable time after the crime" is to be used. Following this approach, if a specific piece of property is damaged, its value for purposes of Sections §53a-117e through §53a-117g is what it was worth at the time (before it was damaged), not what it cost new or would cost to replace it. If the property itself is damaged and the market value of the damage cannot reasonably be ascertained, then it may be appropriate to use as the value the probable cost of repairing the

How do the three statutes differ?

All three statutes concerning criminal damage of landlord's property require that the tenant have no reasonable ground to believe that he had a right to damage the property in question and that the amount of the damage exceeds \$250. They differ in whether the conduct must be intentional or reckless, in the dollar amount of damage that must be caused, and in the penalty for violation.

(1) First degree (Section 53a-117e): Intentional damage in an amount exceeding \$1,500. First degree is a Class D felony.

(2) Second degree (Section 53a-117f): Intentional damage in an amount exceeding \$250 or reckless damage in an amount exceeding \$1,500. Second degree is a Class A misdemeanor.

(3) Third degree (Section 53a-117g): Reckless damage in an amount exceeding \$250. Third degree is a Class B misdemeanor.

Legal authority: General Statutes §53a-117e through §53a-117g.

May a person be charged with a lesser included offense?

Yes, if all of the elements of the offense are met. For example, reckless damage in the amount of \$2,000 could be charged as either second degree (over \$1,500) or third degree (over \$250) damage of a landlord's property. You may exercise your judgment in such a case, based on your overall assessment of the severity of the misconduct.

What constitutes recklessness?

General Statutes §53a-3(13), which applies to all crimes, states that “ a person acts ‘recklessly’ when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” Reckless conduct is thus significantly more serious than negligent conduct.

Legal authority: General Statutes §53a-3(13).

What is “tangible” property?

Sections 53a-117e through 53a-117g apply only to damage to “tangible property.” Tangible

Does it matter if the rented property is residential or commercial?

Yes. Because Sections 53a-117e through 53a-117g use the definitions from the Residential Landlord-Tenant Act, those particular statutes apply only to damage to residential property. Damage to commercial property should be charged under the criminal mischief statutes or any other statutes appropriate to the misconduct.

Legal authority: General Statutes §53a-115 through §53a-117a.

Should these cases be transferred to the housing prosecutor?

Yes. Arrests for criminal damage of a landlord's property are housing matters and should be referred to the prosecutor who handles housing matters in your district, regardless of the particular statute under which they may be charged. In the housing court districts, this prosecutor will be based in the housing court.

Legal authority: General Statutes §47a-68(f) and (i).