



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 27, 2018

CASE NUMBER: 2018OPA-0213

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Training Referral)

**Imposed Discipline**

Written Reprimand
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***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee improperly evicted him and did not properly investigate and document his stolen vehicle.

### ADMINISTRATIVE NOTE:

OPA initially recommended that Allegation #2, which concerns the obligation of Named Employee #1 (NE#1) to comply with Department policy, be Sustained. In reaching this finding, OPA reasoned that Training Digest T14-00013, which concerns the involvement of SPD employees in landlord/tenant disputes, precluded NE#1 from engaging in the functional eviction of the Complainant from his residence. NE#1’s chain of command raised the concern that a Training Digest was not listed in SPD Policy 5.001-POL-2 as a Department policy that NE#1 was required to comply with. Indeed, Training Digests were not mentioned at all in that policy. After speaking to other Department employees, OPA learned that a Training Digest is purposed to be guidance and not necessarily a mandate that an officer must comply with. As such, even though I believe that NE#1’s actions towards the Complainant were improper and inconsistent with the Department’s written guidance and expectations, I do not and cannot recommend that this allegation be Sustained. Instead, I recommend that NE#1 receive the Training Referral set forth below.

### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegations #1**

***15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. The policy further requires that such reports be thorough, complete, and accurate. (SPD Policy 15.180-POL-5.)



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It was alleged that NE#1 may have failed to properly document this matter in his General Offense Report. While he did document the claimed assault that was the genesis for his initial response to the scene, there were three main alleged shortcomings in his report. First, NE#1's General Offense Report contained little detail and was not thorough and complete. Second, NE#1 failed to document the Complainant's claims concerning his vehicle that had allegedly been stolen. Third, NE#1 failed to include any information concerning the landlord/tenant dispute that was ongoing and his actions in this regard.

With respect to the thoroughness and completeness of the report, NE#1 provided little detail concerning the assault and what steps he took, if any, to locate the Complainant's roommate and her boyfriend. It appears that, once he learned that the roommate and the boyfriend had left the scene (in the Complainant's vehicle) his investigation into the assault concluded.

At his OPA interview, NE#1 recalled that the Complainant told him that his vehicle had been stolen. However, NE#1 stated that the Complainant subsequently told him that he had given the keys for his vehicle to his roommate and that she had driven the vehicle away. As such, NE#1 explained that he did not note in his report that the vehicle was stolen by the roommate because NE#1 knew that the roommate had been given lawful usage of the car by the Complainant. He further noted that he did include in his report that the roommate had possession of the vehicle and drove it from the scene.

NE#1 further told OPA that he did not document any of the facts surrounding the landlord/tenant issues in his report because he was under the impression that SPD officers did not generate reports concerning such issues and that this was the purview of the King County Sheriff's Office. He further did not document the fact that he directed the Complainant to leave the residence. He explained that this was because he did not view it as pertinent to the assault allegation.

While, as discussed below, NE#1 is correct that the King County Sheriff's Office, not SPD, handles evictions, this does not mean that officers are completely excused from documenting these matters in a General Offense Report. Indeed, Training Digest TD14-00013, which concerns officers' responses to landlord/tenant disputes, specifically requires that: "Officers shall complete a General Offense Report for landlord-tenant incidents involving possible criminal behavior." Here, the landlord was admittedly acting contrary to the law when she removed the Complainant's property from the residence, changed the locks, and denied him reentry. These acts constituted possible criminal activity in violation of SMC 22.206.180. As such, NE#1 was required to document these matters in his General Offense Report.

Even if I found that NE#1's report was thorough and complete and that he was excused in not including more detail concerning the assault and the "stolen" vehicle, his failure to document the possible criminal activity by the landlord was required by policy. When he did not do so, his General Offense Report was deficient and fell below the standard expected by the Department. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

It is alleged here that NE#1 violated SPD policy and acted contrary to a Training Digest when he functionally assisted in the eviction of NE#1 from his residence. On the date in question, NE#1 and another officer were dispatched to a call of an alleged assault. When they responded to the location, they made contact with the Complainant. The Complainant had been in a fight with his roommate's boyfriend. He further contended that his vehicle had been stolen. As discussed above, the officers were later informed by the Complainant that he had given his car keys to his roommate and that she had driven it from the scene with her boyfriend inside.

While at the location, NE#1 spoke with the Complainant's landlord, who informed the officers that she was removing the tenants from the residence. The Complainant explained that several checks that he had given to his landlord were "bad" and that his landlord had given him a three-day notice, but that no other legal steps had been taken to effectuate the eviction. NE#1 stated in front of both the landlord and the Complainant that SPD does not facilitate evictions. At that time, however, the landlord was proceeding to remove the Complainant's belongings out of the residence. NE#1 entered the residence and instructed the landlord and those assisting the landlord to stop what they were doing. He informed the landlord that she could not remove the Complainant's property from the residence and that the landlord's actions constituted an "illegal eviction." The landlord disregarded NE#1's comments and responded: "I am changing the code and I can go to jail, that's fine."

The Complainant and the landlord began to verbally interact and NE#1 directed the Complainant to "go over there," separating them. NE#1 again told the landlord that proper legal steps needed to be taken before the Complainant could be evicted and the landlord responded: "I am not letting him in." The other officer at the scene also told the landlord to not remove the Complainant's property and further stated: "If you want to change the locks, change the locks." The other officer also told the landlord that the Complainant could sue based on the landlord's actions. As the incident progressed, NE#1 told the Complainant that he had five minutes to grab whatever he needed from his residence. NE#1 told the Complainant that when the five minutes expired, he was "out." NE#1 continued to monitor the Complainant while he was in the residence, telling him that he needed to "go" and updating him on how much time was left before he had to leave. The Complainant stated that he did not have enough time to move his things out and NE#1 told him to leave. After additional time passed, NE#1 stated to the Complainant: "I advise you to grab...whatever the next thing you grab better be the most important thing because time's up." The Complainant continued to remain in the apartment looking for his belongings and trying to negotiate when he would pick up the remainder of his property (the residence appeared to still be full of his belongings). He complained that the eviction was illegal and the Complainant's friend, who was with him at that time, advised the Complainant to stay in the residence. The friend stated that the officers did not work for the King County Sheriff's Department and that there was no law authorizing the officers to remove the Complainant from his residence. The Complainant then reentered and remained in the residence.

In response to this, NE#1 stated: "Wait a minute, time out, time out, time out, hold up, hold up, come on, let's go, no, because it was a three-day notice and you were supposed to be out on the 23rd, let's go." NE#1 continued: "It's not convenient, that's fine, whatever. He had a three-day eviction notice and he was supposed to be out of here on the 23<sup>rd</sup>." The Complainant then exited the apartment and, a short while later, the officers left the scene.



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Training Digest T14-00013, which was issued in 2014, instructs that the “primary objective of responding officers [to landlord/tenant disputes] is to stop or prevent criminal activity, and to suggest appropriate alternative solutions.” The Training Digest explains that: “A tenant cannot be physically removed from the premises for failure to pay rent or abide by the terms of the rental agreement, or have utilities shut off or property seized, until” the appropriate legal steps are taken. Those steps are itemized in the Training Digest and include: (1) a written eviction notice (the three-day notice referenced above); (2) if there is non-compliance with the notice by the tenant, the lawsuit filed by the landlord for “unlawful detainer” to evict the tenant; (3) a hearing on the lawsuit six days after it is filed and at which the tenant can appear to present the tenant’s case; and (4) the issuance of a writ of restitution by the court, which directs the King County Sheriff’s Office to remove the tenant from the residence within three to ten days.”

The Training Digest states that: these steps constitute “the exclusive legal remedy for a landlord to obtain possession of the premises, absent abandonment or a voluntary vacating by the tenant” and “[l]andlord initiated ‘self-help’ eviction measures are illegal and prohibited.” Indeed, SMC 22.206.180, a criminal ordinance, proscribes landlords from: “Changing or tampering with any lock or locks on a door or doors used by the tenant...” and “[r]emoving or excluding a tenant from the premises except pursuant to legal process.” Moreover, the Training Digest directs that the King County Sheriff’s Department, not SPD, is tasked with effectuating lawful evictions.

I note that Landlord/tenant disputes are inherently challenging and confusing. This is exactly why the Training Digest instructs officers to not involve themselves in effectuating evictions. However, this is what NE#1 did here. Moreover, not only did NE#1 effectuate an eviction, but, by doing so, he facilitated an unlawful eviction. The Department video of this incident establishes that the landlord only complied with the first step of the eviction process – the three-day notice. There was no evidence that any of the other steps were taken, which are prerequisites to eviction. NE#1 knew this. He also knew that the landlord was unlawfully removing the Complainant’s property from the residence and had changed the locks. Indeed, if anyone should have been removed from the residence, it was the landlord, not the Complainant, as her actions were admittedly violating the law and were potentially criminal in nature. While NE#1 may not have intended to assist in a violation of law by functionally evicting the Complainant and, in doing so, to act contrary to the Training Digest, that was the result of his actions.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed above, this policy does not include Training Digests. Accordingly, even though I believe that NE#1 acted contrary to virtually the entirety of the Training Digest relevant to the involvement of SPD employees in landlord/tenant disputes, I do not recommend that NE#1 receive a Sustained finding. Instead, I recommend that NE#1 receive the below Training Referral. Moreover, while I do not make a Management Action Recommendation in this case, OPA intends to request that the Compliance Bureau conduct a refresher training concerning landlord/tenant matters and that Training Digest T14-00013 be recirculated to the entire Department.

- **Training Referral:** NE#1 should be retrained concerning Training Digest T14-00013. He should be counseled that his actions in this case were not only inconsistent with the Training Digest, but also functionally effectuated an unlawful eviction. He should be instructed to avoid such situations in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**