

SWAT ACTION WRECKS HOME Owner Says City Should Pay Costs

By

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A Rio Rancho homeowner faced with cleanup after a SWAT intervention left his rental property uninhabitable says the city should cover the costs and establish a group to monitor police policies.

Gary Gamboa believes Rio Rancho Police Department officers used excessive force during a SWAT situation earlier this month involving tenants at a home he owns on Obsidian Place.

Shattered windows, fist-size holes in the drywall, powdery stains on the walls, tear gas canisters and fumes — that's what greeted Gamboa when he visited the home after the incident.

"There should be a neutral group to watch over the police," he said.

Police Department officials defend the SWAT action, maintaining that the response was appropriate given the possible danger to officers.

Gamboa said his insurance will cover the cleanup cost, but professionals Gamboa has consulted say it will mean cleaning ductwork, and replacing drywall, attic insulation and most of the windows. He's received estimates of between \$20,000 and \$30,000.

Gamboa plans to file a tort claim against the city of Rio Rancho, claiming it should be liable for the actions of its police officers.

"How much tear gas do you fire into an 1,100-square-foot house? One can, 20 cans or a 100 cans? Is there no responsibility on the part of the Police Department to at least notify the homeowner of the damage done to their property?" Gamboa wrote in a letter faxed to the Journal.

Deputy Chief Scott Kellogg said he would not comment on the details of the case, but said officers followed the established procedure given the perceived danger.

“In these particular situations — and I have had a chance to speak with our SWAT commander — officer safety is paramount,” Kellogg said in a phone interview last week.

Police spokesman John Francis said the department is not responsible for remediation after tear gas has been used in a home.

“That’s up to the property owner,” Francis said in a phone interview Thursday.

The incident occurred Dec. 6, when Rio Rancho police responded to a call from a woman who said her boyfriend, Eric Mestas, beat her and threatened her with a gun. The woman, Mestas’ girlfriend, called police from a neighbor’s house.

Police arrived, surrounded the house and attempted to coax Mestas out using a loudspeaker. A SWAT team entered the house and removed the couple’s 3-year-old child. Officers then continued to negotiate over the loudspeaker and fired volleys of tear gas into the home. When the team entered the home, Mestas was not there. He later turned himself in.

A Journal news story said court records show that Mestas had three previous arrests on domestic violence charges, and several convictions for DWI and drug possession.

Gamboa acknowledged he had not done a background check on Mestas before renting to him. He accepts that officers faced a dangerous situation but doesn’t understand why police went back outside after they rescued the child, then fired the tear gas into the home.

“It’s like Iraq or something — and civilians, homeowners, don’t have any recourse — there’s no explanation, no liability,” Gamboa said in an interview last week.

Kellogg said officers did not know whether Mestas was still in the home.

“This tactic provides a greater deal of officer safety than the other tactic — involving obviously less damage — however greater danger, death or serious injuries to our officers, and/or the public. That’s our stance here at the Rio Rancho Police Department,” Kellogg said.



These are remains of plastic tear gas canisters and wood plugs Gary Gamboa found in his home after a SWAT team intervened in a domestic dispute between tenants renting the house.

He said the chemical agent in tear gas the Rio Rancho Police Department uses is oleoresin capsicum (OC), the same ingredient found in pepper spray. The agent is housed in projectiles that look like large plastic bullets that burst when they hit a hard surface and disperse a powder. The projectiles can be thrown by hand or fired from a shoulder-held gun.

He said officers are trained in the potential dangers of using OC and the department follows risk assessment guidelines established by the National Tactical Officers Association when making decisions about whether a SWAT team will be called in for a high-risk situation.

A 1999 article in the North Carolina Medical Journal says the chemical affects the tear ducts, causing a burning sensation in the eyes. It can also affect the skin and respiratory system, causing wheezing and coughing.

OC makes it difficult for a person to stay in an environment where it has been introduced, Kellogg said, “and that’s exactly what we want.”

Gamboa said he and a group of friends had to wear gas masks when they entered the home because of the fumes. While removing carpets and furniture, they found remains of 16 tear gas canisters.

He believes there are more canisters lodged behind the damaged drywall.

John DiGulio, CEO of USA Decon, a Houston-based company that provides biohazard remediation services in several states, told the Journal the chemical irritant used in the SWAT situation could cause respiratory system and skin damage if it remains in the home. He said it can concentrate in wall cavities when tear gas projectiles penetrate the drywall.

“The lasting effect to human health, at the very least, if the chemical agent remains in the dwelling would be chronic irritation to the eyes, respiratory system and exposed skin,” DiGulio said in an e-mail.

Gamboa said his main concern is the damage to his house.

“I’m not going away quietly,” he said during the interview.

Rio Rancho refers tort claims to the New Mexico Self Insurers Fund, which provides insurance coverage to member cities. The fund has paid out on behalf of Rio Rancho for a wide variety of claims. Payouts are

capped at \$200,000 for property damage, said Ed Zendel, risk services director for the New Mexico Municipal League, which administers the fund.

He could not recall any payments made for SWAT-related damage claims.

“We typically pay out on claims where there has been some kind of negligence by the city and only after a thorough investigation of the case,” Zendel said in a phone interview.



ROSALIE RAYBURN/JOURNAL Gary Gamboa stands beside a container full of furniture and items he took from a rental home he owns. The furniture belonged to the tenants who were involved in a domestic dispute which resulted in a SWAT situation. Gamboa said the SWAT intervention destroyed the interior of the home.

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