



## **Rights of Tenants: Retaliatory Eviction**

### **When can a landlord evict his tenant?**

Generally, a landlord may evict his tenant for any reason. Unless there is some kind of additional tenant protection (such as a fixed-term lease or rent control laws), there is no “good cause” requirement for eviction.

### **What is retaliatory eviction?**

“Retaliatory Eviction” is an eviction intended to punish a tenant for exercising their legally protected rights. Although a landlord may evict his tenant for any reason, he may not retaliate against his tenant by evicting him. As the Supreme Court of the United States once said, “a landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason.” (*Barela v. Super.Ct*, 1981) Retaliation is an improper reason.

California law protects tenants against “retaliatory” landlord action. The law specifically states that a landlord may not evict, increase the rent, or decrease any service for 180 days if in doing so he is attempting to punish the tenant for an exercise of his legal rights. (Civil Code section 1942.5)

### **What kind of activity is protected from retaliation?**

California tenants have the right to safe and healthful housing. Even if their rent is low, a tenant is entitled to a certain level of habitability and may ask their landlord to make certain repairs. If the landlord fails to make such repairs, the tenant may then file a complaint with a government agency (such as a local code enforcement office). Both of these activities are legally “protected” activities and a landlord may not retaliate against a tenant who exercises these rights. In addition, tenants have the right to organize with other tenants for the purpose of exercising their rights. A landlord may not retaliate against such lawful and peaceful tenant organizations.

### **How can a tenant respond to a retaliatory eviction?**

A tenant can respond to retaliation from his landlord by bringing a lawsuit for damages or injunctive relief. Additionally, a tenant can use retaliation as an affirmative defense against an unlawful detainer. In any legal action involving retaliation as a claim or defense, it will be up to the tenant to present evidence that his landlord’s actions were a retaliatory response to an assertion of rights by the tenant.

*\*Remember, non-payment of rent is a separate reason for eviction!\**

§ 1942.5. Retaliation; prohibited acts; violations; remedies; penalties

- (a) If the lessor retaliates against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate agency as to tenability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following:
- (1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral complaint to the lessor regarding tenability.
  - (2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenability.
  - (3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.
  - (4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenability.
  - (5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenability is determined adversely to the lessor.

In each instance, the 180-day period shall run from the latest applicable date referred to in paragraphs (1) to (5), inclusive.

- (b) A lessee may not invoke subdivision (a) more than once in any 12-month period.
- (c) It is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she has lawfully organized or participated in a lessees' association or an organization advocating lessees' rights or has lawfully and peaceably exercised any rights under the law. In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact, retaliatory.
- (d) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his or her rights under any lease or agreement or any law pertaining to the hiring of property or his or her right to do any of the acts described in subdivision (a) or (c) for any lawful cause. Any waiver by a lessee of his or her rights under this section is void as contrary to public policy.
- (e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein, or within subdivision (c), if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a) or (c). If the statement is controverted, the lessor shall establish its truth at the trial or other hearing.
- (f) Any lessor or agent of a lessor who violates this section shall be liable to the lessee in a civil action for all of the following:
- (1) The actual damages sustained by the lessee.
  - (2) Punitive damages in an amount of not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each retaliatory act where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.
- (g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.
- (h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.