

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
Municipal Department, First District

«PLAINTIFF»,)
)
 Plaintiff,)
)
 -vs-) NO. «CIRCUITCOURTNO»
)
 «DEFENDANT»,)
)
 Defendant.)

VERIFIED ANSWER, AFFIRMATIVE DEFENSE, AND COUNTERCLAIMS

Now comes the Defendant by and through counsel, Paul Bernstein, and in answer to the Plaintiff's complaint states as follows:

1. Defendant denies the allegations in paragraph 1 of the Plaintiff's complaint.
2. Defendant denies the allegations in paragraph 2 of the Plaintiff's complaint.
3. Defendant denies the allegations in paragraph 3 of the Plaintiff's complaint.

WHEREFORE, Defendant respectfully pray that Plaintiff's complaint be dismissed with costs assessed against Plaintiff, including Attorney's fees to be awarded to Defendant's Attorney pursuant to the provisions for same in the Chicago Residential Landlord and Tenant Ordinance.

FACTS COMMON TO ALL THE FOLLOWING AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF DEFENDANT, COUNTERPLAINTIFF

1. Defendant, Counterplaintiff has been a tenant in apartment <<Apt#>> (hereinafter sometimes called the "**apartment**") in the building at <<StreetApt>>, Chicago, Illinois, <<ZipApt>> (hereinafter sometimes called the "**building**") since on or about <<DateFirstOccupy>>. (Said apartment and said building may sometimes hereinafter be referred to collectively as the "**premises**".)

2. At all times mentioned herein, Plaintiff, Counterdefendant was the owner and Landlord of the apartment building, as the word "landlord" is defined in Section 5-12-030(b) of the City of Chicago Municipal Code Title 5, Chapter 12 entitled "**Residential Landlord and Tenant Ordinance**".

3. The building was not occupied by the Plaintiff, Counterdefendant at any time referred to herein.

OR

3. The building consisted of more than six residential apartment units.
 4. The apartment building owned by Plaintiff, Counterdefendant and the apartment rented to Defendant, Counterplaintiff is subject to all of the terms and provisions of the City of Chicago Municipal Code Title 5, Chapter 12 entitled "Residential Landlord and Tenant Ordinance" (hereinafter called the "**RLTO**").
 5. On <<DateofLease>>, Defendant, Counterplaintiff entered into a "MONTHLY RENTAL AGREEMENT" with Plaintiff, Counterdefendant for the said premises, stating that the month to month tenancy began on <<DateBeginLease>>. A copy of the "MONTHLY RENTAL AGREEMENT" is attached hereto as **Exhibit A** and by this reference, made a part hereof.
 6. The current monthly rent is in the sum of \$<<MonthlyRent>>.
 7. The current security deposit is in the sum of \$<<SecurityDeposit>>.
 8. The Defendant, Counterplaintiff paid the Plaintiff, Counterdefendant the security in the amount required under the terms of the lease, details of which payment are:

Date Security Deposit Paid: <<DateSDpaid>>
Amount of Security Deposit: <<SecurityDeposit>>
- A copy of the check for the security deposit is attached hereto as **Exhibit B** and by this reference, made a part hereof.
9. That Section 5-12-080(a) of the RLTO provides for the deposit of a tenant's security deposit into a separate, interest bearing account and not commingled with other monies of the landlord.
 10. That Section 5-12-080(b) of the RLTO provides for the landlord to give the tenant a receipt for said security deposit at the time the security deposit is paid to the landlord
 11. That Section 5-12-080(c) of the RLTO provides for the payment of interest every twelve months, by the landlord on a tenant's security deposit.
 12. That Section 5-12-080(d) of the RLTO provides for the return of the tenant's security deposit within the time and as provided for in said sub-section.
 13. That Section 5-12-080(e) of the RLTO provides for the giving of notice to tenants when a then landlord transfers title to a new landlord, such notice to be in writing and given by both the former landlord and the new landlord.
 14. That Section 5-12-080(f) of the RLTO provides for the payment to the tenant of damages from the landlord in an amount equal to two times the tenant's security deposit plus interest if the landlord or the landlord's agent fails to comply with any provision of Section 5-12-080 (a) – (e) of the RLTO.

15. That Section 5-12-150 of the RLTO prohibits retaliatory evictions.

16. That Section 5-12-050 of the RLTO provides for the Counterdefendant to provide the Counterplaintiff "...the Landlord shall give the tenant notice of the landlord's intent to enter of no less than two days..."

17. Section 5-12-180 of the RLTO provides that the landlord is to pay the tenant/Defendant's attorney fees if the Tenant is the "prevailing plaintiff" in any action arising out of a tenant's application of a tenant's rights available in the RLTO.

FIRST AFFIRMATIVE DEFENSE
LANDLORD RETALIATED AGAINST DEFENDANT
IN THE FILING OF THIS EVICTION DUE TO
DEFENDANT'S DEMANDING REPAIRS TO THE PREMISES

Now comes the Defendant, by and through counsel, Paul Bernstein, and as Defendant's Affirmative Defense to the Complaint filed herein by the Plaintiff states as follows:

1-17. Defendant reasserts and realleges Paragraphs 1-17 of FACTS COMMON TO ALL THE FOLLOWING COUNTERCLAIMS OF DEFENDANT, COUNTERPLAINTIFF as paragraphs 1-17 of Defendant's affirmative defense.

18. The apartment occupied by the Defendant and the building of which it is a part were in substantial noncompliance with the City of Chicago Municipal Code (hereafter sometimes called "Code") and the RLTO, in that there were numerous building code violations at the Premises.

19. That building code violations existed as to the premises in question during Defendant's entire occupancy of said apartment, including but not limited to:

- ;
- ;
- .

20. Section **5-12-070** of the RLTO requires that Plaintiff, as landlord, must maintain the premises in compliance with all applicable provisions of the Code and shall promptly make any and all repairs necessary to fulfill their obligation.

21. Notwithstanding the Plaintiff's obligations pursuant to Section 5-12-070 and other sections of the RLTO and the lease between the parties, said premises were not in compliance with the provisions of the City of Chicago Building Code and were in material noncompliance with numerous provisions of the Code and the RLTO.

22. On <<NoticeRepairsDate>>, the Defendant wrote Plaintiff a 14-day notice demanding repairs to the tenant's apartment, and notifying the landlord that if repairs were not

made that the tenant would begin reducing rent by the monthly sum set forth in said letter. A copy of the said letter from the tenant to the landlord is attached hereto as **Exhibit C** and by this reference, made a part hereof.

23. On <<DateCityComplaint>>, the Defendant complained to the City of Chicago, Department of Buildings about the need for repairs, and the City sent out a building inspector. A copy of the said letter from the tenant to the City is attached hereto as **Exhibit D** and by this reference, made a part hereof.

24. That Plaintiff is attempting to evict the Defendant in retaliation for Defendant's demanding Plaintiff repair the premises of Defendant's apartment and/or Defendant's complaining to the City of Chicago about building code violations.

25. Subsequent to the above events, Plaintiff served tenant with a Five Day Notice, dated <<DateFiveDayNotice>>.

26. Subsequent to the above events, Plaintiff filed the within forcible entry and detainer action against Defendant demanding possession of the premises.

27. Section **5-12-150** of the RLTO provides that the landlord may not bring a lawsuit against the tenant for possession or increase rent or fail to renew a lease because the tenant has, in good faith, exercised any of the certain rights as provided for under the RLTO and any right or remedy provided by law, among said rights being the right to demand repairs to the premises to correct building code violations and to complain to the City of Chicago Building Department about building code violations.

28. That pursuant to the applicable provisions of Section 5-12-150 of the RLTO, the within eviction is presumed to be and is retaliatory.

29. The RLTO further provides that if the landlord acts in violation of Section 5-12-150, the tenant has a defense in any retaliatory action against the tenant for possession and is entitled to retain possession and recover reasonable Attorney's fees, damages in a sum equal to two times the amount of the tenant's monthly rent and costs of their lawsuit.

30. Section **5-12-180** of the RLTO provides that the landlord is to pay the tenants/Defendant, Counterplaintiff's attorney fees if the tenant is the "prevailing plaintiff" in any action arising out of a tenant's application of a tenant's rights available in the RLTO.

31. Demanding repairs is the right of any tenant under the RLTO where the apartment and building in question are subject to the RLTO.

32. Defendant demanded repairs and the within eviction was filed within twelve months of Defendant taking such protected action which protected action is allowed and provided for under Section 5-12-150 of the RLTO that prohibits "Retaliatory Conduct By Landlord" and therefore the Plaintiff's complaint is to be dismissed.

WHEREFORE, Defendant prays that this Honorable Court:

- A. Dismiss the within action for possession and rent with prejudice;
- B. Award Defendant the court costs incurred pursuant to Sections 5/5-109 & 5/9-114 of the *Illinois Code of Civil Procedure* and the applicable provisions of the RLTO;
- C. Award Defendant reasonable Attorney's fees and damages as provided by the RLTO;
- D. Award Defendant such other and further relief as the Court may deem equitable and just.

SECOND AFFIRMATIVE DEFENSE
LANDLORD VIOLATED THE IMPLIED WARRANTY OF HABITABILITY

AUTHOR TO PROVIDE TEXT AFTER 2/25/08

COUNTERCLAIM ONE
LANDLORD RETALIATED AGAINST DEFENDANT
IN THE FILING OF THIS EVICTION DUE TO
DEFENDANT DEMANDING REPAIRS TO THE PREMISES

Now comes the Defendant, Counterplaintiff, by and through counsel, Paul Bernstein and makes Defendant's, Counterplaintiff's Counterclaim One against the Plaintiff, Counterdefendant as follows:

1-32. Defendant, Counterplaintiff reasserts and realleges Paragraphs 1-30 of DEFENDANT'S AFFIRMATIVE DEFENSE as paragraphs 1-32 of Defendant's, Counterplaintiff's first counterclaim.

33. Counterplaintiff within one year prior to the filing of the within complaint by Counterdefendant demanded repairs to Counterplaintiff's apartment and the building of which it is a part.

34. Counterplaintiff is entitled to damages, costs and attorneys fees due to the wrongful conduct of Counterdefendant.

WHEREFORE, Defendant, Counterplaintiff prays that this Honorable Court award damages to Defendant, Counterplaintiff from Plaintiff, Counterdefendant, on Defendant's, Counterplaintiff's first counterclaim, as follows:

- A. Enter judgment in an amount equal to two times the monthly rent of

<<MonthlyRent>>, or damages in the sum of <<TwoXMonthlyRent>> against the Plaintiff, Counterdefendant;

- B. Award Defendant, Counterplaintiff the court costs incurred pursuant to Sections 5/5-109 & 5/9-114 of the *Illinois Code of Civil Procedure* and the applicable provisions of the RLTO;
- C. Award Defendant, Counterplaintiff reasonable Attorney's fees and damages as provided by the RLTO; and
- D. Award Defendant, Counterplaintiff such other and further relief as the Court may deem equitable and just.

COUNTERCLAIM TWO
LANDLORD COMMINGLED SECURITY DEPOSIT WITH PERSONAL ASSETS

Now comes the Defendant, Counterplaintiff, by and through counsel, Paul Bernstein and makes Defendant's, Counterplaintiff's Counterclaim Two against the Plaintiff, Counterdefendant as follows:

1-17. Defendant, Counterplaintiff reasserts and realleges Paragraphs 1-17 of FACTS COMMON TO ALL THE FOLLOWING COUNTERCLAIMS OF DEFENDANT, COUNTERPLAINTIFF as paragraphs 1-17 of Defendant's, Counterplaintiff's second counterclaim.

18. Under Section 5-12-080(a) of RLTO, "a landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank...A security deposit and interest due thereon...shall not be **commingled** with the assets of the landlord..." (emphasis added).

19. The Counterdefendant held the tenants' security deposit in the SAME account that held the Counterdefendant's personal assets and, on information and belief, either has continued to commingle said funds of the tenants with other funds of the landlord from the date of payment thereof by tenants to landlord and up to the filing of the complaint for eviction in this matter and/or Counterdefendant has dissipated and can not account for said security deposit.

20. **Counterdefendant's failure to not commingle the tenants' security deposit with personal assets is in violation of express provisions of the RLTO**

WHEREFORE, Defendant, Counterplaintiff prays that this Honorable Court award damages to Defendant, Counterplaintiff from Plaintiff, Counterdefendant, on Defendant's, Counterplaintiff's second counterclaim, as follows:

- A. Enter judgment in an amount equal to two times the security deposit of <<SecurityDeposit>>, or damages in the sum of <<TwoXSd>> against the Plaintiff, Counterdefendant;
- B. Award Defendant, Counterplaintiff the court costs incurred pursuant to Sections

5/5-109 & 5/9-114 of the *Illinois Code of Civil Procedure* and the applicable provisions of the RLTO;

- C. Award Defendant, Counterplaintiff reasonable Attorney's fees and damages as provided by the RLTO; and
- D. Award Defendant, Counterplaintiff such other and further relief as the Court may deem equitable and just.

COUNTERCLAIM THREE

LANDLORD FAILED TO PAY INTEREST ON THE TENANTS' SECURITY DEPOSIT

Now comes the Defendant, Counterplaintiff, by and through counsel, Paul Bernstein and makes Defendant's, Counterplaintiff's Counterclaim Three against the Plaintiff, Counterdefendant as follows:

1-17. Defendant, Counterplaintiff reasserts and realleges Paragraphs 1-17 of FACTS COMMON TO ALL THE FOLLOWING COUNTERCLAIMS OF DEFENDANT, COUNTERPLAINTIFF as paragraphs 1-17 of Defendant's, Counterplaintiff's third counterclaim.

18. **Counterdefendant did not pay Counterplaintiff's interest on Counterplaintiff's security deposit in violation of express provisions of the RLTO.**

WHEREFORE, Defendant, Counterplaintiff prays that this Honorable Court award damages to Defendant, Counterplaintiff from Plaintiff, Counterdefendant, on Defendant's, Counterplaintiff's third counterclaim, as follows:

- A. Enter judgment in an amount equal to two times the security deposit of <<SecurityDeposit>>, or damages in the sum of <<TWOXSD>> against the Plaintiff, Counterdefendant;
- B. Award Defendant, Counterplaintiff the court costs incurred pursuant to Sections 5/5-109 & 5/9-114 of the *Illinois Code of Civil Procedure* and the applicable provisions of the RLTO;
- C. Award Defendant, Counterplaintiff reasonable Attorney's fees and damages as provided by the RLTO; and
- D. Award Defendant, Counterplaintiff such other and further relief as the Court may deem equitable and just.

COUNTERCLAIM FOUR

LANDLORD ILLEGALLY ENTERED TENANT'S APARTMENT

Now comes the Defendant, Counterplaintiff, by and through counsel, Paul Bernstein and

makes Defendant's, Counterplaintiff's Counterclaim Four against the Plaintiff, Counterdefendant as follows:

1-17. Defendant, Counterplaintiff reasserts and realleges Paragraphs 1-17 of FACTS COMMON TO ALL THE FOLLOWING COUNTERCLAIMS OF DEFENDANT, COUNTERPLAINTIFF as paragraphs 1-14 of Defendant's, Counterplaintiff's fourth counterclaim.

18. The lease entered into on between the Counterdefendant and Counterplaintiff includes an illegal and unenforceable provision that "Lessor reserves the right to enter the demised premises at all reasonable hours for the purpose of inspection..."

19. Under Section **5-12-050** of the RLTO "...the Landlord shall give the tenant notice of the landlord's intent to enter of no less than two days..."

20. On numerous occasions, the Counterdefendant went into the premises without giving Counterplaintiff the requisite 48 hours notice of entry.

21. Under Section **5-12-060** of the RLTO, Counterplaintiff is entitled to damages in "...an amount equal to not more than one month's rent or twice the damage sustained by him, whichever is greater" for **each** illegal entry.

WHEREFORE, Defendant, Counterplaintiff prays that this Honorable Court award damages to Defendant, Counterplaintiff from Plaintiff, Counterdefendant, on Defendant's, Counterplaintiff's fourth counterclaim, as follows:

- A. Enter judgment in an amount equal to the monthly rent of \$<<MonthlyRent>> for each illegal entry against the Plaintiff, Counterdefendant;
- B. Award Defendant, Counterplaintiff the court costs incurred pursuant to Sections 5/5-109 & 5/9-114 of the *Illinois Code of Civil Procedure* and the applicable provisions of the RLTO;
- C. Award Defendant, Counterplaintiff reasonable Attorney's fees and damages as provided by the RLTO; and
- D. Award Defendant, Counterplaintiff such other and further relief as the Court may deem equitable and just.

VERIFICATION BY CERTIFICATION
PURSUANT TO SECTION 5/1-109 OF THE
ILLINOIS CODE OF CIVIL PROCEDURE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I hereby certify that I am the Defendant and Counter-Plaintiff in the above-captioned matter, that I have read the above attached Verified Answer, Affirmative Defense(s) and Counterclaim(s), that I have knowledge of the facts alleged therein, and that the facts contained therein are true, except as to those facts, if any, which are alleged to be upon information and belief, and as to those allegations, I hereby certify that I verily believe the same to be true.

<<Defendant>>

Paul Bernstein,
Counsel for Defendant, Counterplaintiff
333 E. Ontario St. – Ste. #2102B
Chicago, IL 60611
(866) 769-2892
Atty. No. 26707

CERTIFICATE OF MAILING

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned attorney for Defendant, Counter-Plaintiff, certify that I caused a copy of the foregoing pleading to be mailed to the Plaintiff at said Plaintiff address before 5:00 p.m. on <<MailingDate>> by putting said pleading in an envelope properly addressed to said Plaintiff with postage fully prepaid and depositing said envelope in the U.S. Mailbox located at the Richard J. Daley Center, in Chicago, IL 60603.

Paul Bernstein

Paul Bernstein,
Counsel for Defendant, Counterplaintiff
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