

Legal Defenses and Counterclaims to Evictions – Important Information for Landlords and Tenants

Most individuals, landlords and tenants alike, tend represent themselves in an eviction. It is important to consider all possible defenses to eviction and counter claims. Defenses are legal reasons why the tenant should not be evicted, while counterclaims are claims for money that may reduce the amount of rent owed to the landlord. All defenses or counterclaims must be proved to the court with some level of evidence. Both tenants and landlords should bring pertinent documents, pictures or other evidence to any court hearing to provide support to their claims.

LEGAL DEFENSES

Landlord did not terminate tenancy properly: This can include an invalid notice to quit, acceptance of rent after notice to quit without notification the tenant immediately that it is for "use and occupancy," receiving a 14 day notice to quit for non-payment of rent when tenant was not behind on rent, if the eviction is due to non-payment and tenant offered to pay within allotted. These are all defenses to which a tenant may request the court dismiss their case.

Landlord has not Properly Brought the Case: This can include the improper serving of the Summons and Complaint, Landlord filed case before the notice to quit period expired, or the complaint does not state the reason for eviction.

Bad Housing Conditions: If the landlord was aware of a violation to the state sanitary code and does nothing to correct the conditions, the defense can hold for non-payment of rent and no-fault eviction cases. The court must be convinced that the sanitary issue existed, the landlord was aware of the condition, the tenant did not cause the condition and the condition can be repaired without the tenant moving out.

Retaliatory Eviction: This type of eviction is when the tenant believes the landlord is evicting them for certain activities protected by law, such as withholding rent due to unsanitary conditions. If the tenant brings this defense, the landlord must show by clear and convincing evidence that the eviction is based on a valid and legal reason.

Landlord Interference With the Use of an Apartment or Utility Service: This can include the landlord preventing the tenant from enjoying the use of the rented property, turning off utilities, or failing to provide utilities required by law or contract.

Defenses Against Breach of Lease Terms: If the landlord claims the tenant broke the lease, the tenant can defend by showing they did not break the lease, the lease clause is

oppressive and unconscionable, the landlord consented to the "breach," the breach occurred prior to lease renewal, a new owner is suing for a breach before time of ownership or that the violation was an accident the tenant is willing to correct.

Discrimination: Landlords must make reasonable accommodations for tenants with physical and mental disabilities. This is generally an issue when landlords refuse to accept state or federal subsidies or when a person with a disability violates a rental agreement term due to his or her disability. This is a very specific area of law and consulting an attorney is important if this defense is to be raised as a defense.

Landlord Violates the Law: Finally, if the landlord violated the law, related to the tenancy, such as security deposit or quiet enjoyment, or breached the lease, the court may not allow the eviction.

COUNTERCLAIMS

Counterclaims are claims for money brought in response to an eviction suit.

Nonpayment of Rent: If an eviction is for non-payment, counterclaims can reduce the amount owed to the landlord. If the counterclaims are valued higher than what the tenant owes, then the tenant wins the eviction case for non-payment. If an amount is still due, the tenant will have seven days to pay the difference.

Eviction for Cause: If the tenant is being evicted for cause, counterclaims cannot prevent the eviction, however, the court may award money damages to the tenant for the counterclaims.

Choices, Counterclaim or Separate Case: Some counterclaims, such as personal injury, may be brought in a separate civil action. The choice on timing and venue will depend on what the claim is, in what court the eviction is being heard and the statute of limitations for the claim at the time of the eviction.

Some of these issues are much more complicated. You may want to seek an attorney to assist you on specific matters, such as choice of venue, correct notice and service, challenges to a court ordered eviction and many other legal questions.

If this guide has been helpful to you, don't forget to give me a thumbs up. If you have any questions, please don't hesitate to contact the [Bayer Law Office](#).