

Superior Court, County of
Nevada
Public Law Center

EVICTIIONS

(UNLAWFUL DETAINER)

2A

LEGAL REASONS WHY
I SHOULD NOT BE EVICTED

Common Legal Reasons For Not Evicting a Tenant (Also called “Affirmative Defenses”)

Although many tenants believe they have a moral defense for not paying the rent, such as losing a job or a spouse, the law only recognizes certain kinds of defenses in eviction cases. **Affirmative defenses** are defenses that the law recognizes which raise facts not stated in the Complaint. Affirmative defenses must be stated in the Answer in order to be considered at trial. The person who states the defense has the burden of proving it at trial. The following are common defenses:

a. Breach of the warranty to provide habitable premises.

Every property rented for people to live in has to meet certain minimum health and safety standards. The standards for keeping a property safe and sanitary is called the **warranty of habitability**. You have the right to a secure property free of leaks, with working plumbing, safe gas and electricity, heat, hot and cold running water, clean and safe common areas (areas shared with others such as sidewalks and laundry rooms), and free of rats, mice, roaches or other bugs. If the health or safety problem was caused by normal wear and tear, and not by you or

your guests, and if you told the landlord about the problem and he or she failed to make the repairs in a reasonable time, you may be able to withhold the rent money until the repairs are made. If you are going to utilize this defense, you need to give the Landlord written notification prior to your withholding. If you do withhold the rent, you should have the money when you come to trial.

If you want to research the law for this defense, you can find it in the Law Library at Code of Civil Procedure (CCP) section 1174.2 and Civil Code (CC) sections 1941-1942.5; *Green v. Superior Court* (1974) 10Cal.3d 616, 631-632, 111 Cal.Rptr.704.)

b. Deducting Needed Repairs from the Rent.

If the landlord does not maintain the property and you need to make repairs yourself, you must first give your landlord written notice of the things to be fixed, and your intent to fix them and subtract the costs from your next month's rent if the repairs are not made in a reasonable time. You must allow your landlord a "reasonable" time to make the repairs before you do them yourself and deduct the costs. A "reasonable" time is usually considered 30 to 60 days, unless the problem creates an emergency

situation in which health or safety are put at risk if not repaired immediately.

If you want to research the law for this defense, you can find it in the Law Library at Civil Code (CC) section 1942.

c. Landlord's Refusal to Accept the Rent.

If your landlord gave you a 3-Day Notice to Pay or Quit, and you tried to pay your landlord the full amount of rent due before the end of the three days but the landlord refused to accept it, you can check box “c” and state the date when you tried to pay the rent. You should have the rent money with you at the trial.

d. Landlord Waives or Cancels the Notice to Quit.

If your landlord tells you to ignore the notice to quit, or accepts rent from you after giving you the 3-day notice to quit, this defense may apply. If the landlord gave you a 30 or 60 day notice to quit, and later accepted rent to cover a period of time after the 30 or 60 days, this defense may also apply. If you use this defense, save the rent money in a separate bank account and leave it there until your trial.

Having the rent money will help show the judge your good faith, and will help you to settle the case, or make it easier if you have to move.

If you want to research the law for this defense, you can read the case of *EDC Assoc. v. Gutierrez*, (1984) 153 Cal.App.3d 167, 170, 200 Cal.Rptr. 333.

e. Retaliatory Eviction.

If you think the landlord is evicting you to get even because you exercised your legal rights, this defense may apply. An example might be a landlord evicting a tenant for reporting the landlord to the building and safety department for code violations.

If you want to research the law for this defense, you can find it in the Law Library at Civil Code (CC) section 1942.58 and the case of *Barela v. Superior Court*, (1981) 30 Cal.3d 244, 249, 178 Cal.Rptr. 618.

f. Discrimination.

If the landlord is evicting you for reasons which are not related to how good a tenant you are, you may have a defense based on discrimination. A landlord cannot evict or refuse to rent to a tenant on the grounds of race, color, sex, religion, national origin, marital status, sexual orientation, number of children,

occupation, physical or mental disability, or because the tenant is receiving public assistance. Besides being a defense to an eviction, housing discrimination is against the law, and the landlord can be sued for damages in a separate case.

g. Rent Control.

This defense only applies in those areas where local rent control laws are still enforced, such as certain mobile home parks and federal housing projects.

h. Acceptance of Rent After Expiration of Notice.

This defense might apply if the landlord has accepted rent from you after the end of the 3- or 30-day notice given to you.

i. Other Defenses.

If you have any other defenses that are not listed on the answer form, you can check box “(i)” and state your defenses in section 3(j) at the top of page 2 of the form. Some other defenses, which might apply, are the following:

1. Material Breach of Rental Agreement by Landlord.

The landlord violated the rental agreement in a **material** way. This means that the landlord failed to do something important required by the rental agreement.

If you would like to research the law on this defense, you can find it in the Law Library in the case of *Green v. Superior Court*, (1974) 10 Cal.3d 616, 634-635, 111 Cal.Rptr. 704.

2. Defective Notice.

If the landlord gave you a defective notice of the eviction, either because it was not in writing, or was not given to you in the way the law requires, or because the 3-day notice did not state the exact amount of rent due, this defense may apply.

3. Ownership of the Property is in Dispute.

Due process guarantees, homeowners cannot be evicted without being permitted to raise affirmative defenses which if proved would maintain their possession and ownership. In cases where ownership

of the subject property is in dispute, lenders nor foreclosure sale buyers of the property in dispute may use certain existing procedural devices such as an unlawful detainer action to obtain possession of the premises until the separately filed action by the owner/tenant regarding their asserted ownership interest is determined. In such cases a stay of the unlawful detainer proceedings until trial of the action to determine ownership rights should be granted.

Because of its summary character, an unlawful detainer action is not a suitable vehicle to try complicated ownership issues involving allegations of ownership. [*Asuncion v. Superior Court*, 108 Cal.App.3d 141, 146,](#)

For the law on this defense, read the case of *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049, 189 Cal.Rptr. 138.)

4. Subdivision Map Act.

If the landlord has violated the **Subdivision Map Act** by renting the property, this defense might apply.

For the law on this defense, look at Government Code Sections 66410-66499.57, and read the case of

Adler v. Elphick (1986) 184 Cal.App.3d 642, 645-646, 229 Cal.Rptr. 554.

5. Offset.

If you previously overpaid the rent and are entitled to a refund, you may claim a defense called a **set-off** or **offset**, which means you can ask that you receive a credit on your rent for the amount of money the landlord is supposed to refund to you for earlier overpayment of rent.

For the law on this defense read the case of *Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 463-465, 263 Cal.Rptr. 597.

j. Facts Supporting Affirmative Defenses.

This section is found at the top of page two of your answer form. Here you have to explain why you marked the affirmative defenses you chose, and give the facts that support each of your defenses.

If you need more room, you can check the box at 3j(2) and add extra pages, OR you can include the entire facts on a separate page and mark box 3j(1). If you add pages, remember to mark under section 6 the number of pages you are adding.

WARNING

THERE MAY BE OTHER AFFIRMATIVE DEFENSES, WHICH THE LAW RECOGNIZES, BUT WHICH ARE NOT LISTED HERE. AN ATTORNEY CAN BEST INFORM YOU WHICH AFFIRMATIVE DEFENSES ARE APPROPRIATE FOR YOU TO RAISE BASED ON THE FACTS OF YOUR CASE. YOU ARE STRONGLY URGED TO TALK WITH A PRIVATE ATTORNEY, IF POSSIBLE, TO EVALUATE THE FACTS OF YOUR CASE AND ADVISE YOU WHICH AFFIRMATIVE DEFENSES YOU SHOULD INCLUDE BEFORE FILING YOUR ANSWER.