

Defenses + Counterclaims



Eviction Defenses



Definition:

The reason a tenant should win the case instead of the landlord. If the tenant proves the defense at the hearing, the tenant may not be evicted.

When to talk about them:

Defenses are decided by the judge at the first eviction hearing. The tenant should tell the judge all their defenses. It is up to the judge to decide if the tenant has proven the defense. If the tenant does not, they may be evicted.

Examples:

- The landlord says the tenant didn't pay the rent but the tenant has a Venmo receipt showing they paid.
- The landlord says the tenant violated the lease by smoking in the yard, but a neighbor tells the judge they saw it was someone that was just walking by.
- The tenant shows the judge that the Notice to Quit gave the wrong date for how long the tenant had to pay back the rent. (If the tenant shows the Notice to Quit was wrong, the landlord can start over with a new Notice to Quit so the tenant may be evicted later.)

Counterclaims

Definition:

A claim against the landlord for something the tenant thinks the landlord did wrong. Counterclaims **do not stop** an eviction.

When to talk about them:

Counterclaims are handled in the second phase of an eviction case. Tenants need to fill out and file an Answer to tell the judge about any counterclaims.

Examples:

- Landlord did not fix problems or maintain a fit premises
- Unauthorized entry

Other Issues:

Explanations - do not stop evictions

Definition: Personal circumstances or explanations for why the tenant is behind on rent or being evicted may be understandable, but they **do not stop** an eviction.

- Examples:**
- Losing income
 - Children or elders in household
 - Snow or weather
 - Health or medical issues
 - The tenant has nowhere to go
 - Death of a loved one



Discrimination & Retaliation

- Landlords are not allowed to discriminate against tenants.
- Landlords are not allowed to evict tenants to retaliate for something the tenant had a legal right to do (for example, reporting a health code violation to the city).
- If a tenant believes a landlord discriminated or retaliated, it can help to talk to a lawyer.

Rent Withholding - Tenants generally need to pay rent or they may be evicted.

Sometimes if the landlord does not provide an essential service (for example: no heat, no water, or no electricity), the tenant may be able to:

1. provide written notice of the issue,
2. pay to fix the issue & keep the receipts, and
3. reduce the rent by the amount paid.

or

1. provide written notice of the problem,
2. find different housing, and
3. not pay rent while living somewhere else.

Withholding rent can be complicated, and if the tenant does it wrong, the tenant might get evicted for not paying rent. It is good for tenants to talk to a lawyer before taking action.

