

A.: Yes; you may have a defense of “retaliatory eviction”. Generally speaking, a landlord may terminate a month-to-month tenancy or increase the rent upon notice for almost any reason, or for no reason at all, but the tenant cannot be evicted for an improper reason. In other words, a residential landlord cannot evict a residential tenant or raise a tenant’s rent in retaliation for some proper action or for the exercise of a legal right by a tenant.

A landlord must put a residence into a condition fit for “the occupation of human beings,” and repair all subsequent dilapidations thereof. Depending on the facts, a tenant has the legal right to make certain repairs to the residence, if the landlord fails to do so within a reasonable time following written or oral notice by the tenant. The tenant may then make certain repairs, and deduct the cost of such repairs from his or her rent. Thereafter, if the landlord attempts to evict the tenant, the tenant may have the following defenses for retaliatory eviction.

A tenant has two separate defenses available to preclude an eviction based on the landlord’s retaliation. There is a “common law” defense to a retaliatory eviction by the landlord that is independent of a statutory defense under Civil Code section 1942.5. Section 1942.5 provides a defense to the tenant for certain specified motives of retaliatory by the landlord. Among other things, the provisions of section 1942.5 provide a statutory defense to the tenant to any eviction proceeding, increase in rent, or reduction of services (when the tenant is not in default in the payment of rent due under a lease or rental agreement), if such action is taken within 180 days after the tenant has exercised his or her right to repair the premises and deducted the costs of repair from the rent. Under these circumstances, it is presumed that the landlord’s motives are retaliatory.

Whether the landlord’s eviction action is “retaliatory” is a question of fact to be determined by a judge or jury (you are entitled to a jury trial on this issue). The tenant has the burden of proving the landlord’s retaliatory motive by a preponderance of the evidence, which can be proved by circumstantial evidence. When a statute, however, requires the landlord to give the reasons for the eviction and the tenant challenges the reasons given, the landlord has the burden of proving that the reasons are in good faith.

I would recommend that you first attempt to informally resolve this matter with your landlord, either directly between the two of you, or with the assistance of a mediator. You can politely encourage your landlord to do so by providing him a copy of the applicable code sections, and notifying him or her that significant damages may be awarded if a violation of section 1942.5 is found. Such damages include the actual damages sustained by you as a tenant, punitive damages (in an amount not less than \$100.00 and not more than \$2,000.00), and a possible award of reasonable attorney’s fees and costs.