



RETALIATORY EVICTIONS

KNOW YOUR RIGHTS

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Chapter 693 of New York State's Law of 1979 added an important new section, 223-b, to the Real Property Law to define and prohibit Retaliation by Landlord Against Tenant. Tenants who have been reluctant to assert their rights to a habitable dwelling or to form a tenant association now have an explicit defense against landlord retaliation; i.e., revenge exerted by a landlord through eviction, refusal or a renewal lease or by making the rent or living conditions impossible in response to a tenant asserting their rights as defined in the law in three sections.

Section 223-b specifies that "no landlord shall serve a notice to quit upon any tenant or commence any action to recover real property... in retaliation for" **(this means the landlord may not pursue eviction against a tenant as revenge for the tenants' engagement in the following):**

1. "A good faith complaint, by or in behalf of the tenant, to a governmental authority of the landlord's alleged violation of ~~the~~ health or safety law, regulation, code, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes" **This most commonly relates to when a tenant makes a complaint to code enforcement, the health department, or to Section 8 if they are in the voucher program.**
2. "Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, under section two hundred thirty-five-b of this chapter, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes" **This most commonly relates to when a tenant takes legal action by filing a claim in court against their landlord for violating their rights**
3. "The tenants' participation in the activities of a tenant's organization" **This most commonly relates to when a tenant forms, joins, or participates in a tenant association or tenant group.**

The landlord's pursuit of eviction as a result of the tenant taking any of the above actions is prohibited, **unless the landlord can establish that the eviction was filed for any other valid reasons.** This is called a "rebuttable presumption" - meaning it is *assumed* that the landlord is retaliating if they serve an eviction notice upon the tenant within six months of their taking the actions specified above, unless the landlord can "rebut" or disprove this presumption by establishing and proving another valid reason for eviction.

The landlord is also prohibited from making "substantial alterations" to the terms of the tenancy for any actions taken by the tenant as defined above. This includes (but is not limited to) refusal to renew or continue the tenancy, or refusal to renew the lease agreement or to offer a new lease. It should be noted that the landlord is NOT required to offer a new lease or lease renewal for a term greater than one year, even if retaliation is assumed.

IMPORTANT: If there is a nonpayment of rent issue that will usually disprove the presumption of retaliation in these cases. Remember that if you are tenant who may look to the courts to protect you from retaliation by your landlord, your obligation to uphold your tenant responsibilities is of the utmost importance. Do not give your landlord any other possible reasons to pursue eviction, otherwise your retaliation defense/protections could be at-risk!

****SEE BACK****

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Tenants raising retaliation to the court when facing eviction should anticipate that the court will then require the landlord to provide a credible explanation of a non-retaliatory motive for seeking the eviction of the tenant. If a credible explanation is provided by the landlord, the court may find that the eviction is not retaliatory in nature & could order the tenant to move. The tenant does get another opportunity, after the landlord gives a credible explanation, to dispute the explanation or to offer additional proof that contradicts the explanation.

****RETALIATION IS NOT A DEFENSE TO A NONPAYMENT OF RENT EVICTION PROCEEDING****

This law specifically states that the "presumption" that the landlord is retaliating against the tenant for engaging in the three defined activities on the front of this handout is NOT APPLIED in an action based on the violation by the tenant of the terms and conditions of the lease/rental agreement, including nonpayment of the agreed upon rent.

Other notes:

-Any lease provision which seeks to assess a fee, penalty, or dollar charge, in addition to the stated rent, against a tenant because such tenant files a good faith complaint with a building code officer regarding conditions at the tenant's apartment, will be null and void. "A landlord who seeks to enforce such a fee or penalty shall be liable to the tenant for triple the amount of such fee, penalty or charge"

-This section, 223-b, applies to all rental residential premises EXCEPT owner-occupied dwellings with less than four units (buildings where the landlord resides in the building & there are less than four units in that building).

-The provisions of 223-b are not effective if it is established that the condition from which the protected complaint or action arose was CAUSED by the tenant, a member of the tenant's household, or a guest of the tenant.

-The provisions of 223-b are not applied in a case where a tenancy was terminated in accordance with the terms of the lease as a result of a lawful transfer of ownership of the apartment.

TO LEARN MORE ABOUT THE COURT PROCESS, SEE EVICTION - COURT PROCESS HANDOUT!

If you are a tenant and believe that your landlord may be retaliating against you, it is important to seek legal help right away. Tenants who believe they are facing a retaliatory eviction should call Legal Aid Society for help at (518)462-6765. UTA does not give legal advice and this handout is not meant to substitute legal advice.