

Landlord Retaliation

I have been living in my apartment for almost a year. Two months ago I noticed that sewage had backed up in the basement soaking my laundry basket and laundry supplies. I told my landlord about the problem right away. After about a month I realized that he was not going to do anything about it so, I called the Health Department. Two weeks later my landlord sent me a notice telling me that I have to move. The notice said the reason I have to move is because my neighbors have been complaining about noise. I think the real reason he wants me to move is because I reported him to the Health Department. What can I do?

The situation described may be unlawful landlord retaliation. When a landlord decides to evict a tenant or changes the terms of a lease agreement because the tenant contacted the Health Department of Building Inspector, or has attempted to enforce certain rights relating to landlord/tenant law, it may be considered retaliation. However, as described below, retaliation is not a complete defense to an eviction or a change in the lease. In other words, a tenant may still be evicted even though the landlord appears to be retaliating.

What types of actions are protected from retaliation?

If a tenant has complained about health or safety violations or has reported that the landlord has violated any building fair housing laws, or if the tenant has participated in a tenant's rights group, the law may help protect you.

What can tenants do if their landlord is attempting to retaliate against them?

If the tenant believes that the reason the landlord is bringing the eviction action is retaliatory, the tenant should bring that to the attention of his attorney or the judge. The tenant may also want to speak with an attorney at Neighborhood Legal Services.

How does the law against retaliation work?

If a landlord attempts to evict a tenant within six months from the time that the tenant complained about conditions that affect health and safety or took action to enforce rights under a lease, a court will assume that the retaliation is the reason. The judge will then shift the burden of proof to the landlord. Shifting the burden of proof means the judge will give the landlord the opportunity to show that the reason for eviction is something other than retaliation. This means that even if the landlord is attempting to retaliate but can demonstrate another reason why he has a legal right to evict, the judge may decide that the landlord's motive for bringing the eviction is NOT retaliatory and the tenant may be evicted.

Are all tenants protected from retaliation?

The law that prohibits retaliation has some exceptions. The law does not apply to apartments in owner-occupied buildings with less than four units. The law will also not protect tenants whose guests or household members have caused the condition complained about.

If a landlord is retaliating, does the tenant still have to pay rent?

Yes, the law clearly states that even if a landlord is attempting to retaliate against a tenant for one of the acts listed above, the tenant is responsible for paying rent. However, if the landlord increases the rent in retaliation, the tenant is not generally required to pay the extra charges.