

34 Fla. Jur 2d Landlord and Tenant § 88

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Landlord and Tenant

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V. Premises Demised

A. In General

§ 88. Prohibited practices—Retaliatory conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

- West's Key Number Digest, [Landlord and Tenant](#) 🔑132(1) to 132(3)

A.L.R. Library

- [Retaliatory eviction of tenant for reporting landlord's violation of law](#), 23 A.L.R.5th 140

Trial Strategy

- [Tenant's Rights and Remedies Against Retaliatory Eviction by Landlord](#), 45 Am. Jur. Proof of Facts 3d 375
- [Retaliatory Eviction Claims](#), 99 Am. Jur. Trials 289

Primary Authority

- [Florida Pleading and Practice Forms § 12:59](#) (Defense—Notice to terminate ineffective retaliatory eviction—For tenant's reporting health code violation [§ 83.64(1)(a), Fla. Stat.])

It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith.¹ "Discrimination" under the statute means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which is a prerequisite to a finding of retaliatory conduct.²

Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

- (1) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;³
- (2) the tenant has organized, encouraged, or participated in a tenants' organization;⁴
- (3) the tenant has complained to the landlord for the landlord's failure to materially comply with its obligations;⁵
- (4) the tenant is a service member who has terminated a rental agreement pursuant to a specified statute relating to the termination of a rental agreement by a service member;⁶
- (5) the tenant has paid rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association;⁷ or
- (6) the tenant has exercised its rights under local, state, or federal fair housing laws.⁸

Illustration:

A residential condominium landlord's dealings with a tenant's mortgagee did not result in a constructive eviction of the tenant as the unit was not rendered unsafe, unfit, or unsuitable for occupancy in whole, or in substantial part; moreover, the tenant did not give the landlord the statutory notice to cure as required to terminate the rental agreement.⁹

Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against the tenant for possession.¹⁰

In any event, the statute does not apply if the landlord proves that the eviction is for good cause.¹¹ Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of the statutory chapter relating to landlord and tenant.¹²

Illustration:

A landlord had good cause for evicting a tenant, making the tenant's retaliatory eviction defense inapplicable where the tenant admitted breaching the lease by keeping unauthorized pets and moving one of the landlord's rugs to a garage.¹³

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Footnotes

- 1 § 83.64(1), Fla. Stat.
- 2 § 83.64(4), Fla. Stat.
- 3 § 83.64(1)(a), Fla. Stat.
- 4 § 83.64(1)(b), Fla. Stat.
- 5 § 83.64(1)(c), Fla. Stat.
- 6 § 83.64(1)(d), Fla. Stat.
As to the termination of a rental agreement by a service member, see § 83.682, Fla. Stat.
- 7 § 83.64(1)(e), Fla. Stat.
- 8 § 83.64(1)(f), Fla. Stat.
- 9 [Plakhov v. Serova](#), 126 So. 3d 1221 (Fla. 4th DCA 2012).
- 10 § 83.64(2), Fla. Stat.
- 11 § 83.64(3), Fla. Stat.
- 12 § 83.64(3), Fla. Stat.
- 13 [Salmonite v. Eilertson](#), 526 So. 2d 179 (Fla. 1st DCA 1988).

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