



Common Exceptions and Affirmative Defenses to Eviction

DILATORY EXCEPTIONS

Must be filed before or with answer; waived if not pleaded.

- **Prematurity (CCP 926(A)(1))**

- No 5 day notice or 5 day notice has not expired, or Rule for Possession contains different reason for eviction, and there is no waiver of notice. La. CCP 4701.
- Insufficient notice to terminate lease for no cause (10 or 30 days before end of rental period). La. CC 2728 (not waivable under 4701).
- Hearing scheduled before third day after service in violation of La. CCP 4732.
- Lease contains requirement of notice to cure or notice to cease and desist. This must be a separate notice than notice to vacate. Notice was not given or has not run. *Second Zion Baptist Church #1 v. Jones*, 2017-0926 (La. App. 4 Cir. 04/18/18); 245 So. 3d 9, 14.
- Rule says “owner wants possession” for no cause, but lease is not expired.
- Landlord agreement signed for receipt of ERAP funds that prohibits eviction for X days, X days has not expired (Landlord Agreement constitutes valid compromise under La. Code Civ. P. art. 3071).
- Property is a covered property under the CARES Act because it participates in a federal subsidy program or has a federally backed mortgage, therefore 30 days’ notice is required for a nonpayment eviction. 15 USC § 9058(c).
- Housing Choice Voucher Program: State law minimum notice required so 5-day notice cannot be waived. See Section 8 Tenancy Addendum ¶11; 24 CFR 982.310(e)
- Public Housing: Public housing grievance process has not been completed; eviction does not qualify for criminal activity exception. 24 CFR 966.4; 24 CFR 966.54; 24 CFR 966.56.
- HOME Investments Partnership Program: 30 day notice required for eviction. 24 CFR 92.253(c).
- Section 8 Project-Based Rental Assistance: Meeting with management about termination has not yet occurred and/or opportunity for meeting with management was not noticed. See HUD Occupancy Handbook 4350.3.
- Public housing and Section 8 Project-Based Rental Assistance: 30 day notice of eviction for nonpayment of rent and notice of available rental assistance was not provided. 24 CFR §§ 247.4; 880.607; 882.511; 884.216; 966.8.
- Dept. of Agriculture Rural Development Program: Right to notice of violation and opportunity to cure before eviction. 7 CFR 3560.159(a).

- **Unauthorized Use of Summary Proceedings (CCP 926(A)(3))**

- Rule for Possession improperly seeks damages. *Major v. Hall*, 262 La. 243; 263 So.2d 22 (1972).

- Dispute over title cannot be litigated via summary proceeding. *Fradella Constr., Inc. v. Roth*, 503 So.2d 25 (La. App. 4 Cir. 1986) (possessory litigation must be completed first in favor of landowner before eviction by summary proceeding).
- **Vagueness or Ambiguity (CCP 926(A)(5))**
 - RFP does not contain sufficient detail for client to prepare a defense.

DECLINATORY EXCEPTIONS

Must be filed before or with answer; waived if not pleaded (except SMJ).

- **Insufficiency of Service of Process (CCP 925(A)(2))**
 - Rule for Possession served on wrong address.
 - Landlord knew whereabouts of tenant, but the notice to vacate was served by tacking (ex., tenant is in hospital or incarcerated). La. Code Civ. P. art 4703.
 - Defendant is living temporarily outside of Louisiana due to a recent natural disaster, and has not abandoned his or her apartment. The Rule for Possession must be served through the Long-Arm Statute, La. R.S. 13:3204. Also, no trial can be held on the Rule for Possession until 30 days after service of the Rule. La. R.S. 13: 3205.
- **Lis Pendens (CCP 925(A)(3))**
 - There is pending matter filed first that concerns the same parties and same legal issue. La. CCP 531.
- **Lack of Subject Matter Jurisdiction (CCP 925(A)(6))**
 - Where eviction involves ownership dispute, city and JOP courts lack subject-matter jurisdiction. La. CCP 4913(B)(1).

PEREMPTORY EXCEPTIONS

May be raised at any time.

- **No cause of action (CCP 927(A)(5)) – Cannot go outside the pleadings CCP art 931.**
 - Rule for Possession states a violation that is not actually a violation of the lease, ex. tenant failed to mow lawn, but that is not tenant’s responsibility under the lease.
 - “Owner wants possession” eviction stating no cause (something tenant did wrong) from Low Income Housing Tax Credit (LIHTC) housing, public housing, Section 8 Project-Based Voucher housing, Section 8 Project-Based Rental Assistance housing, HOME, or other subsidized housing that has a good cause requirement for eviction; lease automatically renews and cannot be evicted without good cause. (This covers most project-based subsidy programs, but not most tenant-based subsidy programs including Housing Choice Voucher Program).
- **No right of action (CCP 927(A)(6))**
 - Property is heir property and tenant has claim of co-ownership over the property. *Matthews v. Horrell*, 977 So.2d 62 (La. App. 1 Cir. 2007) (succession representative can’t evict co- heir).

- Landlord does not have standing to evict (ex. not actually owner or agent of owner; disputed heir property and succession has not been opened).
- **Res judicata (CCP 927(A)(3))**
 - Landlord already tried to evict for the same reason and the eviction was dismissed on the merits.

AFFIRMATIVE DEFENSES

- **Nonpayment of Rent**
 - TT timely tendered the rent. *Cantrell v. Collins*, 984 So.2d 738, 740-41 (La. App. 1 Cir. 2008).
 - TT had an established custom of late payment. *Versailles Arms Apts. v. Pete*, 545 So.2d 1193 (La. App. 4 Cir. 1989).
 - Plaintiff is not entitled to possession because Defendant properly made repairs and deducted from rent pursuant to La. Civ. Code art. 2694.
 - The rent claimed is not owed because Defendant's use was substantially impaired by [something within landlord's control], and Defendant is entitled to a rent reduction under La. Civil Code art. 2715.
 - The rent claimed is not owed because tenant is entitled to a rent abatement for months when she lost use and enjoyment of apartment due to pending repairs. La. Civ. Code art. 2693; *NOLA E., LLC v. Sims*, 2018-0623 (La. App. 4 Cir. 02/13/19); 265 So. 3d 1147 (abatement is a valid affirmative defense under art. 2693 where tenant had documentation that the apartment as unlivable).
 - Housing Choice Voucher Program participant cannot be evicted for nonpayment of Housing Authority portion of rent. 24 CFR 982.451; Section 8 Tenancy Addendum.
 - Public housing tenants are entitled to rent abatement when repairs are not made in a reasonable time and they are not provided with alternative housing. 24 CFR 966.4(h).
- **Force Majeure**
 - The landlord may only evict for total destruction of the premises by a natural disaster or fire. Defendant's apartment is only partially destroyed. Thus, the landlord may not evict defendant for this reason. La. Civil Code art. 2714-15.
- **Lease Violation**
 - The landlord is not entitled to eviction because he has unclean hands. *Allvend, Inc. v. Payphone Comm 'ns Co.*, 2000-0661 (La. App. 4 Cir. 05/23/01); 804 So.2d 27, 30.
 - Tenant cannot be evicted for being a victim of domestic violence under the Louisiana Violence Against Women Act or the federal Violence Against Women Act. La. R.S. 9:3261.1 (only applies to properties with 6 or more units); 34 U.S.C. § 12491 (applies to federally subsidized properties).
 - Tenant is entitled to a reasonable accommodation under the Fair Housing Act. 42 U.S.C. § 3604(f)(3)(B); *Renewal Homes v. Laneheart*, No. 2017-0199, 2017 La. App. LEXIS 1870 (La. App. 4 Cir. 10/18/17).

- **General**

- The notice to vacate served upon the defendant has been vitiated by the plaintiff's acceptance of rent. The landlord accepted or held rent from defendant after the Notice to Vacate. *Adams v. Dividend, Inc.*, 447 So.2d 80, 83 (La. App. 4th Cir. 1984); *Four Seasons, Inc. v. New Orleans Silversmiths, Inc.*, 223 So. 2d 686 (La. App. 4 Cir. 1969) (delay in returning rent after notice to vacate defeats eviction).
- Lease has a cure clause or cease and desist clause tenant cured the violation. *Second Zion Baptist Church #1 v. Jones*, 2017-0926 (La. App. 4 Cir. 04/18/18); 245 So. 3d 9, 14.
- The Court should exercise judicial control. *Hartmann v. Bank of La.*, 95-3058 (La. 12/13/96); 702 So.2d 648 ("Louisiana courts are vested with discretion under certain circumstances to decline to grant a lessor cancellation of a lease although such right appears to be available to him."); La. Civ. Code art. 2013 (court can award additional time to perform).