

# Ohio Landlord Tenant Law

Tuesday April 11<sup>th</sup>, 2023







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# **Ohio Landlord- Tenant Law COHHIO Conference**

**Melissa Lenz**

**The Legal Aid Society of Columbus**

# LASC Presenter

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# Topics Covered

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1. Landlord and Tenant Rights and Obligations
2. Repairs and Rent Escrow
3. Basic Procedures/Practices of Eviction Court and Hearing Simulation
4. Eviction Defenses and Practical Tips
5. Questions?



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# **Landlord and Tenant Rights and Obligations**

# Duties of Landlords and Tenants

## Landlord Duties

### 5321.04

- Put and keep home in a fit and livable condition
- Keep all electrical, plumbing, heating, and ventilation systems in good working order
- Maintain all appliances and equipment **provided** or required to be supplied by landlord (**no duty to provide appliances**)



## Tenant Duties

### 5321.05

- Keep the home safe & sanitary
- Use electrical and plumbing fixtures correctly
- Keep the plumbing fixtures as clean as their condition allows
- Maintain the appliances **provided** by the landlord in good working order



# Duties of Landlords and Tenants

## Landlord Duties ORC 5321.04

- Provide garbage cans and arrange for trash removal, if the landlord owns four or more residential units in the same building
- Comply with building, housing, health and safety codes



## Tenant Duties ORC 5321.05

- Dispose of trash properly
- Comply with housing, health, and safety codes that apply to tenants

# Duties of Landlords and Tenants

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## Landlord Duties

- Evict the tenant when the landlord has “actual knowledge” of drug activity by the tenant, a member of the tenant’s household or a guest of the tenant occurring in or otherwise connected with the tenant’s premises

## Tenant Duties

- Do not do illegal drugs

# Duties of Landlord

- Supply running water, reasonable amounts of hot water and heat, unless the hot water and heat are supplied by an installation that is under the exclusive control of the tenant and supplied by a direct public utility hook-up



# Duties of Tenant

- Do not damage the house and keep guests from damaging
- Do not disturb any neighbors and require guests to do the same



# Important Principle

- Landlord Tenant Relationship is a business relationship
- A lease/rental agreement is a binding legal contract. One should never sign a contract without first reading and understanding its contents



# New Columbus City Ordinances

- **Required Rent Receipts:** If you pay by cash, money order, or other non-electronic payment, your landlord must provide a receipt within 4 business days of payment.
- **“Renter’s Choice”:** Gives renters choices about how and when they will pay their security deposits to landlords, including payment plan options. The law also requires that landlords inform tenants of the choice of payment options.

# New Columbus City Ordinances

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- **Source of Income Anti-Discrimination:** A landlord cannot discriminate based on a tenant's source of income. For example, a landlord cannot say that they do not take Section 8 Housing Vouchers.

# Quick Tips for Tenants

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- Get receipts for everything paid
- Get all agreements outside lease in writing
  - Work for rent
  - Rental compensation/reduction
- Keep notes of conversations with landlord, including dates and topics





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# Repairs and Rent Escrow

# Repairs and Remedy



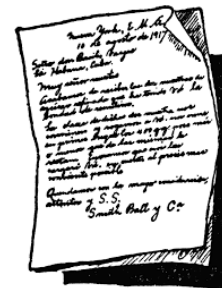
How do you get your Landlord to make repairs?

The process, called rent escrow, is laid out in ORC 5321.07-10.

# Repairs and Remedy

If a tenant reasonably believes the landlord has failed to fulfill an obligation under the law or lease, such as making a repair in the apartment:

1. Must give a **written** notice (text or email counts) to the landlord about the issue they need fixed.



# Repairs and Remedy

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2. After the landlord receives the written notice, the tenant must wait a reasonable period of time, no more than 30 days, for the landlord to make repairs.

3. Must stay current in rent. The tenant cannot be behind in rent if they want to use the escrow process.

# Repairs and Remedy



4. If the landlord makes the repairs, the process ends.

5. If the landlord does not make the repairs within 30 days, they can either start a rent escrow account with the municipal court or terminate the lease. If they choose escrow, they pay rent to the court each month instead of the landlord.

# Repairs and Remedy

Calling Code Enforcement (dial 3-1-1) and asking for an inspection can help support the existence of problems and add another layer of pressure on the landlord to make repairs.



# Repairs and Remedy

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If you would like more information about the rent escrow process, check out this packet that goes over the escrow process in more detail here:

<https://cohhio.org/wp-content/uploads/2016/09/Escrow.pdf>

# Retaliation





# Typical Retaliation in Columbus

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- Tenant, frustrated by lack of response to requests for repairs or extermination, calls Code Enforcement and requests an inspection.
- Code inspects, issues violation notice to landlord.
- Soon thereafter: Retaliation by Landlord. Goal is to get tenant out of the building prior to re-inspection.
- In January 2019, City Council passed an ordinance strengthening protections against tenants whose landlords file retaliatory evictions

# Ohio Revised Code

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## R.C. 5321.02

- protects a tenant's right to complain to Code, escrow or ask for repairs
- Prohibits landlord retaliation, e.g. raising or refusing rent, evicting because tenant enforced rights, etc.

# Ohio Revised Code

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5321.02: If Landlord retaliates:

- Tenant may use the retaliatory action as a defense to an eviction action.
- Tenant may recover possession of the premises.
- Tenant may terminate the rental agreement.
- Tenant may sue landlord for actual damages with reasonable attorney fees.

# Ohio Revised Code

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## 5321.03: Exceptions:

Landlord may not be retaliating if:

- Tenant is behind in rent.\*
- Tenant's lease has expired and tenant has become a holdover tenant.\*
- Tenant caused the condition problems
- Compliance with Code would require “alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit”



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# **Basic Practices and Procedures of Eviction Court**

# Forcible Entry and Detainer

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AKA an Eviction

Two Causes of Action:

- First Cause of Action – Restitution of Premises
- Second Cause of Action – Money Damages
  - Optional

Two separate hearings

# First Cause of Action

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# First Cause of Action

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- Restitution (possession) of the premises
- Governed by R.C. Chapter 1923
- Civil Rules of Procedure apply
  - Except “to the extent where they would by their nature be clearly inapplicable”



# First Cause of Action

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- Who is Subject to Eviction?
  - Hold Over Tenants (lease is up)
  - Nonpayment of Rent
  - Breach of Tenant Obligations that Materially Affect Health and Safety
  - Breach of Written Rental Agreement

# First Cause of Action

- Expedited hearing schedule
  - First cause hearing usually scheduled within weeks after filing of complaint
  - Summary proceeding – any defense may be asserted at trial, even if written answer hasn't been filed
- Written answer is not required by hearing date
  - Exception: Conditions Counterclaim filed pursuant to R.C. 1923.061 (more on this later)

# Hearing on First Cause of Action - Continuances

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- No continuance of more than 8 days past original hearing date (R.C. 1923.08)
  - Consent of landlord
  - Bond
- In many counties, magistrates generally will grant one continuance to Defendant
  - **IF** tenant requests continuance before beginning to testify/answer questions about case

# Hearing on First Cause of Action – pro se tenant

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Magistrate or landlord attorney asks four questions:

1. Did you get this notice?
2. Were you behind in the rent at the time?
3. Are you still behind in the rent?
4. Are you still living in the property?

Anything else you'd like to tell me?

# If the tenant loses the first cause...



# Writ of Restitution

- Order to set tenant out of rental property
  - Landlord cannot set out without writ of restitution
- May be issued as soon as judgment is granted to plaintiff
- For example, in Franklin County, must be issued within 30 days of judgment, pursuant to Franklin M.C. Rule 9.06(4)
  - Parties can extend the writ issuance period up to 120 days by agreed entry
- Plaintiff purchases writ from Clerk's office

# Set-Out

- Property is “red tagged” by bailiff once writ is purchased

**FRANKLIN COUNTY  
MUNICIPAL COURT  
BAILIFF'S DEPARTMENT**  
375 South High Street  
Columbus, Ohio 43215

**EVICTIION NOTICE**

Defendant \_\_\_\_\_  
Address \_\_\_\_\_ Case No. \_\_\_\_\_  
Date \_\_\_\_\_

**ATTENTION**  
The Court has ordered you to Vacate and Leave the premises you now occupy. Unless this order is complied with by \_\_\_\_\_ your property and effects will be moved to the street without further notice to you.

\_\_\_\_\_ Deputy Bailiff  
Phone 645-\_\_\_\_\_  
Monday thru Friday between 8:00-10:00 a.m.

**MOVE & LEAVE KEYS**

THE PLAINTIFF MAY BE ALLOWED TO DESTROY OR DISPOSE OF ANY HAZARDOUS PROPERTY, SUCH AS INFESTED, ILLEGAL, AND HARMFUL ITEMS THAT YOU DO NOT REMOVE BY THE DATE OF THE SET-OUT. YOU SHOULD CONTACT YOUR ATTORNEY IF YOU HAVE ANY QUESTIONS ABOUT YOUR LEGAL RIGHTS.

# Set-Out

- Once writ is purchased, landlord can proceed with set out under supervision of bailiff
- Can set out as soon as five days after red tag is posted (not including day of tagging)
- Bailiff must proceed with set-out no sooner than 5 days and no later than 10 days after premises is tagged
  - It will be 5 days unless the landlord doesn't ask for set out or the bailiff is very busy
  - Has to pay separate fee for set out



# Objections to Magistrate's Decision

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- Must be filed within 14 days. Civ. Pro. 53(E)(2)
- **No** automatic stay of set out
  - Must file Motion for Stay
  - Tenant may be required to post bond for stay
- Should be filed within 5 days of writ issuing to avoid set out

# Second Cause of Action

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# Second Cause of Action

- Hearing scheduled after 1<sup>st</sup> cause
- Money damages for:
  - Back rent
  - Damages to property
  - Late fees
  - Other charges, e.g. utility bills owed by tenant but paid by landlord
  - Anything a landlord can imagine a tenant might owe them and then some



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# **Most Common Eviction Defenses**

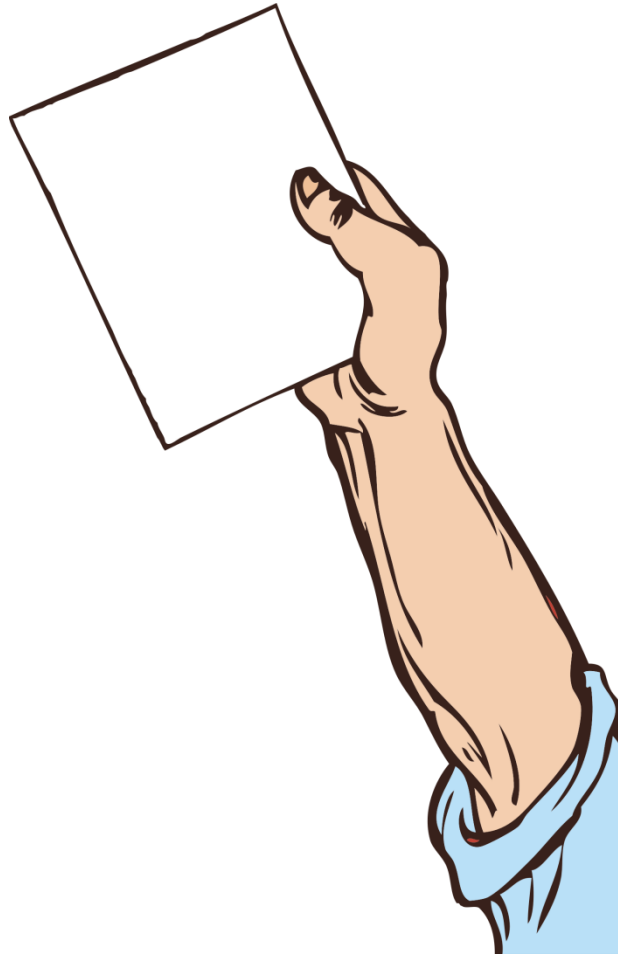
# Disclaimer

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- These slides are for educational purposes and are not legal advice
- Only attorneys can give legal advice
- If you or a patient/ client are facing an eviction, and want to speak with an attorney, they should call their local legal aid.

# Notice Related Defenses

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# Different Types of Notices

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- Notice to Leave Premises
  - Always required – jurisdiction issue
- Notice Terminating Periodic Tenancy
  - Month to Month, etc.
- Notice to Cure
  - Tenant not fulfilling obligations re: health and safety

# Notice Terminating Periodic Tenancy

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- Applies only to termination of periodic tenancy, such as month to month.
- Must be served one full tenancy period before termination of tenancy to be effective.
- E.g. if month to month tenancy, and rent is due on the first, and notice is served Feb. 15, would terminate tenancy effective March 31<sup>st</sup>, not March 15.

R.C. 5321.17



# Notice Terminating Periodic Tenancy

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- If tenant stays past date of termination, landlord must then serve 3 Day Notice to Leave the Premises in order to evict.
- 3 day notice cannot be combined with 30 day Notice of Termination of tenancy

R.C. 5321.17

# Sample Notice Terminating Periodic Tenancy



**BRYDEN HOUSE**  
APARTMENTS

1555 Bryden Road | Columbus, OH 43205  
614.253.6097 | 614.253.5940 Fax | 800.553.0300 Voice/TTY

December 11, 2015

To: [REDACTED]

Apt 515

This is to serve as a 30 day notice to terminate tenancy as of January 31, 2016.

Please turn in all keys by 5:00 pm on that day.

We are exercising our right as landlord article 12 of your lease dated February 7, 2015.

Thank you,

Management

# Notice to Cure

- If alleged breach of tenancy violates tenant's statutory duties (R.C. 5321.05) in a manner that materially affects health and safety, landlord must serve a notice to cure the breach before filing an eviction action.
- Landlord must serve this notice even if the alleged breach is also a breach of the written lease.

R.C. 5321.11

# Notice to Cure

- Tenant must be given reasonable opportunity to cure
  - Not less than 30 days
  - Notice must advise tenant of deadline to cure breach
- If landlord does not serve the tenant with required notice, it is a complete defense to the eviction action

R.C. 5321.11

# Tenant's statutory obligations

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- Keep property sanitary and safe
- Do not damage fixtures, plumbing, appliances supplied by landlord, etc.
- Do not violate health and safety codes
- Don't disturb neighbors
- Allow landlord to enter when reasonable notice given

R.C. 5321.05

# Remedy of Tenant Conditions Breach

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- If tenant receives a Notice to Cure under R.C. 5321.11 and discontinues the alleged offensive behavior, the rental agreement should not be terminated.
- Landlord is required to prove that during the 30 days after getting the Notice to Cure, the tenant continued to engage in the behavior noted in the 5321.11 Notice.

# Sample Notice to Cure

## 30 Day Notice to Remedy Conditions

R.C. 5321.11

To: Bob Smith (Tenant)

Address of Property: 1264 Main St., Columbus, OH 43212

You are hereby notified that Larry Landlord wants you, on or before February 6, 2016 (date) to remedy the following conditions at the rental premises:

Failure to keep the premises safe and sanitary, failure to dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner.

Explanation:

Clean trash throughout house.  
Clutter and trash attracting  
roaches. Can't exterminate  
until cleaned.

Signed:

Larry Landlord  
Larry Landlord

Date Served: January 6, 2016

# Notice to Leave the Premises

- If landlord does not serve 3 day Notice to Leave Premises pursuant to 1923.04, the court lacks subject matter jurisdiction
- Must be served by:
  - Giving directly to tenant (personal service), or
  - Posting to door of residence (residence service), or
  - Certified mail, return receipt requested

R.C. 1923.04



# Notice to Leave the Premises

- Must contain exact required statutory language:

“You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance.”

R.C. 1923.04

# Notice to Leave the Premises

- Statutory language must be “conspicuous” — i.e. it must stand out in some way, e.g.:

-Bigger font

-ALL CAPS

\*\*\*\*\*

- Set off with asterisks

\*\*\*\*\*

R.C. 1923.04

# Sample Notice to Leave the Premises

NOTICE TO LEAVE PREMISES, NO. 1 A  
(RC § 1923.04(A) Eff. 3-22-10) REVISED 11/02

Registered in U.S. Patent and Trademark Office  
anderson publishing co., cincinnati, ohio 45202

## NOTICE TO LEAVE THE PREMISES

(For Residential Property Only)

To: [REDACTED] Tenant:

You will please notice that We want you on or before Sept 11<sup>th</sup> 2015  
to leave the premises you now occupy, and which you have rented of Margaret Mosley & Rebecca Lalla  
situated and described as follows: (Landlord)

1088 Lockbourne Rd

In Columbus County of Franklin and State of Ohio  
Grounds: behind in rent and utilities

YOU ARE BEING ASKED TO LEAVE THE PREMISES  
IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY  
BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT  
REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS  
AS A TENANT, IT IS RECOMMENDED THAT YOU  
SEEK LEGAL ASSISTANCE.

Sept 8<sup>th</sup> 2015

Margaret Mosley & Rebecca Lalla Landlord  
Landlord's Address 1933 E Dublin Granville Rd  
PMB 299 Columbus OH 43229  
614-531-7331

# Landlord Waiver of Notice to Leave the Premises

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- If a landlord serves the tenant with a NTLP and then takes action that is inconsistent with terminating the tenancy, Ohio courts generally find the landlord has waived the NTLP and dismisses the eviction.
  - Accepting future rent
  - Signing new lease

# Waiver of NTLP

- The landlord waives the NTLP if they accept “future” rent after it is served.
- Future rent is any rental payment that can only be applied to the period of time after the landlord serves the notice.
  - E.g. – Tenant served NTLP on February 6<sup>th</sup> for failure to pay February rent. Tenant pays one month’s rent on February 8<sup>th</sup> and landlord accepts it. Landlord has accepted rent covering the time period after February 6<sup>th</sup>, so NTLP is waived.

# Waiver of NTLP

- NTLP is not waived if landlord accepts only back rent after notice is served.
  - E.g. Tenant is served with a NTLP on February 6<sup>th</sup> for failure to pay both January and February rent. Tenant pays one month's worth of rent on February 8<sup>th</sup> and landlord accepts it. Landlord has not waived the NTLP and can still evict, because that rent can be applied to January's back rent rather than February's future rent.

# Waiver of NTLP

- I sent the rent money. Was it “accepted”?
  - Yes, if landlord cashes/deposits check or money order, even if landlord tries to return the money after cashing it.
  - Yes, if landlord is holding the rent money paid, rather than returning it, unless:
    - the landlord notifies the tenant that the money is being held but not accepted, or
    - the landlord returns the money to the tenant prior to court.

# Waiver of NTLP

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- Acceptance of “future” rent payments from a third party also qualifies as acceptance of rent. It doesn’t matter that the money came from someone else.



# Waiver:

## Month to Month Tenancies

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- In a month-to-month tenancy, acceptance of a partial rent payment renews the monthly tenancy, even if tendered and accepted after the due date
- Landlord waives notice terminating periodic tenancy by accepting future rent after the expiration of the tenancy.

# Waiver: Tenant Breach of Rental Agreement

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- When a landlord has knowledge of a breach of the lease by the tenant and does any of the following, they have waived the right to evict for that breach:
  - Accepts future rent
  - Executes a new lease
  - Takes any other action inconsistent with termination of tenancy

# Lease Breach Defenses



# Non-Material Breach of Lease

- A lease is a contract.
- Common law contract rules state a party has not breached the contract if they are in substantial compliance
- A landlord may only evict a tenant if the breach is material.
- E.g.: Lease requires utilities to be paid on time. Tenant pays utilities late, so landlord files eviction

# Lease Terms Prohibited by Statute

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- Any agreement waiving or modifying the landlord's duties as an Ohio landlord.
- Any agreement that the tenant will hold the landlord harmless if the landlord violates the law.
- Any agreement that the tenant pay the landlord's attorney fees or confess judgement if landlord files eviction.
- Lease can transfer tenant's duties to landlord

O.R.C. 5321.13

# Breach of Prohibited Lease Term

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- If a prohibited term is included in a lease, it is stricken and unenforceable.
- The rest of the lease is still enforceable.

# Breach of Unconscionable Lease Term

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- “Unconscionable” lease provisions are unenforceable (R.C. 5321.14)
- Complete defense to the eviction action
- Court is usually arbiter of whether a term is unconscionable

# Unconscionable Lease Terms

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- Defined as “shocking the conscience”
- General prohibition against grossly unfair lease terms.
- Example: Every overnight guest that tenant has must be approved by landlord in advance.



# Unconscionable Late Fees

- Landlord prohibited from charging unconscionable late fees
- Not a penalty – reasonably related to expenses incurred by landlord due to late payment
  - Most appellate courts have held that per diem late fees are unconscionable penalty
- Very case specific defense

# Unconscionable Late Fees

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- Rarely will this be an absolute defense to an eviction
  - Only money owed for late fees
  - Accounting shows tenant paid unconscionable late fees in amounts far exceeding current amount owed
- Often comes up in pay and stay negotiations

# Housing Conditions



# Answer and Counterclaims for Conditions - 1923.061(B)



# Answer and Counterclaims for Conditions - 1923.061(B)

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- The argument: Tenant's monetary counterclaims exceed the amount of rent owed, so tenant cannot be evicted for not paying rent.
- Court must listen to both sides' money claims so hearing reset in front of judge for another day.

# Answer and Counterclaims for Conditions - 1923.061(B)

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- **BIGGEST OBSTACLE-** Franklin County Judges frequently order the tenant to pay “bond” in the amount of the entire alleged rent balance and/or rent going forward

# Answer and Counterclaims for Conditions - 1923.061(B)

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1923.061(b) should be used when:

- Landlord is evicting for unpaid rent.
- The tenant has been paying full rent for several months, while living with bad conditions.
  - Code Reports or other strong documentation needed
- Landlord was made aware of the issues.
- Tenant wants to stay and can pay rent into court going forward if required to.

# Retaliation (again)





# Ohio Revised Code

5321.02: If Landlord retaliates:

- Tenant may use the retaliatory action as a defense to an eviction action.

5321.03: Exceptions:

Landlord may not be retaliating if:

- Tenant is behind in rent.\*
- Tenant's lease has expired and tenant has become a holdover tenant.\*
- Tenant caused the condition problems
- Compliance with Code would require "alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit"

Proof problems!

# Quick Tips for Tenants

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- Get receipts for everything paid
- Get all agreements outside lease in writing
  - Work for rent
  - Rental compensation/reduction
- Keep notes of conversations with landlord, including dates and topics

“Access to justice should be an ever-present goal.”

– Maureen O’Connor  
Ohio Supreme Court Chief Justice



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# CEU Code

# HOC614