

DEFECTIVE EVICTION NOTICE

The eviction notice that is the basis of this action is defective:

- ☐ It did not clearly demand possession and/or it is not in the alternative.
- ☐ It did not clearly demand a forfeiture (cancellation) of the rental agreement or lease.
- ☐ The notice did not adequately describe the property.
- ☐ It demands more rent than the tenant(s) owed because
 - _____ there are/were uninhabitable conditions which reduces the amount of rent owed.
 - _____ Plaintiff failed to give credit for _____ rent paid and/or _____ repairs Defendant made.
 - _____ Plaintiff illegally raised the rent. CCP §827
 - _____ The notice demanded late fees or other non-rental charges in violation of CC § 1671(d)
 - _____ The notice illegally demanded rent for a period beyond one year. CCP §1161
 - _____ The notice is overstated because the tenant is due an offset for _____ reduction of services to tenant promised under the lease or _____ agreed upon Tenant services that Plaintiff failed to pay.
 - _____ Other: _____
- ☐ Tenant tendered the demanded rent and in a manner Plaintiff directed. Plaintiff cannot now demand additional rent from the tenant. CC §1476; CCP §1161.5
- ☐ The notice does not identify _____ an address or _____ telephone number _____ available days of the week or _____ hours where the rent can be paid _____ or natural person for whom to pay. CCP § 1161
- ☐ Plaintiff served the notice before the rent was due or during the late fee period.
- ☐ Notice did not give Defendant 3 days to pay the rent because:
 - _____ the notice cannot expire on or include Saturdays, Sundays or Court holidays. CCP §12a/AB 2343
 - _____ the notice cannot expire on the same day it was served. CCP §1161
 - _____ Plaintiff only accepts rent on certain days but counted days it was unavailable to accept rent.
- ☐ The notice does not give the tenant a full 30 days to move (tenancy less than one year). CC §1946 (c).
- ☐ The notice does not give the tenant 60 days to move (tenancy exceeding one year). CC §1946.1 (b).
- ☐ The notice does not contain statement about reclaiming abandoned personal property. CC §1946.1(h)
- ☐ Defendant was served with multiple notices which confused Defendant(s).
- ☐ The notice was based on a breach of covenant but did not specify what tenant must do to cure the breach and/or did not give tenant 3 days to cure the breach. CCP §1161 (3)
- ☐ It was based on a breach of covenant/ nuisance but failed to specifically describe act(s). CCP §1161
- ☐ Notice is based on a breach of covenant or nuisance but it is trivial or non-material.
- ☐ Facts stated in the notice regarding the breach and/or nuisance are untrue.
- ☐ The notice was not served on the tenant.
- ☐ Tenant was served a different notice from the one attached to the complaint. CCP §1166(d)(1)(A)
- ☐ The notice was not served as (or on the date as) Plaintiff alleges in the complaint. CCP §1166(a) (5)
- ☐ The notice was not served properly per CCP § 1162:
 - _____ It was posted on the door and not mailed and/or mailed and not posted.
 - _____ It was served on a minor at the subject premises.
 - _____ It was given to an adult other than the defendant and not also mailed to Defendant.
- ☐ Defendant was unable to contact Plaintiff within the notice period due to Plaintiff's action and/or failure to act and was therefore prevented from paying the demanded rent. CC §1511
- ☐ The notice violated the Fair Debt Collection Practices Act because a non-owner is collecting the rent for the owner without providing a proper debt validation notice. 15 U.S.C. §1692

DEFECTIVE COMPLAINT

- ☐ The complaint was not verified, or improperly verified. CCP § 1166
- ☐ The complaint was filed before the expiration of the notice period:
 - _____ The notice was served on _____ and so did not expire until the _____.
 - _____ The notice was not served at all or _____ was not properly served.
- ☐ The notice was not attached to the complaint as required by CCP §1166(d) (1) (A).
- ☐ This unlawful detainer is based on a cause of action other than nonpayment of rent. Plaintiff failed to attach the rental agreement to the complaint. CCP §1166(d)(1)(B)
- ☐ The complaint fails to state a cause of action for an unlawful detainer because Plaintiff did not complete the necessary information in paragraphs _____. CCP §1166

BREACH OF WARRANTY OF HABITABILITY

- ☐ The amount of rent demanded in the notice and/or the daily rental value demanded in the complaint is excessive because Plaintiff has failed to provide a habitable premises as required by Civil Code §1941.1 and/or Health and Safety Code §17920.3(a), of which Plaintiff had actual notice and/or constructive notice and which are listed by example and not limitation.
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| <input type="checkbox"/> Damp/leaking ceilings/walls | <input type="checkbox"/> Missing, broken smoke detectors |
| <input type="checkbox"/> Falling plaster/peeling paint | <input type="checkbox"/> Infestation of roaches/rodents/vermin/insects |
| <input type="checkbox"/> Lack of/inadequate heat | <input type="checkbox"/> Unsafe railings/stairways |
| <input type="checkbox"/> Lack of/inadequate hot water | <input type="checkbox"/> Common areas unclean |
| <input type="checkbox"/> Defective/inadequate gas service | <input type="checkbox"/> Inadequate trash collection/receptacles |
| <input type="checkbox"/> Missing/broken windows/doors | <input type="checkbox"/> Inadequate security locks |
| <input type="checkbox"/> Defective/leaking plumbing | <input type="checkbox"/> Defective electrical wiring |
| <input type="checkbox"/> Mold | <input type="checkbox"/> Lead Hazards |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Other: _____ |
- ☐ The conditions above have existed and have not been repaired for 60 days after notice from a government agency inspector, creating a presumption that Plaintiff breached the warranty of habitability. CC § 1942.3
- ☐ Plaintiff may not increase, demand or collect rent when uninhabitable conditions exist(ed) and have not been repaired/abated within 35 days after written notice from a public officer or employee to repair or abate them. CC § 1942.4
- ☐ The dwelling/unit contains serious health, safety, fire or building code violations for which a citation was issued by a government agency and has not been abated for 6 months or longer. CC§ 1954.52.
- ☐ Plaintiff has failed to obtain a valid certificate of occupancy for the premises making the unit unfit for residential habitation. The premises is "an illegal unit" and thus the lease is an unenforceable contract.

REPAIR AND DEDUCT

- ☐ Tenant does not owe the rent demanded because tenant paid for and deducted from the rent the cost of repairs. Plaintiff knew the repairs were needed and failed to provide repairs within a reasonable time. CC §1942(a)
- ☐ Plaintiff and tenant agreed _____ verbally or _____ in writing that tenant could repair the conditions in the unit and deduct the cost of repairs from the rent. CC§ 1942.1
- ☐ Tenant' rent includes charges for light, heat, water or power not separately stated. Tenant made a utility payment and was allowed to deduct the payment from the rent. Public Utilities Code §§10009-10009.1, §§16481-16481.1, and §§ 12822-12822.1; CC§1942.2.

ESTOPPEL

- ☐ Plaintiff was aware of the facts regarding defendant's purported breach and acted so as to lull Defendant into believing that the alleged breach was acceptable to Plaintiff. Defendant reasonably relied on Plaintiff's acts and failure to act to the detriment of Defendant and Defendant was ignorant of Plaintiff's true intentions.
- ☐ Plaintiff made an oral agreement with Defendant that the rent demanded in the notice could be paid at a later date, upon which Defendant(s) detrimentally relied.
- ☐ Plaintiff and Defendant(s) entered into a written agreement that the rent demanded in the notice could be paid at a later date, upon which defendant(s) detrimentally relied.
- ☐ Plaintiff has waived the alleged breach and is estopped from prosecuting this action because the Defendant(s) has paid rent and detrimentally relied on the waiver.

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WAIVER

- ☐ Plaintiff, with full knowledge of the Defendant's alleged breach and the facts surrounding said breach, intentionally waived and relinquished the right to declare a breach or forfeiture of the tenancy.
- ☐ Within the notice period, Defendant timely tendered the full amount of the rent demanded to the Plaintiff, and said tender was accepted by the Plaintiff.
- ☐ Plaintiff accepted rent after the notice expired. Lessor has therefore waived the breach and the notice and has created a new tenancy. CCP §1161.5
- ☐ The rental agreement states rent is due the ____ of each month. However, each month, Defendant has paid on the ____ of the month. The parties have therefore modified the agreement and Plaintiff's nonpayment notice is premature.
- ☐ Plaintiff has accepted rent with actual and/or constructive knowledge of the alleged breach. As a result, Plaintiff has waived the alleged breach. CCP §1161.5
- ☐ Within the notice period, tenant timely tendered the full amount of rent demanded, but said tender was refused. The tender extinguished tenant's obligation to pay rent. CC§1485

RETALIATION

- ☐ Plaintiff may not recover possession to retaliate against the tenant within 180 days of:
 - ____ Tenant complaining to a governmental agency or agencies concerning tenantability. CC §1942.5
 - ____ Tenant complained to the Plaintiff or Plaintiff's agent concerning tenantability. CC §1942.5
 - ____ For otherwise asserting tenant's rights. CC §1942.5
- ☐ Plaintiff demanded that Defendant disclose his/her immigration status in violation of CC §1940.3(b).
- ☐ Tenant is a victim of domestic violence and Plaintiff is evicting tenant in violation of CCP §1161.3.

DISCRIMINATION

- ☐ Plaintiff is discriminating against the tenant in violation of the Constitution and laws of the United States and/or State and local laws on the basis of:
 - ☐ Race ☐ Gender ☐ National Origin ☐ Age
 - ☐ Religion ☐ Sexual Orientation ☐ Family Status ☐ Source of Income
 - ☐ Disability ☐ Presence of children in the household ☐ Other _____

DISCRIMINATION – FAILURE TO PROVIDE REASONABLE ACCOMMODATION

- ☐ Defendant is a qualified tenant with a disability. Defendant asserts that Plaintiff(s) were at all times aware of tenant's disabilities. Accommodation is necessary to afford Defendant equal opportunity to use and enjoy its home. Tenant requested but Plaintiff failed to provide a reasonable accommodation. Fair Housing Act 42 U.S.C. §3604, California Fair Employment & Housing Act Cal. Gov. Code §12900 et. seq. Rehabilitation Act §504 of 1973. 42 U.S.C. §12104 seq. (Americans with Disabilities Act).

OWNERSHIP AND STANDING

- ☐ Defendant was not notified of the change in ownership which prevented payment of rent. CC §1962
- ☐ Defendant paid rent to former owner before receiving notice of the change of ownership. CC §1111
- ☐ A landlord/tenant relationship does not exist between Plaintiff and Defendant.
- ☐ Plaintiff's claim of title and right to possession is based on a void or voidable instrument
- ☐ Title to the subject property is in dispute.
- ☐ Plaintiff is not a real party in interest of the subject premises and/or does not correctly state its authority to sue on behalf of the actual owner. Thus, Plaintiff lacks standing to evict. CCP §367
- ☐ Plaintiff wrongfully brought this action using a business name or failed to register said business name.
- ☐ Plaintiff is a ____ Corporation, ____ LP, or ____ LLC but did not bring the suit under its legal name.
- ☐ Plaintiff is a Corporation/LP/LLC that does not have the capacity to bring this action because:
 - ____ It is not registered with the California Secretary of State. Revenue and Taxation Code § 23301
 - ____ It is suspended as a business entity with the California Secretary of State. *Id.*
- ☐ Plaintiff is a Corporation/LP/LLC/ or Trust and must be represented by an attorney. *Ziegler v. Nickel, et. al.*, 64 Cal.App. 4th, 545, 547-549 (1998).

SECTION 8 VOUCHER

- ☐ Plaintiff receives housing assistance payments from a local housing authority on behalf of Defendant and is subject to a lease, Housing Assistance Payment (HAP) contract and other laws governing Section 8. The notice of termination is defective and/or Plaintiff does not state grounds for the eviction because:
 - _____ The rent demanded exceeded the legal amount that could be demanded under the HAP contract.
 - _____ The notice fails to state the grounds for eviction in enough detail to prepare a defense as required by the lease/HAP contract/federal law.
 - _____ The lease and HAP contract that are the subject of this action require that good cause be shown by the plaintiff in seeking to evict the tenant.
 - _____ The notice was not served concurrently on the Housing Authority as required by Federal law.
 - _____ The HAP contract was abated by the local Housing Authority because plaintiff failed to comply with the Housing Quality Standards of the HAP contract and Federal Law.

FEDERALLY SUBSIDIZED HOUSING/HUD OWNED/HUD INSURED HOUSING

- ☐ The subject premises is a federally subsidized or HUD owned/insured housing development subject to federal statutes and regulations. The notice is defective and/or plaintiff does not state or have grounds for evictions as follows:
 - _____ The nonpayment of rent notice fails to give 10 days notice to pay or quit.
 - _____ The notice is based on a breach of the rental agreement but fails to give 10 days notice to cure the breach.
 - _____ The rent demanded exceeded the amount that could be demanded under the subsidy.
 - _____ The notice fails to advise tenant of the right to request a meeting to discuss the allegations.
 - _____ The notice fails to state good cause for the termination.
 - _____ It fails to give 30 day's notice or, if an alleged threat to health/safety, a reasonable time.
 - _____ Plaintiff failed to make the grievance procedure available to tenant.
- ☐ The notice fails to state the grounds for the eviction in enough detail to prepare a defense.
- ☐ Defendant is a victim of domestic violence, living in HUD subsidized housing. Plaintiff has alleged nuisance and has unlawfully terminated defendant's tenancy in violation of the Violence Against Women Act and Department of Justice Reauthorization Act of 2013.

CONVENTIONAL PUBLIC HOUSING

- ☐ The subject premises are federally financed conventional public housing, owned and operated by a local Housing Authority subject to federal statutes and regulations. The notice of termination is defective and/or the plaintiff does not state or have grounds for eviction because:
 - _____ Notice is based on nonpayment of rent and fails to give 14 days notice to pay rent.
 - _____ Notice is based on a breach of the rental agreement but does not give 14 days to cure the breach.
 - _____ The rent demanded exceeded the legal amount of rent that could be demanded under the subsidy.
 - _____ Notice fails to advise tenant of the right to request a hearing pursuant to the grievance procedure.
 - _____ Notice fails to state good cause for termination.
 - _____ Notice fails to give sufficient days' notice or, if an alleged threat to health and safety, a reasonable time to comply.
 - _____ Plaintiff failed to make the grievance process available to tenant.
 - _____ Notice fails to state the grounds for eviction in sufficient detail to allow Defendant to indicate a defense as required by and contract and federal law.
- ☐ Plaintiff's claims are barred by protections under the Violence Against Women Act (VAWA) and requisite federal and state laws.

TENANT PROTECTION ACT OF 2019 (AB 1482)

- The property is subject to the TENANT PROTECTION ACT OF 2019 (“TPA”) as 1) a tenant has occupied the premises for 12 months or more and 2) the unit was built more than 15 years ago and 3) not otherwise exempted under the law.
 - Plaintiff does not state an “**at-fault** just cause” reason for the eviction under the TPA. CCP §1946.2 (b)(1)
 - Plaintiff does not state or have “**no fault** just cause” for the eviction under the TPA. CCP §1946.2 (b)(2)
 - Plaintiff is not proceeding in good faith in recovering possession. CCP §1946.2 et. seq.
 - Plaintiff has not served tenant with a first written notice of the violation with a 3-Business Day opportunity to cure the violation pursuant to (3) of CCP Section 1161 before serving a secondary notice to quit or filing the unlawful detainer. CCP §1946.2 (c)
 - Plaintiff did not serve a secondary 3-day notice to quit without an opportunity to cure. CCP §1946.2 (c)
 - Plaintiff has failed to provide relocation assistance under “**no fault** just cause” by either (1) providing a direct relocation payment or (2) waiving in writing the payment of rent for the final month of tenancy, prior to the rent becoming due. CCP§1946.2 (d)(1)(A)(B).
 - Even though the plaintiff claims that they are exempted from the “just cause” provisions of the TPA, tenant or occupants were not provided written notice of that exemption from the plaintiff or provided in the lease contract. CCP §1946.2 (d)(8)(B)(i).
 - Plaintiff failed to provide written notice to the tenant or add a similar addendum to the lease or rental agreement notifying the tenant that their unit is subject to the requirements of the TPA. CCP §1946.2 (f)(3).
 - The rent demanded exceeded the legal amount that could be demanded under the TPA. CCP §1947.12
 - Even though the plaintiff claims that they are exempted from the rent limits provisions of the TPA, tenant or occupants were not provided written notice of that exemption from the plaintiff or provided in the lease contract. CCP §1947.12 (d)(5)(B)(i).
 - The tenancy existed prior to March 15, 2019 and Plaintiff failed to “roll back” or revert to the March 15, 2019 rental amount or has charged in excess of the “roll back” amount given the provided increases allowable under the TPA. CCP§1947.12 (h)(1)(2)(3).

MISCELLANEOUS

- ☐ Plaintiff cannot demand that the rent be paid ONLY in cash or via electronic transfer or declined to accept payment from a third party without cause. CC §1947.3
- ☐ Defendant has paid rent and/or provided Plaintiff valuable nonmonetary consideration or other services in lieu of rent to establish a tenancy beyond a tenancy at will. CCP §789
- ☐ This action is barred by a prior judgment or because another action is pending upon the same cause of action. CCP §597
- ☐ Defendant(s) requests the court to take judicial notice of the following case(s):

- ☐ The parties negotiated the written lease agreement in a language other than English. However the written contract is in English, in violation of Civil Code §1632 et. seq.
- ☐ Plaintiff is displacing Defendant using State or Federal funds and has not complied with the State Relocation Act. Gov. Code §§7260-7277, 25 CCR §6000 et. seq. and/or the Federal Uniform Relocation Act (24 CFR Part 42; 42 U.S.C 420-4656, 49 CFR Part 24) and/or § 14(d) of the Housing and Community Development Act of 1974, 42 U.S.C §5301 et. seq.; 49 CFR § 24.2 et. seq.
- ☐ Defendants have filed for bankruptcy, Case No. _____. Therefore, Plaintiff cannot _____ commence an unlawful detainer action against Defendant(s) or _____ take further steps to prosecute. 11 USC §362(a)(1), (2), (3).
- ☐ Defendant is on active military duty and subject to the protections of the Service Members Civil Relief Act (SCRA) 50 U.S.C. § 521 et. seq.
- ☐ Plaintiff is barred from recovery against defendant by reason of the doctrine of laches and undue delay in giving notice to defendant of the matters alleged in the complaint and in commencing this litigation.
- ☐ The Landlord has violated the Implied Covenant of Good Faith and Fair Dealing
- ☐ The Landlord has violated the Implied Covenant of Quiet Enjoyment (CC §1927)

TENANT HARASSMENT

- ☐ Plaintiff has engaged in conduct resulting in Theft (PC §484(a) of Tenant's property and/or Extortion (PC § 518) of the Tenant. CC §1940.2 (a)(1) & (2).
- ☐ Plaintiff used (or threatened to use) force, willful threats, or menacing conduct that interfered with the tenant's quiet enjoyment of the premises in violation of CC §1927 because it created an apprehension of harm to the Tenant. CC §1940.2(a)(3)
- ☐ Plaintiff committed a significant and intentional violation of Civil Code § 1954 – Entry or Notice of Entry into the unit and/or Inspection of tenant's unit to harass Tenant or otherwise invade the Tenant's privacy and/or personal security. CC §1940.2(a)(4)
- ☐ Plaintiff willfully caused the interruption or termination of utility services (including but not limited to water, heat, light, electricity, gas, telephone, elevator, or refrigeration) CC § 789.3 (a)
- ☐ Plaintiff prevented the tenant from gaining reasonable access to the property by changing the locks, removing outside doors/windows, and/or otherwise removing the tenant's personal property, furnishing or other items without the Tenant's consent. CC § 789.3 (b)

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COVID-19 Defenses

A. The premises are a “covered dwelling” under the Federal CARES Act Sec. 4024(a) and thus subject to the CARES Act limitations on evictions. Sec. 4024(b)-(c) and:

1. ☐ Landlord initiated the eviction for nonpayment during the 120-day period following March 27, 2020.
2. ☐ Landlord initiated the eviction at least 120 days after March 27, but landlord provided less than 30 days notice for the underlying eviction action.
3. ☐ Other:

B. The premises are subject to the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088) and:

1. ☐ Landlord failed to include an unsigned copy of a declaration of COVID-19 related financial distress with the Notice to Pay Rent or Quit
2. ☐ The Notice to Pay Rent or Quit did not include the required language under Code of Civil Procedure Section 1179.03 notifying the tenant that the tenant will not be evicted for failure to comply with the notice if tenant complies with certain requirements
3. ☐ The Notice to Pay Rent or Quit failed to provide at least 15 court days to comply with the Notice
4. ☐ Tenant provided Landlord a signed copy of a declaration of COVID-19 related financial distress and Landlord is evicting tenant for rent due and owing from March 1, 2020, through August 31, 2020
5. ☐ Tenant provided Landlord a signed copy of a declaration of COVID-19 related financial distress and has paid 25% of rent due and owing from September 1, 2020 through January 31, 2021.
6. ☐ By bringing an unlawful detainer action based on a cause of action other than nonpayment of COVID-19 rental debt, Landlord is retaliating against Tenant because the Tenant has COVID-19 rental debt
7. ☐ Landlord’s unlawful detainer action is based on a cause other than the allowable reasons under Code of Civil Procedure Section 1179.03.5
8. ☐ Other: