

Retaliatory-Eviction Defense

California Civil Code section 1942.5 - educational outline (v1, 2026-06-07). Not legal advice. For information only. Verify all citations before relying.

1. The retaliation defense, in plain English

California Civil Code section 1942.5 prohibits a landlord from retaliating against a tenant for exercising protected rights. The most-litigated piece of the statute is subsection (a): for 180 days after a tenant gives the landlord written notice of a habitability defect or files a complaint with a housing agency, the landlord cannot raise the rent, decrease services, or evict in retaliation. Subsection (d) creates a parallel protection for tenants who exercise other lawful rights (organizing, joining a tenant union, etc.).

2. Elements of a section 1942.5(a) defense

To raise the section 1942.5(a) defense in an unlawful detainer (eviction) case, a tenant typically must show:

- (a) A protected act - usually a written habitability complaint to the landlord OR a complaint to a government housing agency.
- (b) Timing - the landlord's retaliatory act happened within 180 days of the protected act.
- (c) Causation - the landlord's act was, in substantial part, motivated by the protected act. Within 180 days, courts apply a presumption of retaliation that shifts the burden to the landlord to show a non-retaliatory motive.
- (d) Rent currency - the tenant must be current on rent at the time the protected act occurred. (See section 1942.5(a).)

3. Penalties available to a prevailing tenant

Section 1942.5(h)(2) authorizes a prevailing tenant to recover actual damages plus statutory penalties of \$100 to \$2,000 per retaliatory act, in addition to reasonable attorney's fees and costs. Each retaliatory act is separately penalizable.

4. Habitability + 1942.4 as the parallel rent shield

Independent of retaliation, Civil Code section 1942.4 bars a landlord from demanding or collecting rent, increasing rent, or serving a three-day pay-or-quit notice where (i) the dwelling lacks an affirmative habitability standard or is substandard under Health & Safety Code section 17920.3, (ii) the landlord has been given written notice of the condition, and (iii) the condition has not been abated for 35 days beyond the date of written notice without good cause. Section 1942.4(b)(2) and CCP section 1174.21 add actual damages, statutory minimum damages of \$100, and reasonable attorney's fees and costs.

5. Cited authorities

Statutes

Cal. Civ. Code section 1942.4 (anti-rent-collection for uncured defects); Cal. Civ. Code section 1942.5 (anti-retaliation); Cal. Code Civ. Proc. section 1174.21 (fee-shifting for prevailing tenants); Cal. Civ. Code sections 1941 and 1941.1 (warranty of habitability standards); Cal. Health & Safety Code section 17920.3 (substandard housing definition); Cal. Health & Safety Code sections 26100-26156 (Toxic Mold Protection Act of 2001).

Cases - habitability / warranty

Green v. Superior Court (1974) 10 Cal.3d 616 - implied warranty of habitability adopted; Knight v. Hallsthammar (1981) 29 Cal.3d 46 - mutual dependence of rent and habitability; Erlach v. Sierra Asset Servicing, LLC (2014) 226 Cal.App.4th 1281 - section 1942.4 framework; Brancati v. Cachuma Village, LLC (2023) 96 Cal.App.5th 499 - mold causation in California.

Cases - retaliation

Banuelos v. LA Investment, LLC (2013) 219 Cal.App.4th 323 - 1942.5 presumption shifts burden once tenant shows protected act within 180 days; Glaser v. Meyers (1982) 137 Cal.App.3d 770 - retaliation defense applies to lawful exercise of tenant rights generally; Western Land Office, Inc. v. Cervantes (1985) 175 Cal.App.3d 724 - retaliation must be a substantial motivating factor.

Cases - concealment / fraud overlay

Dee v. PCS Property Management, Inc. (2009) 174 Cal.App.4th 390 - withholding mold-test results supports fraudulent concealment; Rattagan v. Uber Technologies, Inc. (2024) 17 Cal.5th 1 - concealment as alternative form of fraud.

Cases - preclusion limits

Vella v. Hudgins (1977) 20 Cal.3d 251 - limited preclusive effect of summary UD judgments; Gombiner v. Swartz (2008) 167 Cal.App.4th 1365 - UD judgment does not bar later civil claims; Hong Sang Market, Inc. v. Peng (2018) 20 Cal.App.5th 474 - same.

6. Practical checklist before raising the defense

- Confirm the protected act happened in writing and is dated.
- Confirm the landlord's retaliatory act (rent increase, pay-or-quit, eviction filing) is within 180 days.
- Confirm rent currency at the time of the protected act - the defense fails if not current.
- Calendar the 35-day cure period for every habitability notice you serve.
- Photograph every defect contemporaneously, with timestamps and metadata preserved.
- Save all written communications - email, text, certified mail receipts.
- Consult a licensed California attorney or a qualified legal aid organization before filing.

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