

## Common Defenses in Landlord/Tenant Cases

### DEFENSE

#### No Certificate of Occupancy

The Plaintiff is not entitled to the payment of rent because they are leasing the property to the Defendant without a valid Certificate of Compliance issued by the City of \_\_\_\_\_ in violation of local ordinances, including, but not limited to, MCL Sections 125.529 and 125.530 and the City of \_\_\_\_\_ Code, \_\_\_\_\_.

### DEFENSE

#### Retaliatory Eviction

The Plaintiff has attempted to terminate the Defendant's tenancy in retaliation for activities protected under MCL Section 600.5720, including, but not limited to, their complaints to the Code Compliance Division of the Community Development Department of the City of \_\_\_\_\_.

### DEFENSE

#### Violation of covenants of habitability and repair

The landlord's failure to affirmatively prove substantial performance of the statutory covenants of habitability and repair provides grounds for a motion for summary disposition for failure to state a claim on which relief can be granted and an affirmative defense. The landlord's failure to affirmatively prove substantial compliance is a bar to recovery of possession or rent. MCL 600.5720(1)(f) and MCR 4.201(B)(3)(c).

### DEFENSE

#### The Complaint fails to state a claim on which relief can be granted

A copy of the lease, rental agreement, notice to quit, or other writing that is the basis of the relationship between the parties must be attached to the complaint. MCR 4.201(B)(1)(b) and (c). Failure to attach such a document is grounds for a motion for summary disposition for failure to state a claim on which relief can be granted and an affirmative defense.

### DEFENSE

#### Failure to serve a seven-day notice

Service of a seven (7) day notice is required as precondition to bringing a non-payment action. See MCL 554.134 and 600.5714(1)(a). This is a subject matter jurisdictional defect and grounds for a motion for summary disposition and an affirmative defense.

## **DEFENSE**

### Defective seven-day notice

- \_\_\_\_ Notice was mailed and failed to provide a full seven days' notice.
- \_\_\_\_ Notice on its' face shows that a full seven days was not provided.
- \_\_\_\_ Tenant was not actually in default on rental obligations when the notice was sent.
- \_\_\_\_ The notice is improper on its face: it does not state the amount due, or the time tenant has to make a payment, or other defect.

The notice must be served a full seven days prior to commencement of an action for non-payment AND the notice itself must be proper. These are preconditions to an action for non-payment of rent.

\* These are the most common and most basic defenses, there is language available upon request for other defenses that might arise. You can request that language from Noah Joseph (njooseph@lawestmi.org)

If you are given a case that we know has defenses other than these basic defenses, that will generally be communicated to you at the outset, although there will also be times when that is discovered after you get the case. We are always here to talk through any possible defenses and provide language for them if desired.

\*\* CDC Eviction Moratorium: It is generally good to understand why the Moratorium does or does not apply. Since there is a lot of uncertainty surrounding the Moratorium, it is unlikely the Moratorium will apply in your case. That could be because it is not a Nonpayment of Rent case or if they have not had an income loss or extraordinary medical bills.