

# **Know Your Rights and Remedies: Tenant Harassment**

**An introduction to California Civil Code § 1942.5 and related issues**

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# Disclaimer

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# Legally Cognizable Tenant Harassment

- Retaliatory Eviction under California Civil Code § 1942.5
  - Actions that constitute retaliatory eviction
  - Remedies for retaliatory eviction under California Civil Code § 1942.5
- Civil Harassment Restraining Orders
  - Actions that constitute civil harassment
  - Legal standard
- Civil Standby
- Federal Fair Debt Collection Practices Act

# Retaliatory eviction - Cal. Civ. Code § 1942.5(a)

If a tenant exercises their tenants' rights or submits a complaint to a government agency re: habitability at their rental unit, the landlord cannot:

- Recover possession of the dwelling in any action or proceeding.
- Cause the tenant to vacate involuntarily.
- Increase the rent.
- Decrease any services.

Limitations on defense:

- Tenant must not be in “default” of rent.
- 180-day window.

# Cal. Civ. Code § 1942.5 - continued

A landlord may not threaten to report the tenant or individuals known to the landlord to be associated with the tenant, to immigration authorities.

# Cal. Civ. Code § 1942.5(d)

In addition, it is unlawful for a landlord to increase rent, decrease services, cause a tenant to quit involuntarily, bring an action to recover possession, or threaten to do any of these acts for the purpose of retaliating against the tenant because the tenant has lawfully organized or participated in a tenants' association or an organization advocating tenants' rights or has lawfully and peaceably exercised any rights under the law. (Cal. Civ. Code §1942.5(d).)

As of January 16, 2021, it is also unlawful for a landlord to bring an eviction lawsuit based on a cause of action other than nonpayment of COVID-19 rental debt for the purpose of retaliating against the tenant because the tenant has a COVID-19 rental debt. However, the tenant bears the burden of producing evidence that the landlord's conduct was, in fact, retaliatory. (Cal. Civ. Code §1942.5(d).)

# Cal. Civ. Code § 1942.5(d), (f), (g)

Landlords may engage in the specified conduct “for a lawful purpose.”

The notice of termination, rent increase, etc., shall state the lawful ground on which the landlord seeks to engage in the specified conduct.

If the statement is disputed, the landlord has the burden of proof. (See *also, Drouet v. Superior Court* (2003) 31 Cal.4th 583, 600.)

# Remedies - Cal. Civ. Code § 1942.5(h)

If a tenant establishes a retaliatory eviction, the tenant wins in their eviction lawsuit, and the tenant may use that fact to recover as plaintiff in a lawsuit for damages against the landlord. (Cal. Civ. Code §1942.5(h).)



# Cal. Civ. Code § 1942.5(h), (i)

If a landlord has committed one of the acts prohibited by the retaliatory eviction statute, a tenant may recover the following in a civil action against the landlord:

- Actual damages incurred by the tenant (Cal. Civ. Code §1942.5(h)(1)).
- Punitive damages in an amount not less than \$100 nor more than \$2,000 for each retaliatory act when the landlord or agent has been guilty of fraud, oppression, or malice with regard to each act (Cal. Civ. Code §1942.5(h)(2)).
- Any reasonable attorney's fees requested at the initiation of the action (Cal. Civ. Code §1942.5(i)).

Note that if the landlord prevails on the issue of whether a violation of the statute occurred, the landlord is entitled to attorney's fees. (Cal. Civ. Code §1942.5(i).)

# Cal. Civ. Code § 1942.5(j)

The remedies provided by the retaliatory eviction statute are in addition to any other remedies provided by statutory or decisional law. (Cal. Civ. Code § 1942.5(j).)

# Civil Harassment Restraining Order

Cal. Code Civ. Proc. § 527.6

- Unlawful violence; or
- A credible threat of violence; or
- A knowing and willful course of conduct intended to harass and that serves no legitimate purpose.

Legal standard is “clear and convincing evidence.”

# Civil Standby

LAPD Non-emergency phone number (877-275-5273)

# Federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 *et seq.* protections for renters against third-party debt collectors for:

- Demanding more money than is owed or threatening illegal action,
- Failing to include the legally-required disclosures in their initial communication, and
- Sending envelopes stating that the communication is for debt collection.

Remedy: Actual damages, up to \$1,000 in statutory damages, and attorneys' fees.

# Conclusion

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