

Fla. Stat. 83.64. Retaliatory conduct

(1) It is unlawful for a landlord to discriminatorily increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1); or

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682.

(2) Evidence of retaliatory conduct may be raised by the tenant as a defense in any action brought against him or her for possession.

(3) In any event, this section does not apply if the landlord proves that the eviction is for good cause. Examples of good cause include, but are not limited to, good faith actions for nonpayment of rent, violation of the rental agreement or of reasonable rules, or violation of the terms of this chapter.

(4) "Discrimination" under this section means that a tenant is being treated differently as to the rent charged, the services rendered, or the action being taken by the landlord, which shall be a prerequisite to a finding of retaliatory conduct.

Salmonte v. Eilertson, 526 So.2d 179 (Fla.App. 1 Dist.1988)

The relevant facts are that Paul Salmonte, the tenant, leased the Eilertsons' Florida home in September 1985. The landlords lived in Houston, Texas, and sometimes returned to inspect the house. In May 1986, they began inspecting more frequently than the tenant liked, so he began refusing entrance to the landlords and the pest control service. During the landlords' inspections, they discovered various unauthorized changes or breaches of the lease agreement, including keeping pets and changes in the carpeting, wallpaper, locks, and wiring. One of the landlords' rugs had been moved from the house to the garage and had a car parked on it. The landlords soon filed a complaint for eviction. The tenant asserted retaliatory eviction as an affirmative defense and as a basis for a counterclaim. The tenant admitted, however, the unauthorized pets, rug, and other violations.

The judgment below must be reversed. The tenant admitted breaching the lease. In view of the tenant's admissions in that regard, the jury's failure to award possession to the landlords could only be based on the retaliatory eviction defense. That defense, however, could not be raised because Section 83.64(3), Florida Statutes, provides that the defense does not apply when the landlord proves that the eviction is for good cause, and further defines good cause to include "violation of the rental agreement."