

Course of Conduct of Accepting Late Rent

Affirmative Defense to add to Form Answer Packet

Has your landlord accepted late rent in the past, but is now evicting you without giving the same amount of time? If so, then your landlord may not be able to evict you if you file an Affirmative Defense. These instructions will show you how to file an Affirmative Defense page to be used with a Form Answer Packet. This Affirmative Defense form cannot be used without a Form Answer Packet.

Has your landlord accepted late rent in the past?

If your landlord has taken your rent past the due date a couple of times before, that may create a new "course of conduct" between you and the landlord. Basically, that is a new rental agreement that replaces your written rental agreement. The due date for the rent will now be the date that your landlord has accepted rent in the past.

Did your landlord not accept rent paid by the "course of conduct" due date?

If your landlord gave you an eviction notice or refused to accept your rent by the due date established by the course of conduct, then your landlord may not be able to evict you.

AFFIRMATIVE DEFENSE 1
Course of Conduct of Accepting Late Rent Payment

7 Defendant incorporates by reference, as if completely rewritten herein, the allegations set forth in the above paragraphs.

8 A landlord's repeated acceptance of late rent payments may establish a course of conduct between the parties that waives the tenant's obligation to pay rent by the due date specified in the rental agreement.

9 When a waiver occurs, the due date for the tenant's rent payments is established by the course of conduct between the parties.

10 The landlord has accepted rent late in the past on the following dates:

August 11, 2016, _____
December 12, 2016, _____
February 11, 2016, _____
See Exhibit A _____

12 I have not received any written notice from the landlord stating that late rent will no longer be accepted as it was in the past.

13 Because the landlord delivered the notice to vacate before the due date established by the course of conduct, this case should be dismissed.

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Sample Form Answer for SRLN Forms Contest. Find forms and instructions for this page at: <https://www.learnthelaw.org/group/254/classroom/2250/570>



Write when you have paid rent late in the past.

List the dates you have paid rent late in the past, with the month, date and year of the payment. You should also attach evidence that shows you paid late in the past. Write "Exhibit A" (or B if it is the second exhibit) on the evidence and attach it, and write See Exhibit A here.

Did the landlord write that you couldn't pay late anymore?

This defense does not work if your landlord gave you a written notice saying that the landlord would no longer accept late rent. The notice must be given to you a reasonable time before you pay your rent, which is usually around 30 days.

The lease may prevent this defense.

Many leases have a clause that says something like "Failure to enforce a breach shall not constitute a waiver." This clause is trying to prevent this argument. Some courts may not enforce this clause because the lease is a contract of adhesion (which means a one-sided agreement that you didn't get a chance to negotiate.) However, other courts may ignore this defense if the lease has this clause.

Add to the Form Answer Packet

This Affirmative Defense is only to be used with the Form Answer Packet, after the first page with the title. Number all the pages when you finish. The first number is the current page, and the second number is the total number of pages in the answer (not counting exhibits.)

The information in this publication is not legal advice. These instructions are created for the SRLN Forms Contest and are not intended for use at this time.

Useful Evidence

- ★ Accounting Statements or Balances or Ledgers from Landlord. Ask the landlord for a list of payments before you go to court.
- ★ Rent receipts. You can attach a copy of rent receipts.
- ★ Photos of payments, if your landlord doesn't give you rent receipts.
- ★ Money order receipts can show the date paid, especially since the landlord isn't disputing the payment.

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