

Equity

Affirmative Defense to add to Form Answer Packet

If you don't have any other defense to your eviction and you can pay the rent and late fees that you owe, you can make the "equity" 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.

What is an equity defense?

An "equity" defense asks the judge to basically ignore the law and do the right thing - not evict you because you will suffer an extreme hardship if you are evicted. Equity defenses are not likely to be successful. The decision whether to let you stay because of an equity defense is completely up to the judge.

When can't you make an equity defense?

An equity defense has no chance of working if you can't pay the landlord all the money you owe the landlord, including late fees. An equity defense also won't work if the landlord is evicting you for a serious problem, or if the landlord always insists on strict compliance with the lease.

AFFIRMATIVE DEFENSE 1
Equity

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

8 It has long been the rule that "[e]quity abhors a forfeiture [of a leasehold] and will only decree it when such relief is clearly required."

9 Equity will not allow the forfeiture of a lease where the lease violation is minor, where strict compliance with the lease is not uniformly required by the landlord, where adequate monetary compensation can be provided the Lessor in lieu of forfeiture, and where forfeiture would cause extreme hardship for the Lessee.


10 The eviction will cause me extreme hardship because:
My family will be homeless.

11 The landlord will receive adequate monetary compensation because:
I can pay the rent and late fees that are owed.

12 The lease violation is minor and strict compliance with the lease is not uniformly required by the landlord.

13 For equitable reasons, 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/2250/573>



Write how an eviction will hurt you.
In this section, you can write about the problems that would be caused by your family being evicted. You can write about what will happen to you. You can also write about medical problems that will be affected, or property that you will lose.

Write why denying the eviction won't hurt
You should explain that you can pay the amount that the landlord is owed, in order to make the landlord "whole".

Is the problem serious?
This section lists the two other requirements for an equity defense. You should not make an equity defense if this part is not true.

Equity defenses are often unsuccessful.

Equity defenses are only a last-ditch effort to fight the eviction. If you are making an equity defense, you should be prepared to move. It's better to make an agreement with the landlord.

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.)