

Waiver of the Notice to Vacate

Affirmative Defense to add to Form Answer Packet

Did your landlord accept "future rent" after giving you a 3-day notice to vacate? 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.

A Notice to Vacate is "waived" by accepting future rent

If a landlord does something that shows the landlord wants to keep renting to you, such as accepting your rent, after giving you a Notice to Vacate, then the Notice to Vacate can no longer be used in an eviction case. A valid Notice to Vacate is needed in order for a landlord to evict.

What is "future rent"?

Future rent is rent you pay for any month or time period in the future. Future can mean either any time period after you received the Notice to Vacate, such as rent for April after receiving a Notice to Vacate in March. Or it can mean any time period after the landlord accepts your rent, such as if your landlord accepts April rent at the beginning of April.

AFFIRMATIVE DEFENSE 1
Waiver of the Notice to Vacate

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

8 A landlord's acceptance of future rent, after the landlord has served the tenant with an R.C. 1923.04 Notice to Vacate, waives the Notice to Vacate.

9 A landlord may not proceed with an eviction action without a valid Notice to Vacate.

10 I made the following payment(s) of rent after the Notice to Vacate was served:
\$400 on April 10, 2017 and \$350 on May 5, 2017. See Exhibit A.

11 The payment(s) were future rent because the payments were for:
April and May rent, as written on the money orders. See Exhibit A.

12 The landlord did not return my future rent payment(s).

13 Because the landlord accepted future rent after service of the Notice to Vacate, the court should dismiss the complaint.

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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/2250/569>



Write in when you paid rent.

You should write the payments of rent you made after the Notice to Vacate was delivered. The landlord's complaint should say when the Notice to Vacate was delivered. Write how much rent you paid and when you paid it. You can attach evidence and write See Exhibit A (or B, if it is the second exhibit).

Explain what months you paid.

You should say what months the rent were intended for. It's best if your money order or check says what month the payment is for. Write "For May rent" on a money order for May rent to make it clear. If you did this, you can refer to your evidence again.

Did the landlord accept your rent?

This defense does not work if your landlord did not accept your rent. Your landlord didn't accept your rent if your landlord returned your rent or told you the rent was not being accepted and kept the rent payment as evidence.

The landlord can accept past rent and still evict.

A landlord can accept rent that you owe from the past and continue to evict you. For example, if a landlord gives you an eviction notice on February 15th and you pay him on March 1st, the landlord can apply this rent to January's rent and still evict you. For this reason, you should write what month the payment is for on the money order or check and take a picture.

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

- ★ Rent receipts from the landlord are the best proof of payment.
- ★ Photos of payments, if your landlord doesn't give you rent receipts.
- ★ Money order receipts aren't proof, but can support your testimony.
- ★ Landlord ledger, which you can ask for before the hearing.

Last updated May 2017.