## **KNOW YOUR RIGHTS**

**Eviction Protections for Survivors of Abuse and Violence**

In California, survivors have an eviction defense they can use to stop their landlord from evicting them because they experienced abuse or violence.[[1]](#footnote-1)

**What is an eviction?**

An eviction is when a court orders a tenant to move-out of a unit. Find an [overview of the eviction process here](https://fvaplaw.org/wp-content/uploads/2022/12/Overview-of-Eviction-Process.pdf) or by using the URL in the footnotes.[[2]](#footnote-2)

**What is an eviction defense?**

An eviction defense can stop a landlord from evicting a tenant. When an eviction is filed in court, the tenant must tell the court if they have a defense. Tenants usually tell the court their defenses in their “Answer.” An “Answer” is a document the tenant files with the court in response to the landlord’s eviction paperwork.

If the jury or judge believe the tenant has an eviction defense, it should rule in the tenant’s favor and allow them to stay in the unit. The tenant must tell the court about their eviction defense to get its protection from eviction.

**As a survivor or abuse or violence, when can I use the eviction defense?**

When **(1)** your landlord asks you to move because an act of “abuse or violence” against you, **and** **(2)** you give your landlord documentation that shows you experienced abuse or violence.

Abuse or violence is:

*
* domestic abuse,
* sexual assault,
* human trafficking,
* elder or dependent adult abuse,
* stalking, and
* a crime where the victim experienced or was threatened with force or a deadly weapon.[[3]](#footnote-3)

This means, for example, your landlord is not allowed to evict you because your abusive ex-partner broke your building’s front door to scare you, or because you were loud and disturbed other tenants when you were assaulted.

**Can I use the eviction defense if someone I live with committed abuse or violence?**

Yes, and the defense will not protect the person who committed the abuse or violence. You must give your landlord documentation of abuse or violence and tell the court you have the defense. If the jury or judge believes you qualify for the eviction defense, the court should issue a partial eviction.[[4]](#footnote-4) A partial eviction only evicts the person who committed abuse or violence. This means your abuser would have to move and you would get to stay. Your lease terms, like your rent, should not change.[[5]](#footnote-5)

**What can I use to show my landlord that I experienced abuse or violence?**

You must give your landlord one of these 4 types of documentation:

1. **A restraining or a protective order** issued in the last 180 days to protect you.
2. **A police report** written in the last 180 days that says you reported being a victim of abuse or violence.
3. **A qualified third-party letter** stating you told the qualified third party you were a victim of abuse or violence. The below are qualified third parties:
* Doctors
* Psychologists
* Registered Nurses
* Licensed Clinical Social Workers
* Licensed Marriage and Family Therapists
* Licensed Professional Clinical Counselors
* Domestic Violence Counselors
* Sexual Assault Counselors
* Human Trafficking Caseworkers
* Victim of Violent Crime Advocates

Together you and a qualified third-party can write this letter using*FVAP’s Template Qualified Third-Party Letter below*.

1. **Any other documentation** that verifies abuse or violence. For example, a threatening email from the person who was abusive or violent towards you.[[6]](#footnote-6)

**Are there limits to the eviction defense?**

Yes, you lose the eviction defense in the following two situations:

**Situation 1:** The person who committed abuse or violence against you threatens the physical safety of other people on the property such as other tenants, guests, or a property manager; ***and***

* 1. you receive a three-day notice banning the person who committed the abuse or violence from the property; ***and***
	2. you voluntarily let them on the property.[[7]](#footnote-7)

**Situation 2**: You don’t give your landlord correct documentation to show you experienced abuse or violence.[[8]](#footnote-8)

**As a survivor of abuse or violence, can I be evicted?**

Yes, survivors can be evicted. The eviction defense only stops landlords from evicting survivors because they experienced abuse or violence. You can still be evicted for other reasons, like not paying rent or violating your lease in a way that is not abuse or violence against you.

**Does the eviction defense only protect survivors?**

No. It also protects tenants who live with the survivor and tenants who are being evicted because an act of abuse or violence against an immediate family member.[[9]](#footnote-9) The immediate family member does not need to live with the tenant. The tenant must give their landlord documentation that shows the survivor (i.e. their household member or immediate family member) experienced abuse or violence.[[10]](#footnote-10) A tenant that committed the act of abuse or violence is not protected by the defense.[[11]](#footnote-11)

**What can I do if I get a notice asking me to move because of abuse or violence against me?**

1. **Find legal help.**

Talk with an attorney to figure out the best option for you. For help finding an attorney, locate your local legal aid organization at <https://www.lawhelpca.org/>.

1. **Ask your landlord to cancel the notice with FVAP’s template demand letter.**

You can use*FVAP’s template letter: Demand Landlord Cancel Notice Based on Abuse, located below* to tell your landlord that they are not allowed to evict because you experienced abuse or violence***.*** *Attach one of the four types of documentation listed above on page 2 to the letter.*

**Can I use the eviction defense if my landlord did not know I was a survivor when they filled an eviction case in court?**

Yes, you should be able to use the defense if you give your landlord documentation showing you are a survivor when you assert the eviction defense at court, or in your Answer.[[12]](#footnote-12) The next page explains how to assert the eviction defense in your Answer.

Unfortunately, some courts think tenants need to tell their landlord about the abuse before the landlord files the eviction to use the eviction defense. If your court thinks this, you may use *FVAP’s template brief to explain why you should be able to use the defense*. You can find the template by clicking [here](https://fvaplaw.org/wp-content/uploads/2023/02/Documentation-of-Abuse-Pocket-Brief-1.docx) or using the URL in the footnotes.[[13]](#footnote-13)

**What can I do if my landlord files an eviction (unlawful detainer) against me because I experienced abuse or violence?**

1. **Find legal help.**

The eviction process can move very quickly. So, find legal help immediately. For help finding an attorney, locate your local legal aid organization at <https://www.lawhelpca.org/>. If legal aid can’t help you, you may be able to find a local housing attorney at <https://www.tenantstogether.org/resource-directory>.

1. **Assert your eviction defense in your Answer (**[**form UD-105**](https://www.courts.ca.gov/documents/ud105.pdf.)**).**

If you are being evicted because you experienced abuse or violence you may have the eviction defense.[[14]](#footnote-14) You can assert this defense by checking the box 3j in your Answer ([form UD-105](https://www.courts.ca.gov/documents/ud105.pdf.))[[15]](#footnote-15) and describing why you should get this defense in 3w.

Attach one of the four types of documentation listed above to show you experienced abuse or violence to your Answer. Also attach any other documents that show you are being evicted because you experienced abuse. For example, if your landlord is evicting you because of noise caused by domestic violence, attach documents to show you experienced abuse the day that your landlord said you were being loud. Also assert any other defense you have in your answer.

**Below is an example of the 3j box checked in an Answer to assert the defense.**

**Below is an example of someone describing their defense in their Answer.**

**Need Help?** Contact FVAP at info@fvaplaw.org or (510) 380-6243 for information or referrals.

Template ***Demand Landlord Cancel Notice Based on Abuse*** [delete instructions before giving letter to landlord]

1. Fill out the highlighted sections.
2. Date and sign the letter.
3. Attach a police report, restraining or protective order, qualified third party letter or other type of document that shows you experienced abuse or violence to the letter.
4. Make a copy or take a picture of the letter and attachment for your records.
5. Give or send the completed letter and attachment to your landlord.
6. If your landlord does not respond to you, reach out to them. You should reach out before the notice expires and no more than 2 weeks after you send the letter.

[Insert Date]

[PROPERTY MANAGER/LANDLORD NAME]

[PROPERTY MANAGER/LANDLORD COMPANY]

[PROPERTY MANAGER/LANDLORD ADDRESS]

 Re: Request to Rescind the [Date and Name of Notice for example: 30 Day Notice dated 1/20/2023]

I, [insert name] am a tenant at [insert address]. I received a [Name of Notice, for example: “60 Day Notice to Terminate Tenancy” or “3 Day Notice to Quit”] dated [date on notice] (the “Notice”). As explained below, the Notice is based on acts of abuse or violence against me and if you try to use it to evict me, you will not succeed. Therefore, I am asking you to rescind the Notice.

It is illegal for a landlord in California to end someone’s tenancy because they experienced acts of abuse or violence, if the landlord receives documentation evidencing abuse or violence against the tenant. (Code Civ. Proc., § 1161.3, subd. (b).) Attached to this letter please find a [state type of document you are attaching. You should attach either a police report, restraining order, qualified third party statement or other type of document that shows you experienced abuse or violence, for example, a threatening email from the person whose abuse your landlord is trying to evict you for.)]. This document reasonably verifies abuse and is one of the four types of documents tenants can use to evidence abuse. (Code Civ. Proc., § 1161.3, subd. (a)(2).) The Notice is ending my tenancy because of abuse or violence. Specifically, [describe your situation, for example:

* “. . . when I was experiencing domestic violence, my neighbor complained to you about loud noises coming from my unit. Because of the noise complaints, you gave me a 60-Day Notice that saying I “created nuisance on the property by being too loud.”
* “. . . on 1/2/23 the person who trafficked me was arrested at my unit. On 1/4/23 you gave me a 3-Day notice stating that you were ending my tenancy because of criminal activity at my unit. The criminal activity was abuse against me; and therefore, I cannot be evicted for the criminal activity.”
* “. . . on 1/1/23, around 2 a.m. my ex-partner showed up at the house and tried to break in. They damaged the front door and broke 2 windows before the cops showed up and arrested them. You gave me a 60 Day Notice dated 1/4/23 that does not say why you are ending my tenancy. I always pay my rent on time and never before received complaints or notices from you. You clearly gave me the 60 Day Notice because the abuse I experienced on 1/1/23.”]

Because you have the attached document that shows I am a survivor of abuse or violence and you are ending my tenancy because of acts of abuse or violence I experienced, you will not succeed in an eviction (unlawful detainer) action. (Code Civ. Proc., §§ 1161.3 and 1174.27.) Therefore, I request that you rescind the notice in writing immediately, but no later than [insert date that is before the notice your landlord gave you expires and a few days or up to one week after your landlord will get this letter], to confirm that you will not try to evict me. If you choose not to follow California law and file for an unlawful detainer, you will not succeed on your claim.

Thank you in advance for your understanding and cooperation in this matter.

Sincerely,

[Signature]

[Name]

Enclosures: [List any documents you are attaching, such as police reports, or a copy of a restraining order, a qualified third party statement or other document that verifies you experienced abuse or violence.]

**I have made a copy of this letter for my records.**

Template **Qualified Third Party Letter** [delete instructions before using letter]

1. Tenant fills out Part I.
2. Qualified third party fills out Part II.
3. If Part II is completed by a sexual assault counselor, domestic violence counselor human trafficking caseworker or victim of violent crime advocate, the letter must be on their organization’s letterhead.
4. Once complete, make a copy or take a picture of the letter for your records.

Tenant Statement and Qualified Third Party Statement under Code of Civil Procedure Section 1161.3

Part I. Statement By Tenant

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert name of tenant], state as follows:

I, my immediate family member, or a member of my household, have been a victim of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]

The most recent incident(s) happened on or about: [Insert date or dates.]

The incident(s) was/were committed by the following person(s), with these physical description(s), if known and safe to provide: [if known and safe to provide, insert name(s) and physical description(s).]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Tenant Date

Part II. Qualified Third Party Statement

I, [insert name of qualified third party], state as follows:

My business address and phone number are: [insert business address and phone number]

Check and complete one of the following:

\_\_\_\_I meet the requirements for a sexual assault counselor provided in Section 1035.2 of the Evidence Code and I am either engaged in an office, hospital, institution, or center commonly known as a rape crisis center described in that section or employed by an organization providing the programs specified in Section 13835.2 of the Penal Code.

\_\_\_\_I meet the requirements for a domestic violence counselor provided in Section 1037.1 of the Evidence Code and I am employed, whether financially compensated or not, by a domestic violence victim service organization, as defined in that section.

\_\_\_\_I meet the requirements for a human trafficking caseworker provided in Section 1038.2 of the Evidence Code and I am employed, whether financially compensated or not, by an organization that provides programs specified in Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of the Penal Code.

\_\_\_\_I meet the definition of “victim of violent crime advocate” provided in Section 1946.7 of the Civil Code and I am employed, whether financially compensated or not, by an agency or organization that has a documented record of providing services to victims of violent crime or provides those services under the auspices or supervision of a court or a law enforcement or prosecution agency.

\_\_\_\_I am licensed by the State of California as a: [insert one of the following: physician or surgeon, osteopathic physician or surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor] and I am licensed by, and my license number is: [Insert name of state licensing entity and license number.]

The person who signed the Statement By Tenant above stated to me that they, a member of their immediate family, or a member of their household is a victim of: [insert one or more of the following: domestic violence, sexual assault, stalking, human trafficking, elder abuse, dependent adult abuse, a crime that caused bodily injury or death, a crime that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or a crime that included the use or threat of force against the victim.]

The person further stated to me the incident(s) occurred on or about the date(s) stated above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of qualified third-party Date

1. Code Civ. Proc., §§ 1161.3 & 1174.27. [↑](#footnote-ref-1)
2. <https://fvaplaw.org/wp-content/uploads/2022/12/Overview-of-Eviction-Process.pdf> [↑](#footnote-ref-2)
3. *Id.* at § 1161.3, subd. (a)(1) & 1174.27, subd. (a) [↑](#footnote-ref-3)
4. *Id.* at § 1174.27, subds. (e) & (f). [↑](#footnote-ref-4)
5. *Id.*  [↑](#footnote-ref-5)
6. *Id.* at §§ 1161.3, subd. (a)(2) & 1174.27, subds. (c) & (d). [↑](#footnote-ref-6)
7. *Id.* at § 1161.3, subd. (b)(2). [↑](#footnote-ref-7)
8. *Id*. at § 1161.3, subd. (b)(1) & 1174.27, subd. (e). [↑](#footnote-ref-8)
9. *Id*. at § 1161.3, subd. (b)(1). [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id.* at § 1174.27, subd. (f). [↑](#footnote-ref-11)
12. Code Civ. Proc., § 1161.3. [↑](#footnote-ref-12)
13. <https://fvaplaw.org/wp-content/uploads/2023/02/Documentation-of-Abuse-Pocket-Brief-1.docx> [↑](#footnote-ref-13)
14. Code Civ. Proc., § 1161.3 & 1174.27. [↑](#footnote-ref-14)
15. <https://www.courts.ca.gov/documents/ud105.pdf>. [↑](#footnote-ref-15)