



## CASE ALERT

### **New Case Explains When a Tenant Can Assert Their Defense Against Eviction Based on Acts of Abuse.**

*Elmassian v. Flores*, 69 Cal.App.5th Supp. 1 (2021)

**How Could This Case Help Your Clients?** This case may help a survivor of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse whose landlord is trying to evict the survivor for an act or acts of abuse committed against the survivor by a person who is not currently a tenant. This case explains that the domestic violence defense to being evicted for abuse can be raised even if some of the landlord's complaint is based on non-abuse. It also explains that a regular police report is sufficient documentation for raising the defense.

**Summary of the Case:** Tenant's ex long-term partner abused tenant. The tenant obtained a Domestic Violence Restraining Order (DVRO) with a move out order against her ex-long-term partner and he moved out of their shared apartment. Tenant's new boyfriend became abusive. Tenant broke-up with boyfriend, who, against her wishes, continued showing up at her apartment. Landlord served tenant with a 3-Day Notice to Vacate listing the tenant's ex-long-term partner and ex-boyfriend's abusive behaviors to describe how the tenant caused a nuisance and should be evicted. It also listed some other behavior. The landlord filed an unlawful detainer (eviction) action against tenant based on nuisance (under Code of Civil Procedure § 1161(4) ) which went to a jury trial.

At trial, tenant tried to raise the domestic violence affirmative defense outlined in Code of Civil Procedure section 1161.3, which prohibits a landlord from terminating someone's tenancy "based upon an act or acts against the tenant . . . that constitutes domestic violence" and is documented by a report written by a peace officer, restraining order, or qualified third-party statement, and was not committed by a "tenant of the same dwelling unit as the tenant[.]" Tenant documented the abuse of her ex-long-term partner with a copy of her DVRO against him. Tenant documented the abuse of her ex-boyfriend with a Los Angeles Police Department Investigation Report about an incident of domestic violence that was perpetrated by the ex-boyfriend. The trial court prevented the tenant from using the domestic violence defense for her ex-long term partner's abuse because the abuse took place when he was a tenant. The trial court prevented the tenant from using the domestic violence defense for her ex-boyfriend's abuse finding the LAPD investigative report was not a police report because it lacked sufficient descriptive information and was simply information from the tenant making the report. After the trial court prevented the jury from considering the domestic violence defense, the tenant received an unlawful detainer judgment (eviction) against her based-on nuisance, evicting her and her children from their home of over a decade. The tenant appealed.

The appellate division reversed the trial court's judgment explaining that the tenant had provided enough evidence that the landlord's complaints were based on acts of domestic violence to raise the domestic violence defense to eviction. The opinion explains that a tenant can raise the domestic violence defense even if non-domestic violence grounds for eviction are also listed in the landlord's eviction case. The opinion also explains that a report prepared by the police does not need to name the perpetrator of abuse, or their relationship with the survivor to qualify as documentation of abuse under the law. The report is sufficient even if it is based solely on the statements of the survivor. It also

can document only one of multiple instances of abuse and still satisfy the documentation requirements needed to assert the domestic violence defense.

#### PRACTICE TIPS

1. If tenant is sued for unlawful detainer (eviction) **based on act(s) of abuse perpetrated against the tenant and other reasons unrelated to abuse**, the tenant can still assert the defense to an eviction based on abuse. If the court does not let the tenant assert their affirmative defense, give them a copy of this opinion.
2. To assert an affirmative defense to an eviction based on acts of abuse, a tenant may provide the court one of the following: (1) a copy of protective order, such as a restraining order, issued at most 180 days ago, or (2) a copy of a **written report, such as a police report**, written at most 180 days ago, or (3) a statement signed by the tenant and a qualified third party verifying the tenant is a survivor.
  - a. If the court denies a tenant the affirmative defense based on acts of abuse because a police report does name the perpetrator of abuse nor state the tenant-survivor's relationship to the abuser, give them a copy of this opinion.
  - b. If the court won't allow a tenant to use the domestic violence defense to eviction because their documentation of abuse does not list each act of abuse the landlord complains about in eviction notice, give them a copy of this opinion. The tenant only needs to be on record as being a survivor. They are not required to provide documentation verifying multiple instances of abuse. And they do not need documentation specifying that the exact acts complained of by the landlord were domestic violence.
3. This case should apply exactly the same way if a tenant who is a victim of sexual assault, stalking, human trafficking or elder or dependent adult abuse wants to raise the affirmative defense against being evicted because they are a survivor of sexual assault, stalking, human trafficking or elder or dependent adult abuse.

For questions, email or call Family Violence Appellate Project at [info@fvaplaw.org](mailto:info@fvaplaw.org) or (510) 380-6243.  
Thank you!