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RETALIATORY EVICTION: THE UNSOLVED PROBLEM—CLORE V. FREDMAN

Retaliatory eviction¹ is a problem of real, not prospective, proportions for any tenant seeking safe and sanitary housing. The problematic nature of retaliatory evictions may be resolved through judicial² and legislative³ relief. Absent such relief, the tenant's only alternative is to comply with the eviction order.⁴

1. Retaliatory eviction is the forced ejection of a tenant in response to the tenant's complaint to a governmental authority of a housing code or similar regulatory violation. The eviction may be "constructive" in that the landlord raises the rent, decreases the services, materially alters the lease, or refuses to renew the lease, all of which are as effective as actual physical removal from the leasehold.

2. The courts are free to usurp precedent by allowing the tenant to allege retaliatory eviction as an affirmative defense. Professor McElhaney writes that the long-standing resistance to changing landlord-tenant law is grounded in a more general resistance to changing property law.

The sacrosanct intention of long dead testators and the contingent interests of unborn landowners are not present [in landlord-tenant law] . . . [consequently] there is no good reason why the rules of landlord-tenant law cannot flex to meet current needs just as do rules of some contract and most tort law.

McElhaney, *Retaliatory Evictions: Landlords, Tenants and Law Reform*, 29 MD. L. REV. 193, 198 (1969).

3. Due to the fact that landlords possess both economic power and statutory advantage, legislative rather than case-by-case adjudication may better protect the tenant. Loeb, *The Low-Income Tenant in California: A Study in Frustration*, 21 HASTINGS L.J. 287,315 (1970). See also F. Grad, *Legal Remedies for Housing Code Violations 7-8* (The Nat'l Comm'n on Urban Problems Research Rpt. No. 14, 1968). Legislative action is preferred "because it presents exact standards for enforcement." Note, *Retaliatory Eviction - Statute Prescribing Criminal Penalties for Landlord Reprisals Against Tenants Who Report Violations of Housing or Health Laws Held Constitutional*, 20 BUFF. L. REV. 317,327 (1970). See also Note, *Retaliatory Evictions: A Study of Existing Law and Proposed Model Code*, 11 WM. & MARY L. REV. 537, 541 (1969).

4. Forced relocation thus becomes the penalty for demanding what housing and health codes are designed to insure, namely safe and sanitary dwelling units. While relocation poses no problem for the more affluent middle class, it is a "particularly difficult [problem] for the tenant of low-rent housing when burdened by insufficient funds and . . . a general housing shortage." Note, *Retaliatory Eviction: The Tenant's Right to Challenge the Landlord's Motive*, 21 SYRACUSE L. REV. 986, 992 (1970). There are other problems attendant to relocation of an urban tenant. New housing may be equally or more undesirable; the tenant may be branded a trouble-maker and excluded from other housing; or there may be psychological injury involved in a hasty and unpleasant change in surroundings. Comment, *Protection for the Citizen Complaints to Public Authorities - Prohibition of Retaliatory Evictions: The Case of Edwards v. Habib*, 48 NEB. L. REV. 1101, 1106 (1969).

The decision of the Supreme Court of Illinois in *Clore v. Fredman*⁵ represents a mixed victory for the tenant in this area of landlord-tenant law by allowing the tenant, subject to an important caveat, to allege retaliatory eviction as an affirmative defense in a forcible entry and detainer action⁶ filed by the landlord. This Note will examine the change in Illinois law announced by *Clore v. Fredman* and comment on the limitations of that decision.

The Clores rented an apartment from Mr. Fredman on a month to month basis under an oral contract. The apartment contained numerous violations of the Peoria Housing Code,⁷ which the Clores reported to local officials. Fredman was notified of the violations but failed to remedy them. The Clores began to pay their rent to the Director of the Peoria Department of Environmental Development;⁸ one month later Fredman gave notice of termination.⁹ The Clores filed suit against Fredman seeking to prevent the eviction and to compel repair of the apartment.¹⁰ Thereafter, Fredman commenced a forcible entry and detainer action seeking to regain possession of the apartment. The trial court refused to consolidate the actions and granted Fredman summary judgment in his suit for possession.¹¹ On appeal¹² the court rejected the

5. 59 Ill.2d 20, 319 N.E.2d 18 (1974).

6. See ILL. REV. STAT. ch. 57, §2 (1973). A forcible entry and detainer action seeks to quickly restore possession of land to a party when such land is being unlawfully held by another party. See *Chapin v. Billings*, 91 Ill. 539 (1879); *Truly Warner Co. v. Royal Indem. Co.*, 259 Ill.App. 485 (1st Dist. 1931).

7. The violations, as described by the appellate court in *Fredman v. Clore*, 13 Ill.App.3d 903,904,301 N.E.2d 7,8 (3d Dist. 1973), included a "leaking roof, falling plaster, peeling paint, improper wiring, [and] inadequate heat"

8. The Peoria Housing Code states that "[a]fter inspection and due notice of violation by the Director, any tenant . . . so long as the violation exists, may pay all rents due . . . in escrow with the consent of the Director." PEORIA, ILL., HOUSING CODE §16-113.5 (1971).

9. Notice was given pursuant to ILL. REV. STAT. ch. 80, §6 (1973) which provides in pertinent part:

In all cases of tenancy for any term less than one year . . . the landlord may terminate the tenancy by 30 days' notice, in writing, and may maintain an action for forcible entry and detainer or ejection.

10. The suit also named the Director of the Department of Environmental Development and the City of Peoria. The following remedies were sought: (1) compensatory damages; (2) an injunction against Fredman to stop the eviction and to repair the apartment; (3) an injunction against the Director of the Department of Environmental Development to inspect and report future violations and to require the Director to continue to accept rent payments; and (4) attorney fees and court costs. Relief was denied by the trial court and the appellate court affirmed. *Clore v. Fredman*, 13 Ill.App.3d 913, 301 N.E.2d 15 (3d Dist. 1973).

11. The appellate court affirmed the circuit court's refusal to consolidate stating that the Clores failed to meet the statutory requirement of identity of parties and causes of action. *Fredman v. Clore*, 13 Ill.App.3d 903, 906, 301 N.E.2d 7,9 (3d Dist. 1973). See ILL.

Clores' defense of retaliatory eviction¹³ stating that the equitable defense was not "germane" to a forcible entry and detainer.¹⁴ A strong dissent was filed by Justice Stouder.¹⁵

REV. STAT. ch. 110, §48(c) (1973). The supreme court eventually ruled that while the motion for consolidation was discretionary, it should have been granted. "The cases contain common questions of law and fact which could and should have readily been determined at the same time." 59 Ill.2d at 28, 319 N.E.2d at 22 (1974). This ruling is of special significance because it eliminates the necessity of pursuing two separate suits through trial and appeal.

12. 13 Ill.App.3d 903, 301 N.E.2d 7 (3d Dist. 1973).

13. The appellate court considered the Clores' claim of retaliatory eviction to be "self-serving" and a "mere allegation . . . not sufficient to create a material issue of fact." *Id.* at 907, 301 N.E.2d at 10.

14. In controversy is the statute governing the nature of a forcible entry and detainer proceeding. ILL. REV. STAT. ch. 57, §5 (1973). The statute provides in part that "[n]o matters not germane [i.e., not pertinent to the issue of possession] to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim, or otherwise" The statute has been used to preclude numerous defenses on the ground that they were inapposite and not germane to the issue of possession. *See* *Burton v. Firebough*, 344 Ill. App. 548, 101 N.E. 2d 616 (1st Dist. 1951) (excess rent paid by tenant not permitted as an offsetting defense); *Truman v. Rodesch*, 168 Ill.App. 304 (2d Dist.1912) (tenant precluded from raising defense of breach by landlord of an independent covenant to supply heat). Recent decisions have to some extent, ameliorated this position. *See* *Peoria Housing Authority v. Sanders*, 54 Ill. 2d 478, 298 N.E. 2d 173 (1973) (where action for possession is based on non-payment of rent, question of whether rent is due is germane); *Rosewood Corp. v. Fisher*, 46 Ill.2d 249, 263 N.E.2d 833 (1970) (validity and enforceability of an installment contract for purchase of real estate was germane to issue of possession where possession was pursuant to that contract). *See also* notes 16-18 and accompanying text *infra*.

15. Justice Stouder argued that the defense was germane by stating:

It is hard to imagine how a defense alleging that the landlord terminated a lease and is seeking possession in retaliation and in violation of a statute, can be said to be collateral to the distinctive purpose of a forcible entry and detainer action. The defendants are merely seeking to assert their paramount right to possession by stating facts upon which they base their right.

13 Ill.App.3d at 911,301 N.E.2d at 13 (Strouder, J., dissenting). Furthermore, he recognized that statutory authority aimed at preventing retaliatory eviction did exist in the form of ILL. REV. STAT. ch. 80 § 71(1973) which declares retaliatory evictions to be against public policy and the PEORIA, ILL., HOUSING CODE §16-118 (1971) which sets out the requirements for establishing a prima facie case of retaliatory eviction; *see* notes 22,32 and accompanying text *infra*. In support of his position Justice Stouder cited the cogent reasoning of *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969) (a landlord cannot evict a tenant when the eviction is in retaliation for the tenant's reporting of sanitation and housing code violations), and *Schweiger v. Superior Court of Alameda County*, 3 Cal.3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970) (where an eviction or rent increase is sought in retaliation for the reporting of violations of the civil (housing) code, a defense of retaliatory eviction may be raised). The supreme court made note of these two cases in the majority opinion in *Clore*. 59 Ill.2d at 27,319 N.E. 2d at 22.

On review by the Illinois Supreme Court, attention was initially focused on the question of whether the defense of retaliatory eviction was "germane"¹⁶ to a forcible entry and detainer action.¹⁷ The court reviewed its previous opinions. In 1970, in *Rosewood Corp. v. Fisher*¹⁸ the validity and enforceability of an installment contract was held germane to the proceedings. Two years later the supreme court determined that both express and implied warranties in a lease were germane to an action in forcible entry and detainer in *Jack Spring, Inc. v. Little*.¹⁹ Then in 1973 in *Peoria Housing Authority v. Sanders*,²⁰ allegations that a rental policy was unconstitutional were held germane. While each of these cases could be easily distinguished from *Clore* on the facts, the court chose not to do so.

After citing the recent Illinois decisions on the issue of germaneness, the court examined the statutory law regarding retaliatory eviction. The Illinois statute²¹ codifies the principle that the eviction of a tenant who complains of a housing code violation contravenes public policy. The court in *Clore* reasoned that the Illinois statute, in conjunction with the Peoria Housing Code,²² could only be interpreted to preclude the landlord's right to evict in retaliation.²³ Emphasis was placed on the fact that an opposite conclusion would "nullify the clear intent of the statute."²⁴

16. See note 14 *supra*.

17. 59 Ill.2d at 25, 319 N.E.2d at 21.

18. 46 Ill.2d 249, 263 N.E.2d 833 (1970).

19. 50 Ill.2d 351, 280 N.E.2d 208 (1972). The appellate court in *Fredman v. Clore* attempted to distinguish the *Spring* case on the ground that the suit for possession was based on a different statute than the suit in *Clore*. 13 Ill.App.3d at 908, 301 N.E.2d at 11. The supreme court did not discuss the distinction, apparently unconvinced of its significance.

20. 54 Ill.2d 478, 298 N.E.2d 173 (1973).

21. ILL. REV. STAT. ch. 80, §71 (1973) is as follows:

It is declared to be against the public policy of the State for a landlord to terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to any governmental authority of a *bona fide* violation of any applicable building code, health ordinance, or similar regulation. Any provision in any lease, or any agreement or understanding, purporting to permit the landlord to terminate or refuse to renew a lease or tenancy for such reason is void (emphasis added).

22. PEORIA, ILL., HOUSING CODE §16-118 (1971). The section reads in part:

No owner or lessor shall evict or cause to evict or terminate the tenancy of a rentor or lessee solely as retaliation because that rentor or lessee complains to the City of Peoria or the Circuit Court of Peoria County against the owner with violation of this Code or with violation of any warranty of habitability accruing to the rentor or lessee from the owner

23. 59 Ill.2d at 26-27, 319 N.E.2d at 21.

24. *Id.* at 27, 319 N.E.2d at 21.

Therefore, notwithstanding the exclusive nature²⁵ of a forcible entry and detainer proceeding, the court decided that the affirmative defense of retaliatory eviction was germane and could be pleaded.²⁶ However, pleading the defense and proving the defense are different actions.

The obstacle in the path of proving the defense arises from the court's caveat that "this conclusion [*i.e.*, that the defense is germane] is predicated upon the pertinent statutory and ordinance provisions [the Illinois Act and the Peoria Code]"²⁷ Read literally this could mean that absent the Illinois statute or the Peoria Code the defense might not have been allowed. That is a rather narrow interpretation of the court's holding and perhaps a dubious one.²⁸ However, it may be that in a practical sense the two enactments are necessities.²⁹

Under the Illinois statute four requirements must be met to prove the eviction retaliatory: first, a "bona fide" housing code violation must exist; second, a report of the violation must be made to a governmental agency; third, the landlord must be aware of the report to the agency; and fourth, the landlord must have terminated or refused to renew the lease because the tenant filed the report.³⁰ This burden of proof placed on the tenant is formidable.³¹

In *Clore* a prima facie case of retaliatory eviction was set out by the Peoria Housing Code:³² whenever a tenant is evicted within six months

25. In the past, the sole issue in a forcible entry and detainer action was the right of possession. See note 14 *supra*.

26. 59 Ill.2d at 27, 319 N.E.2d at 22.

27. *Id.* at 27, 319 N.E.2d at 22. The court noted that "other courts have reached similar conclusions without such enactments." *Id.* See text accompanying notes 34-39 *infra*.

28. See TENANTS RIGHTS (Ill. Inst. CONT. LEGAL EDUC. ed. 1975) 2-16 to 2-46 [hereinafter cited as TENANTS RIGHTS]. The section on Substantive Defenses cites *Clore*, without qualification, for the proposition that "the defense of retaliatory eviction may be raised in a Forcible Entry and Detainer action predicated upon the serving of a thirty (30) day Notice to Quit," *Id.* at 2-16. This implies that statutory and ordinance provisions are unnecessary.

29. The Illinois statute will always be available to an Illinois tenant provided it is included in the pleadings. Pleading the statute is necessary to show the public policy of the state.

30. TENANTS RIGHTS, *supra* note 28, at 2-31 to 2-33.

31. Of the four requirements the most difficult to prove is the fourth, *i.e.*, the landlord terminated or refused to renew the lease because the tenant complained of a violation. As noted in TENANTS RIGHTS at 2-33, the nature of proof is "purely subjective." See TENANTS RIGHTS at 2-31 to 2-37 for a fuller explanation of the four requirements and the proof required under each one.

32. PEORIA, ILL., HOUSING CODE §16-118 (1971). The applicable part of the section reads: The fact that the rent or lease consideration of the rentor or lessee is not more than thirty (30) days delinquent at the time the owner gives notice of eviction or termination of lease or rental and the fact that, within six (6) months prior

of his complaint to the appropriate governmental agency of a housing code violation, that is evidence of a retaliatory eviction. Under the Peoria Code there is no need to allege a "bona fide" housing code violation, nor is the tenant required to show that the landlord was aware of the complaint or that the eviction was based thereon.

The Illinois Supreme Court easily found "facts . . . sufficient to present the issue of retaliation" in *Clore*, because the Peoria Code had set out the requirements for a prima facie case of retaliation.³³ The Peoria Code thus served as a vehicle for presenting the defense of retaliation. At trial its provisions facilitated the proof of the defense. Without such a vehicle a tenant would have to meet the general requirements of proof under the Illinois statute. That task, aside from its difficulty, may in addition prove futile since to date no cases report the successful use of the Illinois statute to sustain a defense of retaliatory eviction. Therefore, a Peoria-type ordinance or a state statute with provisions similar to those of the ordinance, provides the tenant with a tool which in practice is of immense value.

Common law resolutions of the problem of retaliatory eviction are not unusual. The court in *Clore* took notice of two such decisions in other jurisdictions where the defense was sustained without reliance on statutory or ordinance provisions.³⁴ Jurisdictions permitting a common law retaliatory eviction defense include the District of Columbia,³⁵ California,³⁶ New Jersey,³⁷ New York,³⁸ and

to the notice of eviction or termination of the lease or rental, the rentor or lessee has not been convicted of creating a nuisance at the dwelling or dwelling unit from which eviction is sought . . . shall be prima facie evidence that the eviction or termination of lease or rental by the owner is solely retaliatory because that rentor or lessee has complained against the owner charging him with violation of this Code

33. 59 Ill.2d at 27, 319 N.E.2d at 22. In addition, the court observed:

[the fact that] the Clores alleged they made complaints, violations were found and Fredman was notified . . . [and that] the Director of the Department of Environmental Development notified Fredman that rental payments on the Clores' apartment would be held in escrow until violations were corrected . . . [was] sufficient to raise the issue of retaliation

34. The two decisions cited at 59 Ill.2d. at 27, 319 N.E.2d at 22, were *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969), and *Schweiger v. Superior Court of Alameda County*, 3 Cal.3d 507, 476 P.2d 97, 90 Cal.Rptr. 729 (1970); *see note 15 supra*.

35. *Edwards v. Habib*, 397 F.2d 687 (D.C.Cir. 1968), *cert denied*, 393 U.S. 1016 (1969). *See note 15 supra*.

36. *Schweiger v. Superior Court of Alameda County*, 3 Cal.3d 507, 476 P.2d 97, 90 Cal.Rptr. 729 (1970). *See note 15 supra*.

37. *Alexander Hamilton Sav. & Loan Ass'n v. Whaley*, 107 N.J. Super. 89, 257 A.2d 7 (1969) (defense of retaliatory eviction allowed despite absence of local ordinance; notwithstanding state statute in effect, the court relied upon common law theory of equitable defense to action for possession).

38. *Portnoy v. Hill*, 57 Misc.2d 1097, 294 N.Y.S.2d 278 (Sup. Ct. 1971), *citing Edwards*

Wisconsin.³⁹ Public or broad legislative policy forms the basis for most of the decisions. Should Illinois allow the defense without predicating its decision on statutory provisions but on policy reasons, its decision would be consonant with the jurisdictions cited.⁴⁰

Most states, however, have eliminated the need for common law remedies by enacting suitable protective measures. An examination of such protective legislation, on a state by state basis is facilitated by Figure 1.⁴¹ Generally, state statutes protect the tenant who complains to a government agency whether that agency is a local municipality, regional housing authority or state board of health.⁴² While some states protect the tenant who complains directly to the landlord⁴³ or requests repairs,⁴⁴ other states fail to afford this protection.⁴⁵ For this reason, some tenants have joined together to form tenant unions. This collective action provides the individual tenant with greater economic power over the landlord. However, less than half of the state statutes surveyed in Figure 1 protect tenant union activity.⁴⁶

v. Habib, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969) (defense of retaliatory eviction could be raised where the tenant was served notice to vacate shortly after the tenant reported housing code violations to local officials); *Markese v. Cooper*, 70 Misc.2d 478,481,333 N.Y.S.2d 63, 67 (Sup. Ct. 1972) (strong public policy of maintaining decent habitation required that a long-term tenant who was served with notice of eviction following complaint to housing authorities be allowed the defense of retaliatory eviction; the court specifically noted that the defense was permitted absent local ordinance).

39. *Dickhut v. Norton*, 45 Wis.2d 389, 397, 173 N.W.2d 297, 301 (1970) (although no ordinance, regulation or statute prohibited retaliatory eviction, *per se*, the intent of public policy was rehabilitation of slum areas and that intent would be frustrated if a landlord could evict in retaliation).

40. It is possible that Illinois may follow these jurisdictions in providing common law remedies to the problem of retaliatory eviction. Such a course of action is advocated herein, *see text* accompanying notes 59-62.

41. Figure 1 is not meant to serve as an all-inclusive list of states affording protection against retaliatory evictions. The statutes described were selected for representative purposes only.

42. *See* Figure 1 *infra*. Every state listed protects the tenant in this situation.

43. *Id.* All surveyed states, with the exception of Illinois, Maine and Massachusetts specifically provide protection to the tenant who complains to a landlord.

44. *Id.* Connecticut, Hawaii and the District of Columbia afford protection upon a request for repairs.

45. However, it is this writer's opinion that in the future courts will interpret statutes to include complaints to a landlord.

46. *See* Figure 1 *infra*. Those states protecting tenant union activity include Arizona, Maine, Maryland, Massachusetts and New Jersey.

Eviction is not the sole retaliatory action that may be taken against the tenant. Rent increases,⁴⁷ service decreases,⁴⁸ or material alterations⁴⁹ of the lease have been used as retaliation for tenant complaints. If a statute precludes material alteration of the lease, a specific provision prohibiting service decreases is usually absent, apparently on the assumption that a service decrease will be covered by the broad language of "material alteration." However, it is clear that the "material alteration" language does not encompass rent increases which are tantamount to an eviction for most low and fixed income tenants. Accordingly, most state legislatures specifically prohibit such increases.⁵⁰

The award of attorney's fees is an important facet of some of the statutes surveyed.⁵¹ Attorneys are encouraged to defend forcible entry and detainer actions by the promise of reasonable fees. This provision affords the tenant greater access to legal services, while decreasing the burden on legal aid offices. An additional impetus to enforcement is provided by fixed statutory periods which set up a presumption against the landlord. That is to say, during the statutory time period any action by the landlord to evict, raise rent, decrease service or alter the lease is presumed retaliatory.⁵² The presumption is generally rebuttable, or in a rare case, irrebuttable.⁵³ If rebuttable it may be overcome by a preponderance of the evidence.

An analysis of the surveyed state statutes reveals the gross inadequacy of the Illinois statute. As characterized by the authors of the Model Residential Landlord-Tenant Code, the Illinois statute is "toothless."⁵⁴ Until *Clore* the statute had never been critically evaluated. While this was primarily due to the roadblock of section 5 of the

47. *Id.* Illinois and Maine are the only states listed which do not protect the tenant from a retaliatory rent increase.

48. *Id.* Arizona, California, Connecticut, Maryland, Minnesota and the District of Columbia offer protection to the tenant from a retaliatory service decrease.

49. *Id.* Four of the surveyed states, Massachusetts, Michigan, New Jersey and Rhode Island, provide the comprehensive protection from a retaliation in the form of a material alteration of the lease.

50. *See* note 47 *supra*.

51. *See* Figure 1 *infra*. Only Hawaii, Maryland and Massachusetts provide for an award of attorney's fees.

52. *Id.* Arizona, California, Connecticut, Maine, Massachusetts, Michigan, Minnesota, New Jersey and the District of Columbia provide time periods ranging in length from 60 days to six months in which any eviction oriented action on the part of the landlord will be presumed retaliatory.

53. The Connecticut statute sets out what is essentially an irrebuttable presumption by stating that *no* action may be brought by the landlord during the six month period. *See* CONN. GEN. STAT. ANN. §19-375a (Supp. 1975).

54. MODEL RESIDENTIAL LANDLORD-TENANT CODE 70 (1969).

Illinois forcible entry and detainer statute,⁵⁵ which allows only "germane" defenses,⁵⁶ that explanation does not redeem the act.

Illinois was once considered a leader in providing protection to tenants subjected to a landlord's retaliatory eviction. The Illinois legislature had officially denounced retaliatory eviction as against public policy twelve years ago,⁵⁷ however, the courts heretofore have refused to allow the defense of retaliatory eviction. It was not until *Clore v. Fredman* that the Illinois Supreme Court restored *some* of the protection intended under that 1963 Act. However by grounding the *Clore* holding on the requirement of ordinance and statutory provisions, the supreme court failed to provide full and adequate protection to all tenants faced with a retaliatory eviction. In practice the *Clore* decision can have no beneficial effect upon residents of communities where an ordinance similar to that of Peoria does not exist. For example, the residents of the City of Chicago remain unprotected from a retaliatory eviction.⁵⁸

The Illinois General Assembly should take the initiative to resolve the tenant's dilemma. Considering the supportive case law, statutes and model acts, Illinois can readily find a basis to rewrite its retaliatory eviction statute.⁵⁹ The new statute should at least have the force of the Uniform Residential Landlord and Tenant Act.⁶⁰ Prospective legislation does not, however, aid the tenant who will currently be evicted for having sought safe and sanitary housing. Accordingly, as a stop-gap measure, the Illinois Supreme Court should in the next appropriate case

55. ILL. REV. STAT. ch. 57, §5 (1973).

56. See notes 14-15 *supra*.

57. See ILL. REV. STAT. ch. 80, § 71 (1973), declaring retaliatory evictions to be against public policy was enacted in 1963. See note 21, *supra*.

58. See CHICAGO, ILL., MUNICIPAL CODE ch. 78, §§ 11-20 (1973) (Housing Code). There is no provision in the Chicago Housing Code, nor is there a municipal ordinance of any kind prohibiting retaliatory evictions. Of New York City, Los Angeles and Chicago, only Chicago residents are left unprotected. See Figure 1 and note 59, *infra*.

59. At least 24 states and the District of Columbia have enacted provisions designed to preclude retaliatory eviction. See Figure 1, *infra*; see generally, ALASKA STAT. §34.03.310 (Supp. 1974); DEL. CODE ANN. tit. 25, §5516 (1974); FLA. STAT. ANN. §§83.56, 83.60 (Supp. 1974); KY. REV. STAT. § 383.705 (1974); N.Y. UNCONSOL. LAWS tit. 23, §§8950, 8609 (Supp. 1974); PA. STAT. ANN. tit. 35, §1700-1 (Supp. 1975); VA. CODE ANN. §55-248.39 (Supp. 1974); WASH. REV. CODE ANN. §59.18.240 (Supp. 1975).

Three bills governing retaliatory eviction were introduced in the last session of the legislature; none of the bills progressed beyond committee. See S.B. 909, 79th Ill. Gen. Assembly (1975) (Introduced Apr. 10, 1975); H.B. 1550 and H.B. 1477, 79th Ill. Gen. Assembly (1975) (Introduced Apr. 9, 1975).

60. UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT §5.101. See Figure 1, *infra*. The Act covers most of the important facets of retaliatory eviction. However, the Act does not protect the tenant from a material alteration of the lease, nor does it provide for the recovery of attorney fees.

establish realistic guidelines for proving a prima facie case of retaliatory eviction absent a Peoria-type ordinance. The supreme court has removed the obstacle of "germaneness;" it must now act to revise the language of the *Clore* decision by formulating a case law counterpart to the Peoria ordinance which would be available to all Illinois tenants. In light of the support for the defense of retaliatory eviction evidenced by other courts⁶¹ and legislatures,⁶² the Illinois Supreme Court and the Illinois General Assembly can and should realistically remove the last barricades to safe and sanitary housing.

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61. See notes 34-39 and accompanying text *supra*.

62. See note 59 *supra*.

FIGURE 1

	Protection from eviction upon		c) Joining		Protection from retaliatory		Award of Attorney's Fees	Statutory Period of Presumption
	a) Complaint to landlord	b) Complaint to Govt. agency	a) Rent increase	b) Service decrease	a) Rent increase	b) Service decrease		
Arizona	X	X	X	X	X	X	X	6 mos.
California ⁶	X	X	X	X	X	X	X	60 dys.
Connecticut ⁷	X	X	X	X	X	X	X	6 mos. ⁸
Hawaii	X	X	X	X	X	X	X	6 mos. ⁸
Illinois	X	X	X	X	X	X	X	6 mos. ⁸
Maine	X	X	X	X	X	X	X	6 mos.
Maryland	X	X	X	X	X	X	X	6 mos.
Massachusetts	X	X	X	X	X	X	X	6 mos.
Michigan ^{9,7}	X	X	X	X	X	X	X	90 dys.
Minnesota ⁸	X	X	X	X	X	X	X	90 dys.
New Jersey ²	X	X	X	X	X	X	X	5.
Rhode Island ²	X	X	X	X	X	X	X	90 dys.
Wash. D.C. ¹	X	X	X	X	X	X	X	90 dys.
SB 909	X	X	X	X	X	X	X	1 yr.
HB 1560 ¹	X	X	X	X	X	X	X	6 mos. ⁸
HB 1477 ^{1,1}	X	X	X	X	X	X	X	1 yr.
Model Code ¹	X	X	X	X	X	X	X	6 mos. ⁸
Uniform Act	X	X	X	X	X	X	X	1 yr.

Ariz. Rev. Stat. Ann. § 33-1301 to 33-1381 (1974)
 Cal. Civil Code § 1942.5 (West 1975)
 Conn. Gen. Stat. Ann. § 19-375a (amend. 1972)
 Hawaii Rev. Laws § 521-74 (1974)
 Ill. Rev. Stat. ch. 80 § 71 (1973)
 Me. Rev. Stat. Ann. tit. 14, § 6901 (1974)
 Md. Ann. Code art. 8, § 208.1 (1974)
 Mass. Gen. Laws Ann. ch. 186, § 18 (1975)
 Mich. Comp. Laws Ann. § 600.5720 (1975)
 Minn. Stat. Ann. § 566.03 (1974)
 N.J. Rev. Stat. Ann. § 2a-42-10.10 to 42-10.14 (1974)
 R.I. Gen. Laws Ann. § 34-20-10 (1970)
 D.C. Code Ann. § 5816 (1974)
 S.B. 969, 79th Ill. Gen. Assembly (1975)
 H.B. 1477, 79th Ill. Gen. Assembly (1975)
 H.B. 1550, 79th Ill. Gen. Assembly (1975)
 Model Residential Landlord-Tenant Code § 2-407 (1969)
 Uniform Residential Landlord and Tenant Act § 5.101

1. Protects tenant upon request for repairs.
2. Protects from refusal to renew lease.
3. Protects upon attempt to secure any right under law or contract.
4. Tenant may seek protection of act only once in any one-year period.
5. Presumption arises upon proof of previous complaints (this 1974 revision replaces a 90 day period of presumption previously enacted).
6. During the six months no action may be brought by the landlord (an irrebuttable presumption).
7. There is a presumption against the tenant if the alleged retaliatory act takes place more than 90 days after a complaint is filed.