

# LANDLORD/TENANT ANSWER IN PERSON FACT SHEET (CIV-LT-91)



## #12: ILLEGAL APARTMENT

Defense # 12 says: "The apartment is an illegal apartment."

When an apartment is illegal, the space should not be used to live in, a landlord or owner can't collect rent. So, when you are being sued for failing to pay rent, it is a defense to the nonpayment case if you live in an illegal apartment.

If your apartment is like this, it may be an illegal apartment:

1. Basement Apartments: not all basement apartments are illegal. But, the most common of all illegal apartments are in the basement of a building.
2. The apartment has no inside plumbing, bathroom or cooking places or the bathroom or kitchen facilities are separated, like if the toilet and the shower/bath are in different rooms.
3. Apartments that don't have windows (full size) and/or second exits may be illegal.
4. There are no separate electrical or gas meters for your apartment, like, if your apartment is on the same meter as the lobby of the building.

To find out if your apartment is illegal you can go to the Department of Buildings. They have an office in each borough of New York City. All buildings have to have a Certificate of Occupancy if they were built after April 18, 1929, or had major changes after that date. The buildings that were built before April 18, 1929, will not have a Certificate of Occupancy.

The Certificate of Occupancy shows the way the building can be used, like, how many apartments they can have on each floor of the building. For example:

1. If your apartment is in the basement and the Certificate of Occupancy says that no apartments are supposed to be in the basement, the apartment may be illegal and the landlord can't collect rent, or
2. The Certificate of Occupancy says that on your floor only four apartments are permitted but you know that there are five apartments. At that point, there is a possibility that your apartment is illegal but, you will have to prove that your apartment is the illegal apartment, to be able to use the defense.

The violation of the Certificate of Occupancy must be for the apartment you live in. The fact that the building is being used in a way not permitted by the Certificate of Occupancy may not be a defense in your case if the violation has nothing to do with your apartment. In other words, your apartment must be the illegal one. For example, if the landlord or owner changed the nature of the second floor so that it violates the Certificate of Occupancy but your apartment is on the fifth floor, then the violation has no effect on your apartment, and there is no defense.

You can also find out information about your apartment by going to the Department of Housing Preservation and Development ("DHPD"). They have an office in each borough of New York City. If a building has three or more apartments, it must be registered with DHPD every year. If the landlord or owner has not registered the apartment, then rent can't be collected. This will not tell you if your apartment is illegal, but it may give you an idea that it is illegal if you know there are at least three apartments in your building and there has never been a multiple dwelling registration filed for the building you live in. For example:

1. The building you live in is a two-family house and one of the apartments has been divided. In this case, because there are three apartments, the landlord would have to register the building with DHPD. If the landlord did not, that would be a defense to a nonpayment proceeding, or

2. If you live in the basement of a building or house where there are only two other apartments. Again, since the total number of residences is the issue, the fact that there are three would be a defense if there is no multiple dwelling registration filed the DHPD.

There are some reasons that may allow the landlord to collect rent even if the apartment is technically illegal:

1. Even if your landlord or owner did not comply with the Certificate of Occupancy or have the legal multiple dwelling registration, these are defenses that can be cured, or fixed, by the landlord or owner. If they are cured, then the defense no longer applies. For example, if the apartment is illegal but can be made legal and the landlord or owner does this and gets a proper Certificate of Occupancy, rent can be collected.
2. If the tenant knew that the apartment was illegal, then in Queens and Kings Counties, the landlord or owner may be able to collect rent.
3. If the tenant caused the violation that made the apartment illegal, then the landlord or owner may be allowed to collect rent.
4. If the tenant stopped the landlord or owner from correcting the violation  
that would have made the apartment legal.
5. In New York County, there must be a connection between the violation and the health and safety of the tenant.

When you go to court, tell the Judge or Court Attorney why you believe your apartment is illegal. Bring any proof you got from the Department of Buildings or DHPD and any photographs or witnesses that can talk about the conditions in the building. If the judge says that you have proven this defense, the petition will be dismissed against you.