



# LASC

The Legal Aid Society of Columbus





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# **Landlord Retaliation for Calling Code or Requesting Repairs**

**Ben Horne**  
**The Legal Aid Society of Columbus**  
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## COLUMBUS CITY CODE VIOLATION

777 LILLEY AVE

Inspection has been made at the above address on **June 06, 2016.**

As provided by the Columbus City Code you are hereby given notice to correct the violations listed below within 30 calendar days of the service of this notice. If no action in this notice, or an approval to a written request for extension is granted.

**Failure to comply with this notice is a Misdemeanor of the First Degree and may be punishable by a \$1000 fine and 180 days imprisonment.**

Calhoun's Management LLC

1027 Newton St.

Columbus, OH 43205

June 7, 2016

Ms. Tamara J. Williams

777 Lilley Ave

Columbus, OH 43205

Re: 30-day Notice Termination of Month-to-Month Tenancy

Dear Ms. Williams:

By this letter, you are notified our month-to-month tenancy will end July 7, 2016. It is requested you return my property on or before July, 7, 2016.

Respectfully,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a long, horizontal, wavy line.

ParcelID: 010-050675-00  
CALHOUNS MANAGEMENT LLC

Map-Rt: 010-1065 -069-00  
777 LILLEY AV

Sales Summary

Date	Grantee	Convey No	Inst Type	# of Parcels	Sale Price
SEP-30-2016	CALHOUNS MANAGEMENT LLC	00020915	GW	1	\$2,000
AUG-24-2016	DIRKE BRYAN K	00017768	GW	1	\$2,000
JUL-29-2010	CALHOUNS MANAGEMENT LLC	907339-M	GE	1	\$0
JUL-29-2010	CALHOUN ARNOLD	13612	GW	1	\$5,500
FEB-10-2010	FIRST FEDERAL SAVINGS &	1796	SH	1	\$22,000
JUN-01-2004	MAUGER ENTERPRISES LLC	906874-M	GE	1	\$0
JAN-28-2003	WINFREE ENTERPRISES INC	1747	LW	1	\$20,500
DEC-13-2002	ALTEGRA CREDIT COMPANY	29639	SH	1	\$22,000
FEB-13-2001	CARRINGTON DONNELL	2520	GW	1	\$63,900
MAR-13-2000	HAMMOND BRAD	4313	GW	1	\$62,000
JAN-21-2000	SPRATT JENNIFER L	1225	GW	8	\$220,000





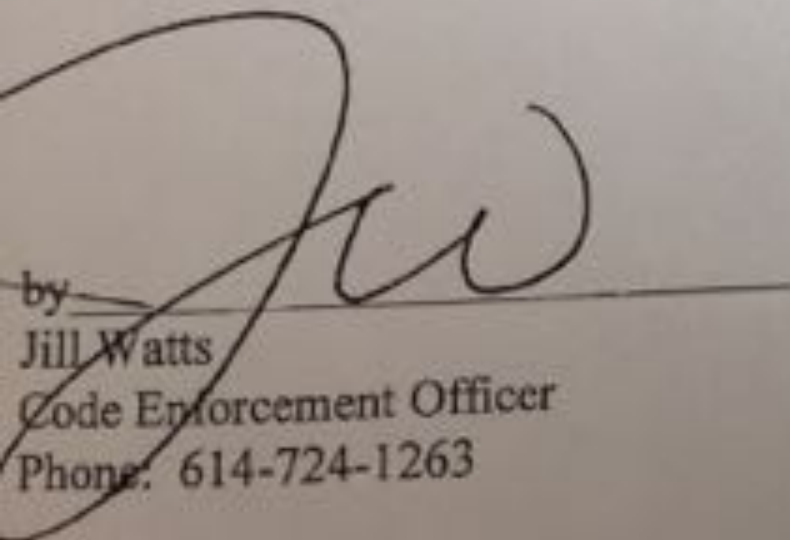


1027 NEWTON ST  
COLUMBUS, OH 43205

## Acknowledgement of Compliance

**Re:** 777 LILLEY AVE

This is to acknowledge that the violations on the above referenced property, cited in the cited above, have been complied as of 1/3/2017.

by   
Jill Watts  
Code Enforcement Officer  
Phone: 614-724-1263

**WOO HOO!**





4041 SULLIVANT AVENUE



Google

THE CITY OF  
**COLUMBUS**

CODE ENFORCEMENT

Dana M. Rose, Administrator

SAMOTH LAM  
2891 CLIME RD  
COLUMBUS, OH 43223

Date of Service/Posting 5/26/17

Order Number: 17440-02757

Parcel Number: 010122408

**COLUMBUS CITY CODE VIOLATION NOTICE**

Re: 4041 SULLIVANT AVE

An inspection has been made at the above address on **May 25, 2017**.

As provided by the Columbus City Code you are hereby given notice to correct the alleged violations listed below within 30 calendar days of the service of this notice unless otherwise noted in this notice, or an approval to a written request for extension is granted by this office.

**Failure to comply with this notice is a Misdemeanor of the First Degree and may be punishable by a \$1000 fine and 180 days imprisonment.**

# NOTICE TO LEAVE THE PREMISES

(For Residential Property Only)

To Romas Cline and all Tenant

You will please notice that I want you on or before June 5 2017  
to leave the premises you now occupy, and which you have rented of South Lane  
situated and described as follows:

4041 Summit Ave.  
Columbus, Oh 43228

Columbus County of Franklin and State of Ohio

amount one payment of rent June @ 655.00

Late charge @ 24.00

Total @ 679.00

**YOU ARE BEING ASKED TO LEAVE THE PREMISES  
IF YOU DO NOT LEAVE, AN EVICTION ACTION MAY  
BE INITIATED AGAINST YOU. IF YOU ARE IN DOUBT  
REGARDING YOUR LEGAL RIGHTS AND OBLIGATIONS  
AS A TENANT, IT IS RECOMMENDED THAT YOU  
SEEK LEGAL ASSISTANCE.**

June 2 2017

South Lane Landlord  
Landlord's Address P.O. Box 28873  
Columbus, OH 43228  
614-962-5399

FILED  
12/11/11  
CLERK

COURT  
CR 80

COMPLAINT

Sandra Lam  
P.O. Box 28873 Columbus OH 43228  
Plaintiff

No. \_\_\_\_\_

Renee Clive, Robert Clive and all  
4841 Sullivant Ave Columbus, Oh 43228  
Defendants

**FIRST CAUSE OF ACTION**

1. Defendant(s) Renee Clive, Robert Clive and all on or before the  
12<sup>th</sup> day of December, 2016, at (month) of the plaintiff(s),  
Sandra Lam  
under Lease agreement

entered upon the following described premises, situated in the City  
of Columbus, County of Franklin  
State of Ohio, and known as 4841 Sullivant Ave Columbus, Oh 43228

1. The term of such tenancy expired on the \_\_\_\_\_ day of \_\_\_\_\_  
OR

2. Defendant(s) has (have) violated the terms of such written lease agreement, as follows:  
Not - pay rent

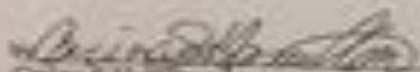
OR

Samuel Lam  
P.O.Box 28871  
Columbus, OH 43228

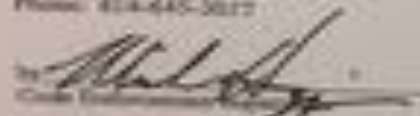
### Acknowledgement of Compliance

Re: 4961 SULLIVANT AVE

This is to acknowledge that the violations on the above referenced property, cited in the notice cited above, have been complied as of 7/19/2017.



Cama M. Ryan  
Code Enforcement Officer  
Phone: 614-445-3017



Samuel Lam  
Code Enforcement Officer



# Typical Retaliation in Columbus

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1. Month to Month Tenant, frustrated by lack of response to requests for repairs or extermination, calls Code Enforcement and requests an inspection.
2. Code inspects, issues violation notice.
3. Soon thereafter: Retaliation by Landlord

# Typical Retaliation in Columbus

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## *1. Landlord fabricates eviction grounds.*

- Next time rent is due, landlord does not pick it up, then delivers Notice to Vacate for non-payment of rent (and late fees)
- Landlord gets rent check in mail but doesn't cash it, claims he never got it, delivers Notice to Vacate for NPOR.

# Typical Retaliation in Columbus

## *2. Landlord ends the lease.*

Landlord delivers 30-day “no-fault” notice, terminating the month-to-month tenancy 30 days from the next time rent is due, or chooses to not renew an annual lease.

If tenant doesn’t vacate after the lease terminates, tenant becomes a “holdover tenant”, and Landlord evicts for this reason.

# The effect of retaliation

1. Chilling Effect on Reporting: Tenants afraid if they report housing conditions problems or call Code, Landlord will try to evict or end tenancy.
2. Especially at risk: Month to month tenants, or nearing end of year lease.
3. Creates dangers for tenants. Unreported issues like broken furnace can lead to space heaters, heating with oven, fires.

# Laws against retaliation

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1. Ohio Revised Code §5321.02.
2. Local Codes

# Ohio Revised Code

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- Section 5321.02 is meant to protect a tenant's right to complain . . .
- (1) to a governmental agency about a code violation or
- (2) to the landlord about a 5321.04 violation

# Ohio Revised Code

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- What is a 5321.04 violation?
- Basically 5321.04 lays out duties of an Ohio landlord, including making repairs.

# ORC 5321.04

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- Comply with applicable codes that affect health and safety
- Make all repairs and do what is reasonably necessary to put and keep the premises in a fit and habitable condition.



# 5321.04

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- Keep common areas safe and sanitary
- Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied by Landlord

# 5321.04

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- Supply running water, reasonable amounts of hot water, and reasonable heat.

# Ohio Revised Code

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- Basically ORC 5321.02 is meant to protect a tenant's right to complain about conditions issues to the landlord or to a governmental agency like Code Enforcement.

# Ohio Revised Code

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What Actions by a Landlord are considered retaliatory?

# Ohio Revised Code

- 5321.02: Landlord may not retaliate against a tenant by
  - (1) increasing rent (unless to reflect cost of installed improvements or other operational costs),
  - (2) decreasing services, or
  - (3) bringing or threatening to bring an eviction action.

# Ohio Revised Code

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What retaliatory action by a landlord is missing from this list that would be helpful?

# Ohio Revised Code

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Ohio Revised Code does not explicitly prohibit the Landlord from:

(1) Terminating a month to month rental agreement

(2) Refusing to renew the rental agreement or continue the tenancy

# Ohio Revised Code

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What is the penalty or remedy if a Landlord retaliates?



# Ohio Revised Code

5321.02: If Landlord retaliates:

- Tenant may use the retaliatory action as a defense to an eviction action.
- Tenant may recover possession of the premises.
- Tenant may terminate the rental agreement
- Tenant may sue landlord for actual damages with reasonable attorney fees.

# Ohio Revised Code

5321.02: If Landlord retaliates . . .

*Tenant may use the retaliatory action as a defense to an eviction action.*

PROBLEM: Landlords fabricate or find legitimate grounds for eviction.

EXAMPLES:

- Failing to pick up rent, or claiming it was not received, then evicting for NPOR.
- Evicting for ticky tack lease violation, or for issue Landlord did not care about previously.

# Ohio Revised Code

5321.02: If Landlord retaliates . . .

- *Tenant may recover possession of the premises.*
- (?) (only makes sense if tenants have already lost possession – e.g. they have been illegally locked out of the property)

# Ohio Revised Code

5321.02: If Landlord retaliates . . .

- *Tenant may terminate the rental agreement.*
- This is not usually the solution the tenant wants. Tenants just want the problems fixed, not to have to move.

# Ohio Revised Code

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5321.02: If Landlord retaliates . . .

- *Tenant may sue landlord for actual damages with reasonable attorney fees.*
- Helpful if tenant incurs monetary damages.

# Ohio Revised Code

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*What if Tenant complains to Code,  
but is a day late paying rent.  
Landlord evicts for NPOR. Can  
Tenant still claim retaliation?*

# Ohio Revised Code

5321.03: Exceptions:

Landlord may evict (not retaliation) if:

- Tenant is behind in rent.
- Tenant caused the condition problems
- Compliance with Code would require “alteration, remodeling, or demolition of the premises which would effectively deprive the tenant of the use of the dwelling unit”
- Tenant is holding over the tenant’s term (lease has expired).

# Ohio Revised Code

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## Weakness of Ohio Revised Code:

- No real penalty for landlords
- Lack of clarity regarding terminating month to month tenancies being retaliation.  
(Appellate courts are split)



# Example Scenario

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1. MTM tenant calls Code.
2. Code issues violations to LL.
3. Next day landlord gives Tenant 30 day notice: “Your lease will end at end of September”.
4. October 3rd: Tenant remains.
5. October 4: Landlord files eviction.
6. At court Tenant argues the 30 day notice was retaliatory.

# Ohio Revised Code

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Appellate Courts are split:

Some courts have found that terminating a month to month lease in response to a tenant calling Code is retaliatory, and will dismiss the eviction.

Other courts have found the opposite - that the tenant cannot argue retaliation because the tenant has become a “Holdover tenant” – a retaliation exception.



# LOCAL CODES

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Local ordinances can address landlord-tenant law as long as they are not in conflict with ORC 5321.

# LOCAL CODES

## Retaliation per Cincinnati Building Code 871-9

In response to Tenant complaint no landlord shall

- Raise the rent above the rent charged for comparable units
- Increase the obligations of the tenant in any way
- Bring an eviction action, or . . .
- **TERMINATE THE TENANCY**

# LOCAL CODES

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- Cleveland Housing Code 375.07
- A landlord may not retaliate against a tenant by
  - Increasing the tenant's rent
  - Bringing or threatening to bring an eviction
  - Terminating or threatening to terminate the tenant's rental agreement.
  - Refusing to renew the tenant's rental agreement or to continue the tenant's tenancy.

# LOCAL CODES

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- Cleveland Remedies for Retaliation
- The retaliatory action is a defense to an eviction.
- Tenant may recover actual damages or damages of between \$50 and \$500 with reasonable attorney fees.

# LOCAL CODES

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## Columbus Housing Code 4509.07

In retaliation for complaining of conditions issues, no owner or person having control shall

- Start an eviction action or . . .
- Otherwise willfully cause a tenant to quit a habitation involuntarily
- Demand an increase in rent
- Decrease services to a tenant or increase the obligations of a tenant



# LOCAL CODES

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## Columbus Housing Code 4509.07

- Nothing specific about terminating a tenancy or refusing to renew the tenant's rental agreement or refusing to continue the tenant's tenancy.
- However . . .

# LOCAL CODES

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## Columbus Housing Code 4509.07

In retaliation, landlords cannot evict or *willfully cause a tenant to quit a habitation involuntarily*”

- Arguably, if a landlord gives the tenant a “no-fault” 30 day notice terminating a month to month tenancy, this is causing the tenant to quit the habitation involuntarily, and is retaliation.

# LOCAL CODES

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## Columbus Housing Code 4509.07

- Penalty is criminal - same as for not remedying a violation of the housing code.
- City Attorney developed questionnaire for Code Officers to give to aggrieved tenants.
- City Prosecutor began looking at retaliation cases about a year ago.
- Could result in a misdemeanor (fine up to \$1000 and 180 days in prison).

# Tenant attorney strategies to discourage retaliation

- Landlords are often successful in getting the tenants to vacate.
  - Sometimes they have good grounds to evict
  - Sometimes tenants get fed up and leave voluntarily
- Even if Tenant is evicted or vacates, Tenant attorneys need to keep the case alive until there is compliance with Code.

# Tenant attorney strategies to discourage retaliation

## Tools for Evictions:

- ORC 1923.15 Motion to Correct Conditions or Prohibit Re-rental
- ORC 3767.41 Counterclaim for Public Nuisance/ Receivership

## Tools for Retaliatory 30 Day Notices

- Complaint against LL arguing 30 day notice is retaliatory and seek order that LL not file an eviction, add Nuisance Abatement and Retroactive Rent Abatement claims.

# Avoiding Retaliation – advice for tenants

- Try to maintain good relationship with landlord.
- In quest for repairs don't escalate too quickly. Start with phone call(s) requesting repairs. Move on to writing texts/emails. Mention that eventually you'll have to call Code, but you don't want to go there, gauge reaction.
- If one year lease will be renewed next month, maybe hold off on repair requests until new lease is signed, then complain/call Code.
- Try to get a long-term lease.



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