

Sample Answer and Counterclaims Involving Lease-Option. This sample pleading could be useful in drafting a response when a tenant pursuant to a lease with option to buy is served with an eviction. It includes counterclaims for failure to repair and a UDAP claim for requiring a tenant to make repairs.

**IN THE MAGISTRATE COURT OF COBB COUNTY
STATE OF GEORGIA**

Laura Landlord,
Plaintiff,

vs.

Allison Renter,
Defendant.

Civil Action No. 18-E-15847

AMENDED ANSWER, DEFENSES, AND COUNTERCLAIMS

COMES NOW Defendant, Allison Renter, and hereby amends her answer to Plaintiff's Proceeding against Tenant Holding Over as follows:

1. Defendant admits the allegation contained in Paragraph 1 of Plaintiff's complaint.
2. Defendant denies the allegations in Paragraph 2.
3. Defendant denies the allegations contained in Paragraph 3.
4. Defendant denies the allegation contained in Paragraph 4.
5. Defendant denies the allegations contained in Paragraph 5.
6. Defendant denies the allegations in Paragraph 6.
7. Defendant further denies any other allegations in Plaintiff's Proceeding against Tenant Holding Over that have not been expressly admitted herein.

FACTUAL BACKGROUND

8. Defendants moved into the property on or about November 1, 2017.
9. Defendants and Plaintiff signed a contract titled "Lease Agreement with Option to Purchase" containing a three year lease period. Defendants paid \$10,000 for the Option upon signing this agreement.

10. Despite Defendants notifying Plaintiff of needed repairs, Plaintiff has failed and refused to make multiple necessary repairs. Said repairs include as follows:
 - a) Flooding in the laundry room and closet.
 - b) The water heater in the home was not functional and Defendants paid for a new one.
 - c) The Defendants paid to replace several kitchen appliances, including a refrigerator, oven, and microwave.
 - d) The HVAC in the home does not work and Defendants have purchased devices to heat the house.
 - e) The defendants have added value to the home through staining kitchen cabinets and wood floors, painting several rooms, and replacing a broken toilet.
 - f) The windows and the back door are screwed shut.

DEFENSES

11. Plaintiff reinstates and reincorporates the “Factual Background” section above herein.
12. **NO VALID DEMAND FOR POSSESSION.** Plaintiff’s complaint should be dismissed on the basis that Plaintiff failed to make a demand for possession before filing this case. *See* O.C.G.A. § 44-7-50.
13. **COUNTERCLAIMS EXCEED RENT.** Plaintiff’s Proceeding Against Tenant Holding Over should be dismissed because Defendant’s counterclaims, as specified below, exceed the alleged amount of rent due in Plaintiff’s Complaint. *See Weaver v. Roberson*, 134 Ga. 149, 157-58 (1916); *See also Walker v. Housing Auth. of Atlanta*, 174 Ga. App. 585 (1985).
14. **EQUITABLE DEFENSES.** To the extent equitable relief is sought, Plaintiff’s request for relief is barred, in whole or in part, by the doctrines of waiver, estoppel, laches, and/or unclean hands.
15. **EXCUSE.** Any purported nonperformance by Defendants under the Contract was caused by the conduct of either Plaintiff or one of the other title holders of the Property, excusing Defendants for any alleged non-performance. O.C.G.A. § 13-4-23.
16. **FAILURE TO MITIGATE DAMAGES.** Plaintiff has failed to mitigate damages as required by law.

COUNTERCLAIM FOR BREACH OF CONTRACT

17. Plaintiff reinstates and reincorporates the “Factual Background” section above herein.
18. Plaintiff and Defendant entered into a contract titled “Lease Agreement with Option to Purchase” on November 1, 2017.
19. Paragraph 13 of said contract states, “Upon the occurrence of any “event of default”, Landlord shall provide Tenant written notice of such default, wherein Tenant shall

have five (5) days after written notice thereof from Landlord to Tenant to cure such event of default.”

20. Plaintiff has breached said contract by failing to provide Defendant with such notice and an opportunity to cure the default within five (5) days.
21. Paragraph 6 of said contract states, “Landlord shall provide to Tenant a copy of the latest mortgage statement for the Existing Mortgage.”
22. Plaintiff has breached this provision of the contract by failing to provide Defendants with a copy of the mortgage statements throughout the duration of the contract.
23. As a result of Plaintiff’s breaches of contract, Defendants have incurred damages.

COUNTERCLAIM FOR BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

24. As discussed above, Plaintiff and Defendant have a valid residential agreement. By representing to Defendant that Plaintiff has no obligation to make repairs, Plaintiff has breached its implied duty of good faith and fair dealing.
25. As such, Defendants have and will suffer actual damages as a result of said breach. In the event that Defendants are forced to vacate their apartment, they will have paid thousands of dollars in improvements and repairs made to the residence from which they will be evicted.

COUNTERCLAIM FOR FAILURE TO REPAIR

26. Plaintiff reinstates and reincorporates the “Factual Background” section above herein.
27. Pursuant to O.C.G.A § 44-7-13, Plaintiff has a duty to keep the residence in good repair. The duty to repair cannot be waived in a lease. *See* O.C.G.A. 44-7-2.
28. Plaintiff has breached this duty to repair, as specified in the “Factual Background” section above.
29. Plaintiff’s failure to repair has proximately caused damages to the Defendant.
30. Defendant hereby seeks compensatory damages from Plaintiff, including but not limited to actual expenses and diminution in the value of the premises caused by Plaintiff’s failure to repair.
31. Defendant further seeks punitive damages under OCGA § 51-12-5.1(b) based on the Plaintiff’s willful conduct and wantonness.

VIOLATION OF THE FAIR BUSINESS PRACTICES ACT

32. Plaintiff has treated Defendants like homeowners for purposes of avoiding their obligation to make repairs on the home, and have instead imposed on Defendants the costs of ownership and maintenance of the Property. But Plaintiff claimed Defendants were tenants when she filed a dispossessory warrant on October 8, 2018, denying that Defendants possessed any of the rights of a homeowner, and continues to assert in the instant action that Defendants have no rights other than those of a tenant. Plaintiff has attempted to shift the responsibilities and burdens of homeownership to Defendants and none of the rights.
33. Furthermore, Plaintiff's conduct in requiring a tenant to make repairs to the home that are necessary to render it habitable, in violation of Georgia landlord-tenant law, O.C.G.A. §§ 44-7-13 and 44-7-2, is both unfair and deceptive. The conduct was unfair because the landlord's duty to provide habitable conditions cannot be waived or delegated under Georgia law. Plaintiff's conduct was deceptive because it misrepresented that the Defendants were responsible for paying for these repairs, material misstatements that the Defendants reasonably relied upon to their detriment. Defendants have been harmed by Plaintiff's unfair and deceptive conduct.
34. Plaintiff's conduct in structuring the transaction to shift the burdens of ownership to the Defendants, and yet attempting to evict Defendants through a dispossessory claim is unfair, deceptive, and unconscionable.
35. Defendants have been injured by Plaintiff's unfair and deceptive and unconscionable conduct.
36. The above conduct authorizes the imposition of punitive damages, pursuant to O.C.G.A. § 51-12-5.1, in that it shows willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of a conscious indifference to consequences, and Defendants seek such damages.

PRAYER FOR RELIEF

WHEREFORE, Defendant, Allison Renter, prays this Court:

- (a) Dismiss Plaintiff's claims and order Plaintiff to pay costs;
- (b) Award Defendant the compensatory damages, treble damages, and punitive damages plead for herein in an amount to be determined at trial;
- (c) Award Defendant attorney's fees;
- (d) Transfer this case to the Superior Court of Cobb County; and
- (e) Grant such other relief the Court finds just and proper.

Respectfully submitted this 29th day of October, 2018.

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