

LANDLORD-TENANT LAW---TENANT REQUIRED TO PROVE RETALIATORY MOTIVE

Kernodle v. Antonette Apartments (Superior Court,
Appellate Division, Decided June 17, 1970) by
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Not approved for publication at this writing.

As previously noted, 17 State Clearing House Report 10 (April, 1970), this was an attempt by a tenant who had filed a complaint with the Health Department against her landlord to permanently enjoin the landlord from proceeding with a summary dispossession action. The Chancery Division, Atlantic County, denied the permanent injunction, holding that the tenant had not proved that the landlord acted in retaliation, and that the landlord had a reasonable explanation for the eviction proceeding, namely, that the apartment was needed to house the landlord's son, who was transferring from a northern New Jersey college to a college in Atlantic City, to which he would commute from home.

The Appellate Division affirmed the judgment of the Chancery Division, stating that the burden of proving the motive for the eviction rested upon the tenant, because she had sought to invoke the general equity powers of the court. No basis was found for disturbing the trial court's finding that the tenant had failed to sustain that burden.

The Appellate Division expressly declined to rule on the tenant's contention that the 90-day presumption set forth in N.J.S.A. 2A:170-92.1, which makes reprisals a disorderly persons offense, can be applied in civil suits. The decision indicates, however, that the Chancery Division can enjoin an eviction if the tenant, without the 90-day presumption, can carry the burden of proving that the landlord's motive was retaliatory.

Assembly Bill A. 831, described in 19 State Clearing House Report 15 (June 1970), which recently passed both houses of the State Legislature and is presently being reviewed by the Governor, would amend N.J.S.A. 2A:170-92.1 to provide the protection sought by the tenant in this case.

Opinion.

