

tial impact of shopping centers as public forums.⁴²

*Robins v. Pruneyard Shopping Center*⁴³ continues a trend toward further restrictions on private property ownership rights.⁴⁴ Courts have often balanced the competing interests of free expression and private property.⁴⁵ Changing social and economic conditions assure that if courts continue to employ this balancing test both the right of free expression and property rights will remain in flux.⁴⁶ *Robins* demonstrates that state guarantees of free expression are expandable and that litigants may possibly circumvent the state action requirement of the fourteenth amendment by asserting claims under state constitutions.

LANDLORD & TENANT—RETLIATORY EVICTION—HAWAII RECOGNIZES COMMON-LAW RETALIATORY EVICTION DEFENSE SUPPLEMENTARY TO STATE STATUTE. *Windward Partners v. Delos Santos*, 59 Hawaii 104, 577 P.2d 326 (1978). Windward Partners petitioned the State Land Use Commission to rezone its land from “agricultural” to “urban” as a first step in a plan to develop the area into a residential community.¹ Four residential and four nonresidential tenants who occupied the land attended a statutorily required public land-use hearing² and vigorously opposed the rezoning. After the Commission denied the petition, the landowners terminated the tenants’ month-to-month tenancies. When the tenants refused to vacate, the owners instituted eviction proceedings. The trial court refused as a matter of law to al-

in the nation’s 21 largest metropolitan areas account for 50 percent of the retail trade, while the innercity downtowns are dying.

Id. at 618 (footnotes omitted).

42. 23 Cal. 3d at 907-08, 592 P.2d at 345-46, 153 Cal. Rptr. at 858-59.

43. 23 Cal. 3d 899, 592 P.2d 341, 153 Cal. Rptr. 854, *cert. granted*, 100 S. Ct. 419 (1979) (No. 79-289).

44. For an excellent discussion of the changing nature of property rights in the United States, see Powell, *supra* note 39.

45. See *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972). The balancing test employed by the courts appears in *Heneley*, *supra* note 18.

46. *Agriculture Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 404, 546 P.2d 687, 694-95, 128 Cal. Rptr. 183, 190-91 (1976) (power of government to regulate uses of property must be adaptable to changing environment).

1. *Windward Partners v. Delos Santos*, 59 Hawaii 104, 577 P.2d 326 (1978).

2. HAWAII REV. STAT. § 205-4(e) (1976).

low the tenants' defense of retaliatory eviction and granted the landlord's motion for summary judgment.³ On appeal, the Hawaii Supreme Court reversed and *held*: a residential or nonresidential tenant's claim of eviction in retaliation for his exercise of a statutory right that protects a property interest in his tenancy is an affirmative defense in a summary possession proceeding.⁴

According to traditional property law, a landlord held an absolute right to terminate a periodic tenancy regardless of motive.⁵ Courts⁶ and legislatures⁷ have in recent years⁸ formulated exceptions to this rule to effectuate the legislative policy underlying the enactment of housing codes. Because the enforcement of housing codes depends

3. 59 Hawaii at 108, 577 P.2d at 329.

The trial court held that the defense was precluded by *Aluli v. Trusdell*, 54 Hawaii 417, 508 P.2d 1217 (1973). In *Aluli* a tenant claimed that his landlord restricted his first-amendment rights by evicting him in retaliation for having encouraged other tenants to form a tenants' union. The court rejected the tenant's defense, finding: (1) no impairment of the tenant's constitutional rights, as membership could continue; (2) the landlord had merely exercised his right to terminate; and (3) no state action upon which to base a first amendment claim. *Id.* at 420, 508 P.2d at 1220. The *Windward* trial court, finding no material factual issues and interpreting the retaliatory eviction defense as "insufficient as a matter of law . . . in a summary proceeding" under the *Aluli* holding, granted plaintiff's motion for summary judgment. 59 Hawaii at 108, 577 P.2d at 329.

The tenants in *Windward* based their claim to the defense on public policy rather than on constitutional grounds. The Hawaii Supreme Court thus concluded that *Aluli* did not govern its decision in the present case. 59 Hawaii at 109-10, 577 P.2d at 329.

4. 59 Hawaii at 116, 577 P.2d at 333.

5. *See, e.g.*, *LaChance v. Hoyt*, 6 Conn. Cir. Ct. 207, 269 A.2d 303 (1969); *Snitman v. Goodman*, 118 A.2d 394 (D.C. 1955); *Gabriel v. Borowy*, 324 Mass. 231, 85 N.E.2d 435 (1949); *Gladwell v. Holcomb*, 60 Ohio St. 427, 54 N.E. 473 (1899); *Motoda v. Donohoe*, 1 Wash. App. 174, 459 P.2d 654 (1969).

6. *See, e.g.*, *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968); *Tarver v. G & C Constr. Corp.*, No. 64-C2945 (S.D.N.Y. Nov. 9, 1964); *Schweiger v. Superior Court*, 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970).

7. *See, e.g.*, HAWAII REV. STAT. § 521-74 (1976); ILL. ANN. STAT. ch. 80, § 71 (Smith-Hurd 1966).

8. The first restrictions placed on the landlord's right to recover premises from a tenant whose lease had expired were a result of the housing shortage following World War II. *See* Housing and Rent Act of 1947, ch. 163, § 209, 61 Stat. 193, 200. These restrictions were emergency measures only and were repealed in 1953. Housing and Rent Act of 1953, ch. 31, § 5, 67 Stat. 23. Only New York retained the wartime measures, and to this date New York has extensive rent control laws, justified as emergency controls. Rent and Eviction Regulations of the Division of Housing and Community Renewal, §§ 1-117, *reprinted after* N.Y. UNCONSOL. LAWS § 8597 (McKinney 1974); New York City Rent and Rehabilitation Law, §§ Y51-1.0 to -18.0, *reprinted after* N.Y. UNCONSOL. LAWS § 8617 (McKinney 1974).

Landlords may not evict tenants when eviction operates to chill the exercise of first-amendment rights; *e.g.*, the right to vote. *United States v. Beatty*, 288 F.2d 653 (6th Cir. 1961).

largely on private citizens' reports,⁹ landlord evictions in retaliation for a tenant's report of violations would discourage other tenants from making similar reports and thus frustrate the purpose of the codes.¹⁰ Some states have further extended protection against retaliatory evictions to tenants exercising their statutory rights.¹¹ Presently, most jurisdictions have either a common-law¹² or a statutory¹³ prohibition against retaliatory eviction.¹⁴ The Hawaii statute, in part, disallows any action against a tenant to recover possession of the dwelling unit after the tenant has complained in good faith to the landlord or appropriate governmental agencies about conditions that constitute a viola-

9. *Edwards v. Habib*, 397 F.2d 687, 700 (D.C. Cir. 1968).

10. *Id.* at 701.

11. Several jurisdictions have promulgated particularly broad prohibitions against retaliatory eviction. *See, e.g.*, MINN. STAT. ANN. § 566.03 (West Supp. 1979-1980); N.J. STAT. ANN. §§ 2A:42-10.10 to .14 (West. Supp. 1979-1980); R.I. GEN. LAWS §§ 34-20-10, -11 (1970). The New Jersey statute is reproduced in note 34 *infra*.

12. The following cases may provide a basis for a prohibition against retaliatory evictions: *Frampton v. Central Ind. Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973) (*dicta*); *Sims v. Century Kiest Apts.*, 567 S.W.2d 526 (Tex. Civ. App. 1978) (cause of action for damages only); *Harless v. First Nat'l Bank*, 246 S.E.2d 270 (W. Va. 1978) (*dicta*); *Dickhut v. Norton*, 45 Wis. 2d 389, 173 N.W.2d 297 (1970) (tenant must prove a condition that in fact violated housing code).

13. Thirty states and the District of Columbia have enacted statutes prohibiting retaliatory evictions. *See* ALASKA STAT. § 34.03.310 (1978); ARIZ. REV. STAT. ANN. § 33-1381 (1974); *id.* § 33-1491 (Supp. 1978-1979); CAL. CIV. CODE § 1942.5 (Deering 1975); CONN. GEN. STAT. § 47a-33 (1979); D.C. CODE ENCYCL. § 45-1654 (West Supp. 1978); FLA. STAT. ANN. § 83.60 (West Supp. 1978) (interpreted in *Bowles v. Blue Lake Dev. Corp.*, 504 F.2d 1094 (5th Cir. 1974), and 1 FLA. ADMINISTRATIVE CODE 2-11.07 (1975)); HAWAII REV. STAT. § 521-74 (1976); ILL. ANN. STAT. ch. 80, § 71 (Smith-Hurd 1966); IOWA CODE ANN. §§ 562A.36, 562B.32 (West Supp. 1979-1980); KAN. STAT. ANN. § 58-2572 (1976); KY. REV. STAT. ANN. § 383.705 (Baldwin 1979); ME. REV. STAT. ANN. tit. 14, § 6001 (West Supp. 1978-1979); MD. REAL PROP. CODE ANN. § 8-208.1 (Cum. Supp. 1978); MASS. ANN. LAWS ch. 186, § 18 (Michie/Law. Co-op Supp. 1978); *id.* ch. 239, § 2A (Michie/Law. Co-op Supp. 1978); MICH. STAT. ANN. § 27A.5720 (Supp. 1979-1980); MINN. STAT. ANN. § 566.03 (West Supp. 1978); MONT. REV. CODES ANN. § 70-24-431 (1978); NEB. REV. STAT. § 76-1439 (1976); NEV. REV. STAT. § 118A.510 (1973); N.H. REV. STAT. ANN. §§ 540:13-a, -b (1974); N.J. STAT. ANN. §§ 2A:42-10.10 to .14 (West Supp. 1979-1980); N.M. STAT. ANN. §§ 70-7-39, -40 (Supp. 1975); N.Y. REAL PROP. LAW § 230 (McKinney Supp. 1978); N.C. GEN. STAT. § 75-1.1 (1975), *interpreted in State v. Cleve*, 74 C.V.S. 852 (Carteret County Super. Ct. 1974), *cited in Comment, Prohibition of Retaliatory Eviction in Landlord-Tenant Relations: A Study of Practice and Proposals*, 54 N.C.L. Rev. 861, 862 n.11 (1975-76)); OHIO REV. CODE ANN. §§ 5321.02, .03 (Page 1979); OR. REV. STAT. § 91.865 (1975); PA. STAT. ANN. tit. 35, § 1700-1 (Purdon 1977); R.I. GEN. LAWS §§ 34-20-10, -11 (1970); TENN. CODE ANN. § 53-5505 (1977); *id.* § 64-2854 (1976); VA. CODE § 55-248.39 (Supp. 1979); WASH. REV. CODE §§ 59.18.240, .250 (West Supp. 1978).

14. For an historical analysis of retaliatory eviction, see *Comment, Retaliatory Eviction in Texas—An Analysis and a Proposal*, 10 ST. MARY'S L.J. 303, 305 (1978); *Comment, California's Common Law Defense Against Landlord Retaliatory Conduct*, 22 U.C.L.A. L. REV. 1161, 1163 (1975); 30 BAYLOR L. REV. 525, 525 (1978).

tion of a health law or regulation.¹⁵

In *Windward Partners v. Delos Santos*¹⁶ the court conceded that the Hawaii statute did not protect the tenants from retaliatory evictions arising from the tenants' public opposition to the landlord's rezoning application.¹⁷ The court, however, found that the statute did not "purport to be the sole expression of the rights and remedies available to landlords and tenants."¹⁸ Tenants could also rely on equitable defenses in summary possession proceedings,¹⁹ including the doctrine of retaliatory eviction.²⁰

Two basic concerns prompted the court to incorporate the retaliatory eviction doctrine into its common law and accord this defense to the four residential tenants in this case. First, the court noted that the legislature had granted the residential tenants a statutory right to appear before the Land Use Commission at a public hearing and offer testimony relevant to their landlord's rezoning petition.²¹ The legislative

15. The Hawaii statute provides:

Notwithstanding that the tenant has no written rental agreement or that it has expired, so long as the tenant continues to tender the usual rent to the landlord or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the tenant, nor shall the landlord otherwise cause the tenant to quit the dwelling unit involuntarily, nor demand an increase in rent from the tenant, nor decrease the services to which the tenant has been entitled, after:

- (1) The tenant has complained in good faith to the department of health, landlord, building department, office of consumer protection, or any other governmental agency concerned with landlord-tenant disputes of conditions in or affecting his dwelling unit which constitutes a violation of a health law or regulation or of any provision of this chapter; or
- (2) The department of health or other governmental agency has filed a notice or complaint of a violation of a health law or regulation or any provision of this chapter; or
- (3) The tenant has in good faith requested repairs under section 521-63 or 521-64.

HAWAII REV. STAT. § 521-74 (1976).

16. 59 Hawaii 104, 577 P.2d 326 (1978).

17. *Id.* at 110-11, 577 P.2d at 330. The landlord had argued that the four residential tenants' opposition to rezoning did not fall within any of the enumerated activities protected under the statute and that the retaliatory eviction defense was not available to the four nonresidential tenants whose rented premises were being used for commercial purposes only. *Id.* at 110, 577 P.2d at 330.

18. *Id.* at 110-11, 577 P.2d at 330. The court cited HAWAII REV. STAT. § 521-3(a) in support of its conclusion: "Unless displaced by the particular provisions of this chapter, the principles of law and equity . . . supplement its provisions." 59 Hawaii at 110-11, 577 P.2d at 330.

19. *See* *Island Holidays v. Fitzgerald*, 58 Hawaii 522, 574 P.2d 884 (1978).

20. In recognizing retaliatory eviction as an equitable defense in this case, the court surveyed other jurisdictions' incorporation of the doctrine into their common law. *See* 59 Hawaii at 111-14, 577 P.2d at 330-32.

21. *Id.* at 114, 577 P.2d at 332.

purpose underlying this right was to encourage all interested parties to express their views on the rezoning proposal.²² That purpose would be frustrated if landlords, by threatening eviction, could discourage tenants from speaking in a public forum.²³ Second, the court, in a cryptic passage, stated that it premised its holding "substantially on the recognition of the salutary policy of protecting the *property interests* of the tenants from retaliating landlords."²⁴

The court thus fashioned a two-prong test to determine whether a residential tenant can invoke an affirmative defense of retaliatory eviction. A tenant must show that the eviction resulted from (1) his exercise of a statutory right (2) to protect a property interest in his tenancy.²⁵ The court then summarily found the test to be equally applicable to nonresidential tenants,²⁶ although it recognized that other jurisdictions disallow the defense when asserted by commercial tenants.²⁷

The *Windward Partners* decision is important for three reasons. The Hawaii Supreme Court is the first court to shape a common-law retaliatory eviction defense as a supplement to an existing statutory defense.²⁸

22. *Id.* at 115, 577 P.2d at 332.

23. *Id.* at 116, 577 P.2d at 333.

24. *Id.* (emphasis added) In a footnote to this statement, the court added:

The legislative history of HRS § 521-74 indicates that when the predecessor provision was first enacted as Act 41 and designated as HRS § 666-34, the primary purpose was to encourage the repair of substandard housing conditions and to provide tenants with protection from evictions and rent increases by landlords for actions taken by tenants to remedy unsafe or unsanitary conditions. Standing Committee Report Number 485-70, House Bill 43. In 1972, when the legislature enacted the Residential Landlord-Tenant Code, it removed the retaliatory provision from chapter 666 and enacted it as HRS § 521-74, amending the provision to include as protected conduct, complaints by tenants for other landlord-tenant disputes, in addition to health-related disputes.

Id. at 116-17 n.11, 577 P.2d at 333-34 n.11.

25. *Id.* at 116, 577 P.2d at 333.

26. *Id.* at 117, 577 P.2d at 334.

27. *Id.* at 118, 577 P.2d at 334. The court cited the following cases, in which commercial tenants could not raise a retaliatory eviction defense to unlawful detainer proceedings: *Clark Oil & Ref. Corp. v. Thomas*, 25 Ill. App. 3d 428, 323 N.E.2d 479 (1974); *Mobil Oil Corp. v. Rubenfeld*, 48 A.D.2d 428, 370 N.Y.S.2d 943 (1975); *Cornitius, Inc. v. Wheeler*, 276 Or. 747, 556 P.2d 666 (1976); *Rossov Oil Co. v. Heiman*, 72 Wis. 2d 696, 242 N.W.2d 176 (1976). For other cases holding that commercial tenants may not raise a retaliatory eviction defense, see *Mobil Oil Corp. v. Handley*, 76 Cal. App. 3d 956, 143 Cal. Rptr. 321 (1978); *Union Oil Co. v. Chandler*, 4 Cal. App. 3d 716, 84 Cal. Rptr. 756 (1970). See also *S.P. Growers Ass'n v. Rodriguez*, 17 Cal. 3d 719, 730, 552 P.2d 721, 727, 131 Cal. Rptr. 761, 767 (1976); RESTATEMENT (SECOND) OF PROPERTY § 14.8 (1977). No other case has allowed a commercial tenant to assert a retaliatory eviction defense.

28. See notes 32-36 *infra* and accompanying text.

Hawaii is also the first jurisdiction to extend this defense to nonresidential tenants.²⁹ Finally, the decision appears to grant tenants a property interest in their tenancies not previously recognized at common law.³⁰

By supplementing the Hawaii retaliatory eviction statute with a common-law defense,³¹ the Hawaii Supreme Court effectively ignored the legislative determination of the scope of tenants' protected rights. Some commentators have argued that policy matters are best left to the legislature because it is the branch of government most responsive to popular needs.³² Such deference is especially important when the legislature has by statute expressed its view on public policy.³³ The Hawaii legislature could have modeled its statute after those of states that had extended broader protection to tenants.³⁴ In enacting a more limited defense, however, the legislature expressed its view on the proper balance among such competing interests as the tenant's ability to exercise his statutory rights, the summary nature of forcible entry and detainer suits, and the landowner's traditional right to dispose of his property as he pleases.³⁵ In addition to overriding the legislature's determination of public policy, the Hawaii Supreme Court also gave short shrift to the superior ability of the legislature to make uniform laws that provide a definite standard upon which citizens may model their conduct.³⁶

29. See notes 37-40 *infra* and accompanying text.

30. See notes 41-42 *infra* and accompanying text.

31. See notes 6-15 *supra* and accompanying text.

32. Comment, *Prohibition of Retaliatory Eviction in Landlord-Tenant Relations: A Study of Practice and Proposals*, 54 N.C.L. REV. 861, 881 (1976); Comment, *Retaliatory Eviction in Texas—An Analysis and a Proposal*, 10 ST. MARY'S L.J. 303, 308 (1978). See also *Schweiger v. Superior Court*, 3 Cal. 3d 507, 518, 476 P.2d 97, 104, 90 Cal. Rptr. 729, 736 (1970); *Dickhut v. Norton*, 45 Wis. 2d 389, 395, 173 N.W.2d 297, 303 (1970).

33. See Note, *Retaliatory Eviction in California: The Legislature Slams the Door and Boards Up the Windows*, 46 SO. CAL. L. REV. 118, 127 (1972).

34. The New Jersey statute, for example, went into effect in 1970, well before the enactment of the Hawaii statute. It provides in part that no landlord can evict a tenant:

- (a) As a reprisal for the tenant's efforts to secure or enforce any rights under the lease or contract, or under the laws of the state of New Jersey or its governmental subdivisions, or of the United States; or
- (b) As a reprisal for the tenant's good faith complaint to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code or ordinance, or state law or regulation which has as its objective the regulation of premises used for dwelling purposes.

N.J. REV. STAT. ANN. §§ 2A:42-10.10 to .14 (Supp. 1979-1980).

35. The Hawaii Supreme Court noted exactly this reasoning in its earlier opinion of *Aluli v. Trusdell*, 54 Hawaii 417, 421, 508 P.2d 1217, 1220 (1973); see *S.P. Growers Ass'n v. Rodriguez*, 17 Cal. 3d 719, 721, 552 P.2d 721, 723, 31 Cal. Rptr. 761, 763 (1976); Note, *supra* note 33, at 127.

36. See *Markese v. Cooper*, 70 Misc. 478, 490, 333 N.Y.S.2d 63, 74 (Monroe County Ct.

Not only did the Hawaii court improperly extend the scope of protected tenant activities, it also contradicted prior law by extending the retaliatory eviction defense to a new class of persons—nonresidential tenants.³⁷ The court spent little time justifying this innovation.³⁸ A number of distinctions between residential and nonresidential tenants might justify different legal treatment of the two.³⁹ By failing to review these distinctions, the court effected a potentially major change in property law without well-reasoned justification.⁴⁰

Because the court in extending a common-law retaliatory eviction defense to both residential and nonresidential tenants disregarded the legislature's policy determinations in this area and failed to recognize important distinctions between residential and nonresidential tenants, the actual explanation for this decision may lie in the court's concern over protecting tenants from unjust evictions. The court's statement that it premised its holding substantially on "the salutary policy of protecting the property interests of the tenants from retaliating landlords" supports this view.⁴¹

The court's reference to a tenant's "property interest," however, is perplexing. According to traditional property law, a landlord may terminate a periodic tenancy at the expiration of the term regardless of

1972); Comment, *Retaliatory Eviction in Texas—An Analysis and a Proposal*, 10 ST. MARY'S L.J. 303, 309 (1978).

37. 59 Hawaii at 117, 577 P.2d at 334.

38. *Id.* See text accompanying notes 26-27 *supra*. The court in *Cornitius, Inc. v. Wheeler*, 276 Or. 747, 556 P.2d 666 (1976), for example, expressed doubt whether the doctrine would ever apply to tenants other than apartment dwellers.

39. Although an evicted commercial tenant may have no place to work, an evicted residential tenant may have no place to live. In a tight urban housing market, a residential tenant may encounter greater difficulty in finding another apartment than would a commercial tenant attempting to find another office. A commercial tenant, then, may be only minimally deterred from exercising a statutory right as compared to a residential tenant. Additionally, the nonresidential tenant may be better able to protect his rights because of greater bargaining power vis-à-vis the landlord than the residential tenant. These differences might only justify extension of the retaliatory eviction defense to the residential context.

For a general discussion on how courts have treated differently commercial and residential tenants with regard to the implied warranty of habitability, see 35 U. PITT. L. REV. 901 (1974).

40. A number of commentators, however, have advocated the result reached by the Hawaii Supreme Court. See Moskowitz, *Retaliatory Eviction—A New Doctrine in California*, 46 CAL. ST. B.J. 23 (1971); Comment, *California's Common Law Defense Against Landlord Retaliatory Conduct*, 22 U.C.L.A. L. REV. 1161 (1975); 25 DEPAUL L. REV. 522 (1976); 22 HASTINGS L.J. 1365 (1971).

41. See note 24 *supra* and accompanying text.

motive;⁴² thus, a tenant has no property interest in the renewal of his tenancy. The court, therefore, in precluding *Windward Partners* from terminating for retaliatory reasons the month-to-month tenancies of the eight tenants in this case, seems to have recognized an expectancy—*i.e.*, “a property interest”—in the renewal of periodic tenancies.

For this reason the court’s decision may signal a significant change in the judicial attitude toward the doctrine of retaliatory eviction.⁴³ Courts originally fashioned the retaliatory eviction doctrine in response to the public policy need for private citizens’ reports of housing code violations.⁴⁴ The *Windward Partners* court may have shifted the doctrine’s foundation to the need to protect tenants from retaliating landlords.⁴⁵

DOMESTIC LAW—DIVORCE—KENTUCKY INCLUDES LICENSE TO PRACTICE DENTISTRY IN MARITAL PROPERTY DIVISION. *Inman v. Inman*, 578 S.W.2d 266 (Ky. Ct. App. 1979). Early in the Inmans’ seventeen-year marriage, Mrs. Inman worked as a teacher to enable her husband to attend dental school. Although Dr. Inman worked steadily as a dentist after obtaining his license and the Inmans acquired several

42. See note 5 *supra* and accompanying text.

43. California may have followed Hawaii’s lead in extending a common-law retaliatory eviction defense to tenants beyond its statutory defense. In *Vargas v. Municipal Court*, 22 Cal. 3d 902, 587 P.2d 714, 150 Cal. Rptr. 918 (1978), the court allowed an agricultural tenant to assert a common-law retaliatory eviction defense in addition to its statutory defense. The landlord conceded that the common-law defense existed, but claimed that the lower court lacked jurisdiction. This concession is surprising in light of four law review articles that had debated the question of whether a common-law retaliatory eviction defense still existed in California after enactment of the California statute. See Moskowitz, *supra* note 40; Note, *supra* note 33; Comment, *California’s Common Law Defense Against Landlord Retaliatory Conduct*, 22 U.C.L.A. L. REV. 1161 (1975); 22 HASTINGS L.J. 1365 (1971). The California Supreme Court noted this debate and expressly left open the question in *S.P. Growers Ass’n v. Rodriguez*, 17 Cal. 3d 719, 729 n.4, 552 P.2d 721, 727 n.4, 131 Cal. Rptr. 761, 767 n.4 (1976). *But see* *Laster v. Bowman*, 52 Ohio App. 2d 379, 370 N.E.2d 767 (1977) (statute is exclusive remedy available to evicted tenants).

44. See notes 6-10 *supra* and accompanying text.

45. If the interest granted to the tenants in *Windward* extends one step further, a situation may develop in which a landlord cannot evict a tenant without good cause. See D.C. CODE ENCYCL. § 45-1653 (West Supp. 1978-1979); N.J. STAT. ANN. § 2A:18-61.1 (West Supp. 1979-1980); note 8 *supra*. Tenants in these states seem to have an even greater “property interest” in their tenancies than the *Windward* tenants.