

[Trial Court Improperly Grants an Award of Fees to Tenant Under Fair Housing Act](#)

April 27, 2011 by [David J. McMahon](#)

In [Morrison v. Vineyard Creek](#), 2011 DJDAR 4611 (2011), the [California Court of Appeal for the First Appellate District](#) overturned an award of attorney fees granted to a tenant under [California's Fair Employment and Housing Act](#) (FEHA).

The plaintiff signed a lease for an apartment. The lease stated that the apartment would only be used as a private residence and specifically prohibited all uses for commercial or non-residential purposes.

After taking possession of the premises, the plaintiff notified the landlord that she intended to operate a family child day care facility on the premises pursuant to the [California Child Day Care Facilities Act](#) (Act). The landlord responded to the notice, stating that operation of a day care business in the apartment would constitute a breach of the lease.

Plaintiff then sued the landlord. The plaintiff alleged violations of the Act, [California's anti-retaliation statute](#), and FEHA. Thereafter, the parties signed a settlement agreement. The landlord agreed to recognize the plaintiff's right to operate a family child care home and to pay \$6,501.

In 2009, the plaintiff moved for attorney fees under the retaliatory eviction statute and FEHA. The trial court denied the motion for fees and the plaintiff pursued an appeal of the decision.

The court of appeal cited [Civil Code Section 1942.5](#), the anti-retaliation statute. The court noted that the statute provides for an award of attorney fees for the prevailing party in an action brought for damages for retaliatory eviction.

The court of appeal noted that in this case, the landlord did not threaten to take any retaliatory action against the tenant and only wanted to enjoin the plaintiff from operating a day care facility. In addition, FEHA provides prevailing parties with attorney fees, and prohibits an owner of housing from discriminating against a person because of her source of income.

Because the landlord only sought to enforce the lease provision against the plaintiff, the landlord did not discriminate against the plaintiff. Thus, the plaintiff was not entitled to attorney fees.