ADVANCE SHEET HEADNOTE
February 20, 2024

2024 CO 11

No. 22SC936, *Miller v. Amos*—Landlord and Tenant—Forcible Entry and Detainer—Affirmative Defenses—Civil Rights.

In this case, the supreme court considers whether a tenant contesting a forcible entry and detainer action based on a notice to quit may assert a landlord's alleged violation of the Colorado Fair Housing Act as an affirmative defense. After examining the interplay between the Colorado Fair Housing Act and the forcible entry and detainer statute, sections 13-40-101 to -123, C.R.S. (2023), the court concludes that a tenant may assert a landlord's alleged violation of the Colorado Fair Housing Act as an affirmative defense to an eviction under the forcible entry and detainer statute.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 11

Supreme Court Case No. 22SC936
Certiorari to the District Court
Adams County District Court Case No. 22CV30680
Honorable Teri L. Vasquez, Judge

Petitioner:

Claire E. Miller,

v.

Respondent:

Jesse A. Amos.

Judgment Reversed
en banc
February 20, 2024

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE SAMOUR** joined.
CHIEF JUSTICE BOATRIGHT did not participate.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 At her eviction trial, petitioner Claire Miller tried to argue that her landlord improperly terminated her tenancy and filed a forcible entry and detainer ("FED") action to evict her because she refused to have sex with him. It is undisputed that Miller asserted this as a defense in the written answer she filed with the county court and that, if proven, her landlord's conduct would constitute discrimination and retaliation under the Colorado Fair Housing Act ("CFHA"), sections 24-34-501 to -509, C.R.S. (2023). But the county court would not allow Miller to assert the alleged CFHA violation as an affirmative defense at trial, concluding that a landlord can serve a notice to quit a tenancy for "no reason or any reason." Accordingly, it entered judgment for possession in favor of Miller's landlord. On appeal, the district court affirmed.

¶2 We granted certiorari to address whether an alleged violation under the CFHA can be raised as an affirmative defense to an FED action. After examining the interplay between the CFHA and the FED statute, sections 13-40-101 to -123, C.R.S. (2023), we conclude that yes, a tenant may assert a landlord's alleged violation of the CFHA as an affirmative defense to an FED eviction.

¶3 Accordingly, we reverse the judgment of the district court.

I. Facts and Procedural History

¶4 In 2021, Miller and her son moved into a home owned and occupied by Jesse Amos. Miller and Amos entered into an oral tenancy agreement under which Miller agreed to provide pet care and light housekeeping services in lieu of paying rent. Six months later, Amos served Miller with a notice to quit under section 13-40-107, C.R.S. (2023), of the FED statute, providing her with twenty-one-days' notice of the termination of her tenancy for her alleged breach of their oral agreement. When Miller didn't move out by the end of the notice period, Amos filed an FED complaint under section 13-40-110, C.R.S. (2023), in Adams County Court, seeking a judgment of possession and a writ of restitution.

¶5 Miller filed an answer, in which she asserted that the complaint and underlying notice to quit were unlawful and invalid because Amos commenced eviction proceedings in retaliation for her refusal to engage in sexual acts with him. She also asserted counterclaims, which were transferred to the district court, alleging unlawful removal or exclusion, assault and battery, intentional infliction of emotional distress, civil trespass, and violations of both the CFHA and the federal Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601–3619. The county court dismissed Amos's FED complaint, finding that the notice to quit was technically defective and that the court lacked jurisdiction to proceed on the issue of

possession. Miller's counterclaims—removed to the district court—remained pending.

¶6 Following the dismissal, Amos commenced eviction proceedings for a second time by serving Miller with a new twenty-one-day notice to quit. When that notice period elapsed and Miller again declined to vacate the home, Amos filed a second FED complaint in Adams County Court.

¶7 Miller again contested the eviction, alleging in her answer that Amos brought the action "primarily in retaliation for [her] refusal to engage in a sexual and/or romantic relationship with [him]." She reasserted her earlier claims that Amos subjected her to "unwelcome . . . demands to engage in sexual conduct as a condition of her maintaining her housing," as well as repeated unwelcome and offensive physical contact. And she further asserted that Amos commenced the latest eviction process after Miller "most recently refused to engage in [Amos's] express and implied demands for sexual conduct."

¶8 The case proceeded to trial, and Miller sought to assert as an affirmative defense that the eviction constituted retaliation on the basis of sex in violation of the CFHA. She argued that she should be allowed the opportunity to prove Amos's retaliatory intent and, if successful, that the defense should defeat Amos's claim for possession. The court permitted "limited questioning" as to Amos's motivation for evicting Miller. In the end, however, the court reasoned that a

landlord may file a notice to quit "for no reason or any reason," and thus concluded that a claim of a discriminatory or retaliatory eviction under the CFHA was not a defense to an FED action based on a notice to quit. Construing Miller and Amos's oral agreement as a month-to-month tenancy and finding no defect in the notice to quit, the court entered judgment for possession in favor of Amos. Miller appealed.

¶9 The district court affirmed the county court's judgment. It reasoned that the CFHA's references to relief "all refer to affirmative relief"; thus, there was no indication "that the [CFHA] was intended to be available for use as an affirmative defense in any situation." Accordingly, the court concluded that a tenant cannot properly assert a CFHA violation as a defense to an FED action. In the court's view, a tenant was not left without recourse if their landlord filed an FED action that constituted a violation of the CFHA because the tenant could still pursue a civil remedy (1) by asserting a counterclaim under the CFHA in the FED action or (2) by filing a separate action under the CFHA. We granted Miller's petition for a writ of certiorari.[1]

[1] We granted certiorari review of the following issue:

1. [REFRAMED] Whether a landlord's discrimination or retaliation under the Colorado Fair Housing Act can be raised as an affirmative defense to a forcible entry and detainer action.

II. Analysis

¶10 We start by identifying the standard of review and applicable law. We then examine the language and purpose of the CFHA and conclude that it prohibits a landlord from bringing an FED eviction action based on a tenant's protected characteristic or class. Next, we examine the language of section 13-40-113(1) and the CFHA and consider if the statutes evince a legislative intent to permit a tenant in an FED action to raise unlawful discrimination or retaliation as a defense. We conclude that they do. Ultimately, we apply these principles to the matter before us and hold that a tenant may properly raise a landlord's alleged CFHA violation as an affirmative defense to an FED action. Accordingly, we reverse the district court's judgment.

A. Standard of Review

¶11 Whether a tenant is entitled to assert a landlord's alleged violation of the CFHA as an affirmative defense turns on our interpretation of sections 24-34-502, C.R.S. (2023), and 13-40-113(1). Statutory interpretation involves questions of law, which we review de novo. *Mook v. Bd. of Cnty. Comm'rs*, 2020 CO 12, ¶ 24, 457 P.3d 568, 574.

¶12 Our primary goal when interpreting statutes is to effectuate the General Assembly's intent. *Id.* To accomplish this, we "read a statutory scheme as a whole, 'giving consistent, harmonious, and sensible effect to all of its parts,'" and we

ascribe to words and phrases their ordinary and common meanings. *Colo. Prop. Tax Adm'r v. CO_2 Comm., Inc.*, 2023 CO 8, ¶ 22, 527 P.3d 371, 376 (quoting *People in Int. of A.C.*, 2022 CO 49, ¶ 10, 517 P.3d 1228, 1233). Where statutory language is unambiguous, our work is complete, and we need not resort to other tools of statutory interpretation. *A.C.*, ¶ 10, 517 P.3d at 1234. We turn now to the statutes at issue in this case.

B. Colorado's Fair Housing Act

¶13 In 1959, nine years before Congress passed the FHA, Colorado became the first state in the nation to prohibit discrimination in housing when the General Assembly enacted the CFHA. As relevant here, the CFHA provides that:

> It is an unfair housing practice, unlawful, and prohibited:
>
> (a)(I) For any person to refuse to show, sell, transfer, rent, or lease any housing; . . . or otherwise make unavailable or deny or withhold from an individual any housing because of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, marital status, familial status, veteran or military status, religion, national origin, or ancestry . . . .

§ 24-34-502(1)(a)(I).

¶14 Section 3604(a) of the FHA contains nearly identical language, declaring it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). Given the substantial similarity in language

between the CFHA and the FHA, "federal case authority is persuasive in interpreting the [CFHA's] provisions." *Boulder Meadows v. Saville*, 2 P.3d 131, 136 (Colo. App. 2000). It is undisputed here that Miller's allegation that her landlord was using the eviction process to retaliate against her because she refused to have sex with him, if proven, would amount to discrimination on the basis of sex in violation of the CFHA. *See, e.g.*, *Honce v. Vigil*, 1 F.3d 1085, 1089 (10th Cir. 1993) ("quid pro quo" harassment is a form of sex discrimination that "occurs when housing benefits are explicitly or implicitly conditioned on sexual favors").

¶15 Like the rest of the Colorado Anti-Discrimination Act ("CADA")—of which it is a subpart—the CFHA "serves substantial public policy objectives." *Elder v. Williams*, 2020 CO 88, ¶ 1, 477 P.3d 694, 695. And, like its federal counterpart, the CFHA has "broad remedial intent." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982). However, remedies for violations of the CFHA are incidental to its central purpose of eradicating discriminatory practices. *See Brooke v. Rest. Servs., Inc.*, 906 P.2d 66, 69 (Colo. 1995) ("[R]emedies under [CADA] for individuals subjected to sex discrimination on the job are only incidental to [CADA's] primary purpose of eradicating discriminatory practices by employers."); *see also City of Colo. Springs v. Conners*, 993 P.2d 1167, 1174 (Colo. 2000) (the Colorado Civil Rights Act was "not designed primarily to compensate individual claimants but rather to eliminate discriminatory practices").

C. Forcible Entry and Detainer Actions

¶16 Colorado's FED statute "provides a quick mechanism for resolving possession disputes between landlords and tenants." *Miles v. Fleming*, 214 P.3d 1054, 1056 (Colo. 2009). The statutory scheme permits a landlord to terminate a tenancy through an adequate written notice to quit, subject to certain time limitations. § 13-40-107(1).

¶17 Whereas other methods of termination require the landlord to state a basis for eviction, *see e.g.*, § 13-40-106, C.R.S. (2023) (requiring a landlord filing a demand for compliance to "specify[] the grounds of the demandant's right to the possession of such premises"), a notice to quit does not, § 13-40-107; *see also* Lindsay J. Miller, *Residential Tenancies, Lease to Eviction – An Overview of Colorado Law*, 43 Colo. Law. 55, 60 (May 2014) (explaining that a notice to quit is used to terminate a holdover tenancy or to prevent a holdover tenancy). The notice to quit must be served not less than twenty-one days before the end of "[a] tenancy of one month or longer but less than six months." § 13-40-107(1)(c). And if, at the end of the twenty-one-day notice period, the tenant does not vacate the residence, the landlord may proceed with an eviction action by filing a written complaint with the court "describing the property with reasonable certainty, the grounds for the recovery thereof, the name of the person in possession or occupancy, a prayer for

recovery of possession, and a signed affidavit," § 13-40-110(1)(a), and must serve the tenant with a summons and copy of the complaint, § 13-40-112, C.R.S. (2023).

¶18 A tenant who wishes to contest the eviction may do so by filing a written answer with the court, setting "forth the grounds on which the defendant bases the defendant's claim for possession, . . . presenting *every defense* which then exists and upon which the defendant intends to rely." § 13-40-113(1) (emphasis added). If, after a trial, the court finds that the tenant is guilty of an unlawful detention—i.e., the tenant "holds over and continues in possession" of the property after the lawful termination of the tenancy pursuant to the notice to quit, § 13-40-104(1)(c), C.R.S. (2023)—the court shall enter a judgment of possession and a writ of restitution in favor of the landlord, § 13-40-115, C.R.S. (2023).

III. Application

¶19 The question in this case, which is one of first impression, is whether a tenant can properly assert a landlord's alleged violation of the CFHA as an affirmative defense in an FED action. Miller contends that the district court erred in concluding that a landlord's alleged CFHA violation cannot be asserted as a defense in this manner. She acknowledges that a landlord can generally serve a notice to quit a tenancy for "no reason or any reason," but argues that the plain language of the CFHA "prohibits" a landlord from terminating a tenancy or evicting a tenant because of a protected characteristic or because the tenant is a

member of a protected class. *See* § 24-34-502(1)(a)(I). Additionally, Miller asserts, a landlord's violation of the CFHA is an equitable defense and this court has long held that tenants can raise equitable defenses in unlawful detainer actions. Finally, she contends that because the CFHA's central purpose is to prevent housing discrimination—not just to provide an individual with a remedy after the fact—a tenant must be able to raise a landlord's prohibited conduct as an affirmative defense in the face of an eviction. That is, a tenant may use the CFHA "as a shield against a discriminatory or retaliatory FED eviction," not solely as a sword to recover damages at some point long after being evicted. We turn next to consider these arguments.

A. The CFHA Prohibits a Landlord from Discriminating or Retaliating Against a Tenant by Terminating Their Tenancy and Pursuing an FED Action Based on the Tenant's Protected Characteristic or Membership in a Protected Class

¶20 We first address Miller's contention that the district court erred because the plain language of the CFHA prohibits a landlord from evicting a tenant in an FED proceeding for reasons that violate the CFHA.

¶21 While Colorado has long recognized that a landlord has a "traditional right to decline to renew a lease for any reason," that right is not absolute. *W.W.G. Corp. v. Hughes*, 960 P.2d 720, 721 (Colo. App. 1998). Under the CFHA, "[i]t is an unfair housing practice, unlawful, and prohibited" for a landlord "to refuse to . . .

rent[] or lease any housing[,] . . . or otherwise make unavailable or deny or withhold from an individual any housing because of" a person's protected characteristic or membership in a protected class. § 24-34-502(1)(a)(I). Courts have interpreted nearly identical language in the FHA to "protect[] renters not only from eviction, but also from discriminatory actions that would lead to eviction," including "refusing to renew [the tenant's] lease and directing them to vacate their apartment." *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016). Put another way, the FHA prohibits not only discriminatory evictions but also "attempted discriminatory evictions." *Bloch v. Frischholz*, 587 F.3d 771, 782 (7th Cir. 2009). If it is to fulfill its purpose of "eliminat[ing] . . . discriminatory practices," *Colo. C.R. Comm'n ex rel. Ramos v. The Regents of the Univ. of Colo.*, 759 P.2d 726, 728 (Colo. 1988), the same must be true of the CFHA.

¶22 Thus, we agree with Miller that the plain language of the CFHA prohibits a landlord from discriminating or retaliating against a tenant by terminating their tenancy and pursuing an FED eviction because the tenant is disabled or a person of color or a veteran, or otherwise protected by the CFHA. But does that mean that a landlord's alleged CFHA violation can be asserted defensively in an FED action? Or is a tenant under these circumstances—as the district court concluded—limited to pursuing affirmative relief? We examine these questions next.

B. A Tenant Can Properly Assert a Landlord's Alleged CFHA Violation as an Affirmative Defense

¶23 To determine whether a tenant can properly assert a landlord's alleged CFHA violation as an affirmative defense in an FED action, we begin, "[a]s always, . . . with the text." *People in Int. of A.T.C.*, 2023 CO 19, ¶ 15, 528 P.3d 168, 171 (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457 (2022)). When a statutory term is undefined, "we assume that the General Assembly intended to give the term its usual and ordinary meaning." *Roup v. Com. Rsch., LLC*, 2015 CO 38, ¶ 8, 349 P.3d 273, 276. In determining the usual and ordinary meaning, we may look to a dictionary for assistance. *Cowen v. People*, 2018 CO 96, ¶ 14, 431 P.3d 215, 218.

¶24 Recall that under section 13-40-113(1), a tenant contesting an FED action must timely file an answer "set[ting] forth the grounds on which the defendant bases the defendant's claim for possession, . . . presenting every defense which then exists and upon which the defendant intends to rely." The dictionary defines "every" as "being each individual or part of a group *without exception*." *Every*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/every [https://perma.cc/99XB-7W5C] (emphasis added). Thus, we read the unambiguous language of the statute to require a tenant sued for eviction to raise each defense on which they intend to rely, without exception.

¶25 This provision of the FED statute does not, however, entirely answer whether the CFHA can be asserted as an affirmative defense to an FED action. The

question remains whether a tenant can wield the CFHA defensively or is limited to pursuing affirmative legal relief. To answer that, we look to Colorado's established law regarding the assertion of defenses that are equitable in nature in FED cases.

¶26 It's well-settled in Colorado that defendants can raise equitable defenses to legal causes of action. *White v. Widger*, 358 P.2d 592, 596–97 (Colo. 1960) (citing *Fairview Mining Corp. v. Am. Mines & Smelting Co.*, 278 P. 800, 802 (Colo. 1929)). And we have long recognized that defenses which are equitable in character can be raised by a tenant in an FED proceeding. *Adcock v. Lieber*, 117 P. 993, 994 (Colo. 1911). We have additionally emphasized that the FED statute is "designed not only to provide landlords with an expeditious method of regaining possession of their premises but also to ensure that tenants not be ejected without due process of law." *Miles*, 214 P.3d at 1056. As the U.S. Supreme Court recognized in *Pernell v. Southall Realty*, 416 U.S. 363, 385 (1974),

> A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

Ensuring due process requires that a defendant in an FED action has "an opportunity to fully present available defenses." *Butler v. Farner*, 704 P.2d 853, 858 (Colo. 1985).

¶27 Where applicable, tenants may assert affirmative defenses, which are "facts and arguments that, if true, will defeat the plaintiff's . . . claim, even if all the allegations in the complaint are true." *LeHouillier v. Gallegos*, 2019 CO 8, ¶ 42, 434 P.3d 156, 163 (quoting *Affirmative Defense*, Black's Law Dictionary (10th ed. 2014)). Thus, a landlord's ownership of a property does not always defeat a tenant's right to possession, even when the landlord has followed the FED statute's requirements. An affirmative defense that sounds in equity may allow a tenant to retain possession when it would be inequitable to allow the landlord to evict the tenant. *See White*, 358 P.2d at 597; *see also Abstract Inv. Co. v. Hutchinson*, 22 Cal. Rptr. 309, 314 (Cal. Ct. App. 1962) ("[T]he very nature of [an unlawful detainer] action, involving, as it does, a forfeiture, . . . requires 'a full examination of all of the equities involved . . . .'" (quoting *Knight v. Black*, 126 P. 512, 515 (Cal. Dist. Ct. App. 1912))).

¶28 Colorado's tradition of permitting courts to consider equitable defenses in eviction proceedings extends back more than a century.[2] In *Adcock*, this court

[2] The term "equitable defenses" in this context is often used broadly to include defenses beyond those that originally were cognizable only in courts of equity. *See, e.g.*, *Adcock*, 117 P. at 994 (recognizing that a claim for specific performance of a contract cannot be compelled in a suit for unlawful detainer, but that such a contract and the facts that support it could be asserted as an equitable defense); *see also Schweiger v. Superior Ct.*, 476 P.2d 97, 101 (Cal. 1970) ("[T]he right not to be deprived in court of home and shelter because of the exercise of statutory rights is a 'broad equitable principle' . . . deserving of protection . . . ."); *Abstract*,

wrestled with an earlier provision of the FED statute, which provided that the defendant in an unlawful detainer action "shall set forth all the substantial facts upon which he relies, entitling him to the possession of the property described in plaintiff's complaint." 117 P. at 994 (quoting § 2612, C.R.S. (1908)). We concluded that "[a]ll the substantial facts . . . includes such facts as will entitle him to the possession at law *or in equity*." *Id.* (emphasis added). This language, we observed, "is broad and comprehensive, and *does not preclude a defendant from setting up an equitable defense, but rather invites him to do so*." *Id.* (emphasis added).

¶29 Colorado courts have repeatedly affirmed this principle. *See, e.g.*, *White*, 358 P.2d at 597 (holding that the defense of laches barred an FED action because "[t]he inequity which would result from allowing plaintiff to maintain the [FED] action in the present fact setting is clear"); *McCrimmon v. Raymond*, 234 P. 1058, 1058 (Colo. 1925) ("[E]quitable defenses may be interposed in [FED] actions . . . ."); *Hamill v. Bank of Clear Creek Cnty.*, 45 P. 411, 413 (Colo. 1896) (defendants "may set up matters equitable in character" which, if proved, would defeat the plaintiff's legal claim to possession); *W.W.G.*, 960 P.2d at 721 (describing retaliatory eviction as an equitable defense).

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22 Cal. Rptr. at 313 ("The mere fact that an equitable concept has been denominated by the legislators and the people . . . does not strip it of its equitable nature and derivation.").

¶30 And a number of jurisdictions have either directly held or indirectly acknowledged that an alleged violation of a state or federal fair housing statute can be raised as an affirmative defense to defeat a discriminatory or retaliatory eviction.[3]

¶31 In our view, a landlord's violation of the CFHA—an *unfair* housing practice—raises significant equitable concerns. The General Assembly's primary purpose in enacting the CFHA is turned on its head if a landlord is simultaneously prohibited from and allowed to engage in a discriminatory or retaliatory eviction.

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[3] *E.g.*, *Newell v. Rolling Hills Apartments*, 134 F. Supp. 2d 1026, 1038 (N.D. Iowa 2001) (holding that discrimination is an available affirmative defense in Iowa and noting that "[i]t appears that the majority of states to consider the question recognize that the landlord's discriminatory conduct . . . towards a tenant on the basis of a protected characteristic . . . is a cognizable defense in [an FED] action"); *Fayyumi v. City of Hickory Hills*, 18 F. Supp. 2d 909, 912 (N.D. Ill. 1998) ("[A] defendant in [an FED] action may rely upon the [FHA] to enjoin a violating landlord's attempt to evict him."); *Abstract*, 22 Cal. Rptr. at 314 (tenant's affirmative defense of racial discrimination, if proven, would bar eviction); *Marine Park Assocs. v. Johnson*, 274 N.E.2d 645, 648 (Ill. App. Ct. 1971) (tenant's assertion of racial discrimination constituted a type of equitable defense that was "germane . . . to the distinctive purpose of the [FED] proceeding" and therefore could be raised as an affirmative defense); *Mascaro v. Hudson*, 496 So. 2d 428, 429 (La. Ct. App. 1986) (affirmative defense of national origin discrimination in violation of the FHA could be raised in summary eviction proceeding); *Josephinium Assocs. v. Kahli*, 45 P.3d 627, 632 (Wash. Ct. App. 2002) (tenants may assert unlawful discrimination as a defense to eviction); *Racine Highland Apartments v. Mosby*, No. 79-726, 1980 WL 99293, at *1 (Wis. Ct. App. Jan. 16, 1980) (unpublished opinion) ("[E]ven if it is not necessary to state a reason for evicting a person, removing a tenant for racial reasons, if proven, is not permissible and cannot be the basis for eviction.").

Because it is well-settled that tenants in Colorado can raise equitable defenses in eviction proceedings and because a landlord's violation of the CFHA—if established—raises significant equitable concerns, we conclude that a tenant may properly assert a CFHA violation as an affirmative defense in an FED action.

C. The District Court's Conclusion that the CFHA Only Allows a Tenant to Seek Affirmative Relief Is at Odds with the CFHA's Central Purpose

¶32 The district court concluded that a tenant alleging a CFHA violation is limited to seeking a civil remedy through a counterclaim in an FED action or a separate civil action under the CFHA. We disagree.

¶33 Interpreting the intersection of the FED statute and the CFHA in this manner would all but ensure that the CFHA fails to fulfill its purpose of *preventing* discriminatory or retaliatory evictions. Requiring a tenant to first suffer a wrongful eviction and *then* pursue a separate action to vindicate their statutory right undermines the effectiveness of the statutory scheme and reduces judicial efficiency. This order of operation ignores the plain language of the CFHA and subverts its central purpose, which is to eradicate discriminatory practices.

¶34 A tenant's right to be free from discriminatory conduct and right to due process are undermined if the tenant is not able to prevent an unlawful eviction in the first instance. *Cf. Fuentes v. Shevin*, 407 U.S. 67, 81 (1972) ("If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at

a time when the deprivation can still be prevented."). Indeed, this court has recognized that judicial remedies may be inadequate in the wake of a wrongful eviction. *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 7, 529 P.3d 105, 107 (noting that "an appeal would be an inadequate remedy . . . if the eviction moves forward" because the defendant would "lose possession of her home" and "the eviction would mar her rental history").

¶35 Additionally, neither the FED statute nor the CFHA requires piecemeal litigation where the tenant does not seek affirmative relief but instead only defends against the landlord's claim. The enforcement provision of the CFHA instructs that "an aggrieved person may commence a civil action in an appropriate United States district court or state district court . . . *to obtain appropriate relief* with respect to such discriminatory housing practice." § 24-34-505.6(1), C.R.S. (2023) (emphasis added). This language creates an important distinction: While a county court may not have jurisdiction to consider a tenant's *counterclaim* arising under the CFHA, the statute does not prohibit the same court from considering a violation of the CFHA raised solely as an affirmative defense—that is, only to defeat the landlord's claim for possession.

¶36 Amos argues that allowing a tenant to assert this affirmative defense would inject delay into a summary proceeding intended to produce a speedy resolution. That may well be true, although from the record before us, it is unclear how much

delay this type of defense will, in fact, typically cause. But more importantly, as we have explained today, Colorado's FED law does not sacrifice a tenant's rights at the altar of expediency. On the contrary, a tenant's right "to be heard on relevant matters, and to be secure in their constitutional rights, as well as the desirable purpose of preventing a multiplicity of suits, is, and must be, superior to the desire to provide a speedy remedy for possession." *Rosewood Corp. v. Fisher*, 263 N.E.2d 833, 839 (Ill. 1970). A tenant must be afforded due process. And "[s]ome delay, of course, is inherent in any fair-minded system of justice." *Pernell*, 416 U.S. at 385.

¶37 It's not for this court to decide whether Miller's allegations are true, nor whether she could have persuaded the court that her landlord violated the CFHA.[4] But Colorado law requires that she should have been given the opportunity to present her affirmative defense.

[4] This is not to say that if a tenant can prove a violation of the CFHA, the tenant is entitled to remain in possession of the property in perpetuity. If the illegal purpose is dissipated, a landlord can, unless otherwise prohibited by law, evict a tenant. *See Edwards v. Habib*, 397 F.2d 687, 702 (D.C. Cir. 1968).

IV. Conclusion

¶38 For the foregoing reasons, we hold that a landlord's alleged discrimination or retaliation in violation of the CFHA may be asserted as an affirmative defense in an FED action.[5] Accordingly, we reverse the district court's judgment.

CHIEF JUSTICE BOATRIGHT did not participate.

[5] We are mindful that the General Assembly recently enacted S.B. 23-184, which took effect on August 7, 2023. That bill codified the right of tenants to assert a landlord's alleged violation of the CFHA as an affirmative defense in an FED eviction. Ch. 402, sec. 6, § 13-40-113(2.5), 2023 Colo. Sess. Laws 2411, 2413–14. S.B. 23-184 makes clear what the law has been since the CFHA was enacted: A landlord cannot evict a tenant for reasons that are unlawful under the CFHA.