

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

97 RENTALS, L.L.C.

NO. 2017 CW 1381

VERSUS

MARLIN SERVICES, INC.

DEC 04 2017

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In Re: Marlin Services, Inc., applying for supervisory writs,  
32nd Judicial District Court, Parish of Terrebonne,  
No. 178288.

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**BEFORE: McCLENDON, HIGGINBOTHAM, THERIOT, HOLDRIDGE AND PENZATO, JJ.**

**WRIT GRANTED.** Upon Marlin Services, Inc.'s eviction from the leased premises on February 10, 2017, 97 Rentals, LLC's right to collect accelerated future rentals for the remainder of the lease term was extinguished. When a lessee defaults on a lease agreement, the lessor's relief is mutually exclusive. The lessor may not both cancel the lease and enforce its terms. See **Kushi Healthcare, LLC v. St. James Behavioral Health Hosp., Inc.** 2015-0007 (La. App. 1 Cir. 6/5/15), 174 So.3d 1192. Whether Marlin Services, Inc. abandoned the premises is immaterial, because 97 Rentals, LLC did not avail itself to the "self-help" exception to eviction recognized in **Richard v. Broussard**, 495 So.2d 1291 (La. 1986) and La. Code Civ. P. art. 4731. This court finds that 97 Rentals, LLC is not entitled to collect unpaid rentals from the date of eviction through the expiration of the lease term. Additionally, Marlin Services, Inc.'s defense to 97 Rentals, LLC's claim arises by operation of the very law under which the plaintiff seeks recovery; therefore, Marlin was not required to affirmatively plead the defense. "There can be no unfair surprise, since no one may avail himself of ignorance of the law." **Fishbein v. State ex rel LSU Health Sciences Center**, 2006-0549 (La. App. 1 Cir. 3/9/07), 960 So.2d 67, writ denied, 2007-0730 (La. 6/22/07), 959 So.2d 495 and 2007-0708 (La. 6/22/07), 959 So.2d 505; La. Civ. Code art. 5. Considering this, the trial court erred in denying Marlin Services, Inc.'s motion for partial summary judgment. The trial court's September 28, 2017 judgment is hereby reversed, Marlin's motion for partial summary judgment is granted, and 97 Rentals, LLC's claim for accelerated future rentals is dismissed with prejudice. 97 Rentals, LLC is cast with all costs of this proceeding.

GH  
AHP  
PMc

**Higginbotham and Theriot, JJ.**, dissent and would deny the writ. The criteria set forth in **Herlitz Construction Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (*per curiam*) are not met.

COURT OF APPEAL, FIRST CIRCUIT



DEPUTY CLERK OF COURT  
FOR THE COURT