

Arizona Commission on Access to Justice SRL-LJC Workgroup

Meeting Agenda

August 10, 2017 - 2:00 p.m. to 3:30 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 331 ♦ Phoenix, Arizona

[ACAJ WEBPAGE](#)



| TIME | AGENDA ITEM | PRESENTER |
|-----------|--|---|
| 2:00 p.m. | Welcome and Opening Remarks | <i>Judge Anna Huberman, Maricopa County Justice Court</i> |
| 2:05 p.m. | Status of Rule Petitions * Pg. 5 • R-16-0040: Mandatory Eviction Forms <ul style="list-style-type: none"> ○ Next steps • R-17-0020: Stipulated Judgments | <i>Judge Huberman</i> |
| 2:20 p.m. | Eviction-Related Projects <ul style="list-style-type: none"> • Enhance eviction webpages into subject matter pages in both English and Spanish <ul style="list-style-type: none"> ○ http://www.azcourts.gov/selfservicecenter/Eviction-Actions ○ http://www.azcourts.gov/elcentrodeautoservicio/Autoservicios-Centro-Formularios/Acci%C3%B3n-de-Desalojo * Pg. 7 • Review and revise Legal Info Sheets: Eviction Actions (based on CLS's informational documents) <ul style="list-style-type: none"> ○ http://www.azcourts.gov/selfservicecenter/Eviction-Actions/Legal-Info-Sheets-Eviction-Actions * Pg. 27 • Review Judge Huberman's eviction script (1st Legal Info Video) <ul style="list-style-type: none"> • Review Ellen Katz's informational documents regarding evictions | <i>Judge Huberman</i> |
| 3:25 p.m. | Discuss next Access to Justice meeting report Wednesday, September 20, 2017 - 12:00 p.m. to 2:00 p.m. State Courts Building, Phoenix, Arizona Conference Room 230 | <i>All</i> |

Arizona Commission on Access to Justice
SRL-LJC Workgroup
NOTES
June 29, 2017
2:00 p.m. to 3:30 p.m.

Present: Judge Anna Huberman (chair), Mike Baumstark, Judge Lawrence Winthrop
Telephonic: Judge Thomas Berning
AOC Staff: Theresa Barrett, Julie Graber, Kathy Sekardi

Matters considered:

1. Welcome and opening remarks

The June 29, 2017, meeting of the SRL-LJC Workgroup was called to order by Judge Anna Huberman, Chair, at 2:05 p.m.

2. R-17-0020 – Rule Petition regarding Stipulated Judgments in Eviction Actions

The workgroup reviewed the comments received and considered whether the workgroup should submit a reply. Discussion ensued and the workgroup addressed commenters' objections and suggested changes as follows:

- The modified proposal does not go far enough to ensure self-represented litigants understand the terms and effects of stipulated judgments.
 - The workgroup believes its proposed language goes further than the current language and practice and strikes a balance between the landlord attorneys and the tenant advocates.
 - Members do not believe the commenters' suggestions would solve the issue.
 - Alternative methods should be employed ensuring self-represented litigants understand the terms and effects of stipulated judgments, such as judicial education, a "navigator" program, housing clinics, and short educational videos about the eviction process.
- Language should be included that provides that courts call cases with stipulated judgments first.
 - The workgroup agrees with the intent but instead of instructing judges to run their calendars in a certain way, courts should be encouraged to consider best practices and develop their own internal protocols.
 - The workgroup recommends working with courts and addressing the issue in judicial training rather than in the proposed rule.
- Inconsistencies were identified:
 - Since all listed factors are mutually exclusive, the language in Rule 13(b)(4) was revised so "the court may accept a stipulated judgment, only when the court finds one of the following:"
 - Paragraph (D) was removed to avoid creating a conflict when a party does not personally appear.
 - Additionally, "tenant" has been replaced with "defendant," "landlord" has been replaced with "plaintiff," "rental property" has been replaced with "property," and "form" has been replaced with "judgment form."
 - Next, "contains the following warning" has been replaced with "that reads as follows."

- “Prior to accepting the stipulated judgment” has been added to the beginning of the paragraph in (b)(4):
 - Prior to accepting the stipulated judgment, the court determines that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied.

Next steps:

- Staff will prepare and circulate to workgroup members a draft reply by July 3, 2017, for review.

3. Discuss Strategic Planning for Workgroup Projects

The workgroup discussed several workgroup projects:

Community Legal Services Justice Court Project’s informational documents:

- The workgroup agreed that the informational documents from CLS were good forms and neutral enough.
- Staff suggested using images to represent the different sections to further enhance the documents.

Ellen Katz’s informational documents regarding evictions

- The workgroup agreed that the informational documents could be repurposed and could complement potential eviction videos.

Eviction scripts for videos

- The workgroup discussed educating the public on court processes driven by court cases rather than focusing on landlord and tenant obligations.
- Judge Huberman will prepare a script to include in the meeting materials for the next meeting.
- Staff will provide the PowToon’s video from AZCourtHelp.org so efforts are not duplicated.
- Any videos produced should be translated into Spanish. Judge Huberman volunteered to proofread and do the voice over.

4. Discuss next Access to Justice meeting report

Next steps:

- Judge Huberman noted that she will be out of town at the next Commission meeting.
- A tentative workgroup meeting date was set for August 10, 2017, at 2:00 p.m. A Doodle request will be sent to workgroup members.

Meeting adjourned at 3:30 p.m.

Next SRL-LJC Meeting: TBD

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-16-0040
RULES 5(a), 5(b)(6), 5(b)(7))
and ADD RULES 13(h) and 20,)
ARIZONA RULES OF PROCEDURE FOR)
EVICTION ACTIONS) **FILED 12/14/2016**
)
)
)
_____)

**ORDER
CONTINUING THIS MATTER AND REOPENING THE PETITION FOR COMMENT**

A petition having been filed proposing to amend Rules 5(a), 5(b)(6) and 5(b)(7), and to add Rules 13(h) and 20, Arizona Rules of Procedure for Eviction Actions, and comments and a reply having been received, upon consideration,

IT IS ORDERED that this matter be continued and that the attached version of the proposed rules, which includes the revisions made in Petitioner's Reply, be reopened for comment, with comments due February 17, 2017, in accordance with Rule 28(D), Rules of the Supreme Court of Arizona.

DATED this 14th day of December, 2016.

_____/s/_____
SCOTT BALES
Chief Justice

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TO:

Rule 28 Distribution
Hon Lawrence F Winthrop
Susan Pickard
Hon Gerald A Williams
Paul A Henderson
Denise M Holliday
Scott M Clark
Michael A Parham
Ellen S Katz
Scott M Drucker
Mark B Zinman
Pamela M Bridge
Cynthia Zwick
Melissa Parham

Legal Info Sheets: Eviction Actions





Non-Payment of Rent

[A.R.S. § 33-1368\(B\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 5 days. [A.R.S. § 33-1368\(B\)](#).
- In an action for non-payment of rent, landlord cannot file the eviction action until after the final day of the notice.
- If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>



4 REINSTATING THE RENTAL AGREEMENT

- If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, late fees that appear in a written rental agreement, attorney fees, and court costs before judgment is entered. [A.R.S. § 33-1368\(B\)](#).



Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Landlord

After Eviction Judgment

5 DEFENSES



- You paid your rent in full and on time (provide proof of payment to the court).
- Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).
- You made repairs to the unit after notifying the landlord that you would do so at his expense, gave your landlord an opportunity to make repairs, you hired a licensed contractor to perform the work, you provided a lien waiver signed by the contractor and list of work performed to your landlord, and subtracted the actual and reasonable costs of the work from the rent due (up to \$300.00 or half your monthly rent, whichever is greater). [A.R.S. § 33-1363](#).
- You do not pay rent or pay less than what your landlord is claiming because you are in subsidized housing – see [Legal Info Sheet: Eviction Actions: Section 8](#) (Section 8, tax credit, etc.).

6 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

7 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

8 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (5-day Notice for Health and Safety)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you a written notice stating what the problem is and that the rental agreement will terminate after 5 days if the problem is not fixed in 5 days. [A.R.S. § 33-1368\(A\)](#).
- In an action for material breach of the rental agreement materially affecting health and safety, your landlord cannot file the eviction with the court action until after the 5 days specified in the notice is up (at least 6 days after you receive the notice).
- If you did not receive a termination notice and an opportunity to fix the problems, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- If you fixed the problems identified in a 5-day notice, and there is a second 5-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 5-day notice and then file an eviction action if you remain in the rental unit after the 5th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/court filing fees>



4 DEFENSES



- Problems claimed in the notice and complaint did not occur.
- If there was a time period for you to fix the problems specified in the notice, you fixed the problems before the final day of the 5-day notice.
- Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371, RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1381](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony (documents and statements) must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or if the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- A default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (10-day Notice)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you a written notice stating what the problems are and that your rental agreement will terminate after 10 days if the problems are not remedied in 10 days. [A.R.S. § 33-1368\(A\)](#).
- In an action for material breach of the rental agreement, your landlord cannot file the eviction action until after the 10 days stated in the notice (at least 11 days after you receive the notice).
- If you did not receive a termination notice and an opportunity to fix the problems, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- If you fixed the problems identified in a 10-day notice, and there is a second 10-day notice claiming problems of the same or similar nature in the same rental agreement period, your landlord may give you a second 10-day notice and then file an eviction action if you remain in the rental unit after the 10th day. Even if you fix the problems specified in the second notice, your landlord can still file the eviction action.



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/court filingfees>



4 DEFENSES



- Problems stated in the notice and complaint did not occur.
- If there was a time period for you to fix the problems specified in the notice, you fixed the problems on or before the final day of the 10-day notice.
- Your landlord accepted rent, or a portion of rent with knowledge of an alleged violation by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371, RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord. A.R.S. § 33-1381](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Material Breach of the Rental Agreement (Immediate and Irreparable)

[A.R.S. § 33-1368\(A\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord must give you written notice of his intent to immediately terminate your rental agreement.
- Your landlord can file the eviction action the same day you receive the notice of immediate termination.
- If you did not receive a termination notice, the notice does not comply with the law, or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).
- *If the acts alleged in the eviction action concern criminal activity, anything you say or present at the eviction hearing may be used against you in a criminal case.*



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - 1) personally served on you, or
 - 2) posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER

- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>



4 DEFENSES



- The landlord claims that your conduct or the conduct of one of your guests violated the rental agreement; however, this conduct never happened or happened off the property.
- Your landlord accepted rent, or a portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1381](#).
- You are generally responsible for the conduct of your guests that violates the rental agreement, but only if you could reasonably be expected to be aware that such actions might occur and you did not attempt to prevent those actions to the best of your ability. [A.R.S. § 33-1368\(G\)](#).

5 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

6 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

7 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not have an opportunity to offer a defense and cannot appeal from this type of judgment.
- The judge may award your landlord possession of the property plus rent, late fees (if there is a written rental agreement), attorney fees, court costs, and other damages if there is a legal and factual basis to award these damages.
- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for important information if the judge rules against you.



Mobile Home Park Evictions

The following applies to mobile home park evictions where you own the mobile home and rent the lot your home sits on. The information below may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 NOTICE

- Your landlord may not terminate or refuse to renew your space rental agreement without good cause—"good cause" means:
 - Noncompliance with the rental agreement
 - Non-payment of rent
 - Change in use of land
 - Clear and convincing evidence that you have repeatedly violated the Mobile Home Parks Residential Landlord and Tenant Act. [A.R.S. § 33-1476\(B\)](#).
- Material noncompliance with the rental agreement** – If your landlord thinks you have broken the rental agreement, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 30 or more days if you have not fixed the problems in 14 days.
- Material noncompliance with the rental agreement affecting health and safety** – If your landlord thinks you have broken the rental agreement and the problems materially affect health and safety, he must give you a written notice identifying the problems and inform you that the rental agreement will terminate in 20 or more days if you have not fixed the problems in 10 days.
- Immediate termination** – If your landlord thinks you have broken the rental agreement and that the problem is both material and irreparable, and happened on the premises, your landlord can give you a notice for immediate termination of the rental agreement and file the eviction action the same day.
- Non-payment of rent** – Your landlord must give you written notice that your rent is unpaid and that your rental agreement will terminate if rent is not paid in 7 days.
- If you did not receive a termination notice and a chance to pay the rent and late fees, or the notice does not comply with the law or was not properly served, the court must dismiss the eviction action. [RPEA 13\(a\)\(2\)](#).



2 SERVICE

- Generally, an eviction action summons and complaint must be served in one of two ways:
 - personally served on you, or
 - posted in an obvious place and mailed to you by certified mail. [RPEA 5\(f\)](#).



3 ANSWER



- You may file a written answer or answer orally in open court on the record. If the court sets a trial date, you may be ordered to file a written answer. [RPEA 7](#).
- If you cannot afford the filing fee, ask the clerk for a fee waiver/deferral application in order to not pay the fee when you file. <http://www.azcourts.gov/courtfilingsfees>

4 REINSTATING THE RENTAL AGREEMENT



- If the eviction is only for non-payment of rent, the rental agreement will be reinstated if you pay all past due rent, attorney fees, and court costs before judgment is entered. [A.R.S. § 33-1476\(E\)](#).

5 DEFENSES



- You paid your rent in full and on time (provide proof of payment to the court).
- The problems claimed in the notice and complaint never happened or happened off the property.
- Retaliation – If you complained to the landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety within 6 months prior to the eviction being filed, there is a presumption that the eviction is retaliatory. You may be entitled to damages if this happened. See [Legal Info Sheet: Eviction Actions: Claims Against your Landlord](#). [A.R.S. § 33-1491](#).

6 TRIAL



- You have a right to a trial if the court determines that you MAY have a defense or proper counterclaim. [RPEA 11\(b\)\(1\)](#).
- You have a right to a jury trial, but you must ask for it the first time you see the judge. The judge will then decide if there are factual matters to be determined by a jury. If there are no factual matters appropriate for a jury, the case will be heard by the judge. [RPEA 11\(d\)](#).

7 EVIDENCE AND TESTIMONY



- Evidence and testimony must be relevant to the proceeding.
- A witness must testify from personal knowledge – the witness telling the court what somebody else told the witness is generally not allowed.
- You have a duty to make timely objections. If a witness testifies to a fact he or she does not have personal knowledge of or the testimony is not relevant to the proceeding, immediately tell the judge you object to the testimony or evidence.

8 JUDGMENT



- Default judgment will be entered against you if you are not present in the court when your case is called by the judge. [RPEA 13](#).
- Stipulated judgment – you are agreeing that the allegations in the complaint are true and judgment will be entered against you. You will not be able to offer a defense and cannot appeal from this type of judgment.

9 AFTER JUDGMENT



- See [Legal Info Sheet: Eviction Actions: After an Eviction Judgment](#) for discussion on writs of restitution.
- A sheriff or constable can execute a writ of restitution by removing all occupants and their possessions from the mobile home. [A.R.S. § 33-1481\(B\)](#).
- After removing the occupants and their possessions from the mobile home, the mobile home is deemed abandoned.
- You cannot move your mobile home from the mobile home space until you get a signed agreement from the mobile home park. This agreement must show clearance (the mobile home park's permission) for removal and that all monies due and owing have been paid. You can also reach some other agreement with the landlord. [A.R.S. § 33-1478\(A\)](#).



Section 8 Housing

[A.R.S. § 33-1368\(A\)](#)

The following applies to Housing Choice Vouchers (“Section 8 Vouchers”). Below is information that may be helpful to you but is **not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in regarding Section 8 Vouchers. *C.F.R. means Code of Federal Regulations.*

| |
|------------------------------|
| Non-Payment of Rent |
| 5-day Notice Health & Safety |
| 10-day Notice |
| Immediate & Irreparable |
| Mobile Home Park |
| Section 8 |
| Claims Against Your Landlord |
| After Eviction Judgment |

1 TENANT’S PORTION OF THE RENT



- An individual or family with a Section 8 voucher is only responsible for their portion of the rent. [24 C.F.R. 982.310\(b\)\(1\)](#).
- A landlord may not demand from the tenant more than the tenant’s portion of the rent as determined by Section 8. [24 C.F.R. 982.451\(b\)\(4\)\(iii\)](#).

2 SECTION 8’S PORTION OF THE RENT



- As long as the tenant remains in the Section 8 program, a landlord cannot evict a tenant if Section 8 has not paid its portion of the rent. [24 C.F.R. 982.310\(b\)\(2\)](#).
- If a landlord is seeking Section 8’s portion of the rent, you can report your landlord to your Section 8 program or HUD’s Fraud Hotline at (800) 347-3745. This will not stop the eviction case against you.
- If Section 8 fails to pay rent or pays their portion of rent late, the tenant is not responsible for the late fees on the Section 8 portion of the rent. In other words, if a tenant pays his portion of rent on time and Section 8 pays late, the tenant is not responsible for late fees. [24 C.F.R. 982.451](#).

3 HOUSING QUALITY STANDARDS (HQS)



- HQS inspections are inspections conducted by Section 8 to ensure the unit meets housing quality standards set by HUD. [24 C.F.R. 982.401](#).
- Periodically, Section 8 is required to conduct an HQS inspection of the subsidized unit to make sure it is up to HUD’s Standards. [24 C.F.R. 982.401](#).
- If the unit does not pass the HQS inspection and it is the landlord’s fault, Section 8, by law, cannot pay the landlord for the month the unit failed the HQS inspection. [24 C.F.R. 982.404\(a\)\(3\)](#).
- If the unit has failed due to the landlord and Section 8 has not paid its portion of the rent, a landlord does not have the right to evict the tenant as long as the tenant has paid his portion of the rent. [24 C.F.R. 982.310\(b\)\(2\)](#).

4 LANDLORD’S ACCEPTANCE OF RENT



- If your landlord accepted rent, either the tenant’s portion or Section 8’s portion of rent with knowledge of a default by you and did not obtain a writing signed by you at the time of accepting rent informing you of the terms and conditions of accepting the rent, the landlord has waived the right to evict. [A.R.S. § 33-1371](#), [RPEA 13\(a\)\(4\)](#).



Claims Against Your Landlord

[A.R.S. § 33-1368\(B\)](#)

The following does not apply to mobile home park evictions, recreational vehicle park evictions, and certain subsidized housing. Below is information that may be helpful to you **but is not a substitute for legal advice**. There are other rules and laws that may be applicable to your situation, but these are common rules and laws that apply in eviction actions.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

These claims may be brought against your landlord in a separate action or as counterclaims in the eviction action.

Non-Payment of Rent

5-day Notice Health & Safety

10-day Notice

Immediate & Irreparable

Mobile Home Park

Section 8

Claims Against Your Landlord

After Eviction Judgment

1 COUNTERCLAIMS



- Counterclaims in an eviction action must be filed in writing and served upon the opposing party. [RPEA 8\(a\)](#). You can hand it to your landlord or his attorney before your case is called by the judge.
- Counterclaims must state specific facts claiming that your landlord violated the rental agreement or statute.
- Counterclaims must state when and how any required notices were sent to your landlord and what the notices were about.

2 RETALIATION



- If, in the past 6 months, you complained to your landlord or a government agency charged with code enforcement about habitability issues materially affecting health and safety, and then your landlord did any of the following, you may be entitled to damages. [A.R.S. § 33-1381](#).
 1. Landlord increased rent
 2. Landlord decreased services
 3. Your landlord filed an action for possession (eviction action)
 4. Your landlord threatened to bring an action for possession
- Damages are the same as those found in [A.R.S. § 33-1367](#). See [Ouster](#) below.

3 OUSTER



- If your landlord unlawfully locks you out of your rental unit or intentionally stops providing electric, gas, water, or other essential services, you can do the following: [A.R.S. § 33-1367](#)
 1. Recover possession of the rental unit
 2. Terminate the rental agreement (landlord must return your security deposit as required by the law)
 3. Sue or counterclaim for an amount not more than 2 month's rent or twice the actual financial harm you suffered, whichever is greater.

4 ABUSE OF ACCESS

- If your landlord does one of the following: [A.R.S. § 33-1376\(B\)](#)
 1. Enters your rental unit unlawfully (usually this means not providing proper notice of his intent to enter the rental unit);
 2. Enters lawfully in an unreasonable manner; or
 3. Makes repeated demands for entry that unreasonably harass you.



You can do one of the following:

1. Obtain injunctive relief (get the court to order your landlord to stop); or
 2. Terminate the rental agreement.
- In addition to the above, you can also sue for actual damages not less than an amount equal to one month's rent.

5 DIMINUTION OF FAIR RENTAL VALUE

- If your landlord deliberately or negligently fails to provide running water, gas or electrical service, reasonable amount of hot water, heat, air conditioning or cooling (where units are installed), or essential services, you can ask the court for a return of part of the rent you have paid. In other words, because your landlord failed to supply one or more of the above, your rental unit was not worth what you were paying for. [A.R.S. § 33-1364\(A\)\(2\)](#).
- This statute requires that you first give your landlord reasonable notice about the problem.



6 NONCOMPLIANCE WITH RENTAL AGREEMENT BY LANDLORD

- This statute allows for damages against your landlord, but requires previous written notice (either a 10-day notice for material noncompliance with the rental agreement or a 5-day notice for noncompliance materially affecting health and safety) to your landlord and an opportunity for your landlord to fix the problems stated in your notice. [A.R.S. § 33-1361](#).





After an Eviction Judgment

The information below may be helpful to you but is **not a substitute for legal advice**.

A.R.S. means Arizona Revised Statutes and RPEA means Rules of Procedure for Eviction Actions.

1 JUDGMENT



- Once your landlord has been awarded a judgment, the only way you can stay in the rental unit is by working out an agreement with your landlord or filing an appeal of the judgment and paying a supersedeas bond (see [Bonds](#) below). Any post-judgment agreements should be in writing and signed by your landlord. Keep a copy of any agreement.
- Judgments accrue interest from the time of the judgment until paid.
- Once a judgment is paid off, the judgment creditor (landlord) must file a satisfaction with the court. A satisfaction lets anybody who looks at the court records know that the judgment has been paid off.
- A judgment does not allow your landlord to take possession of the rental unit. See [Writ of Restitution](#) below.

2 WRIT OF RESTITUTION



- In most cases, your landlord can go back to the court after 5 days to get a writ of restitution. [A.R.S. § 12-1178](#). If the eviction action was filed based on an immediate and irreparable breach, your landlord can obtain the writ of restitution the next court day.
- Writs of restitution are executed (served on a tenant or the rental unit) by a constable.
- Your landlord may not change the locks or enter the rental unit until the writ of restitution has been issued by the court and served by the constable. You can call the police if your landlord changes the locks or enters the rental unit too early.
- Once the writ of restitution has been lawfully executed, you may not remain at or return to the rental unit without the express permission of your landlord. If you remain or return to the rental unit without permission, you can be charged with criminal trespass.

3 MOTION TO SET ASIDE JUDGMENT



- There are 10 specific reasons to file a motion to set aside the judgment (e.g., the court did not have jurisdiction to hear the case, you tendered all amounts due prior to judgment being entered, the judgment is contrary to law, etc.). See [RPEA 15](#) for the full list.
- For certain reasons, a motion to set aside the judgment must be filed with the trial court not more than 60 days after the judgment. For other grounds, the motion must be filed within a reasonable time.
- Filing a motion to set aside the judgment does not prevent the execution of a writ of restitution or allow you to stay in the rental unit.

4 APPEAL



- A notice of appeal must be filed within 5 days after the judge has signed the judgment. Filing the notice of appeal will not allow you to remain in the rental unit.
- There is a fee to file an appeal, but if you cannot afford the fee, you may request a deferral or waiver. Ask the clerk for a fee deferral/waiver application. <http://www.azcourts.gov/courtfilingsfees>.

5 BONDS



- There is a cost bond of \$250.00 associated with filing an appeal that can be waived or deferred.
- A supersedeas bond can be filed with the trial court to stay the writ of restitution, which will allow you to remain in the rental unit while the appeal is being heard. This bond cannot be waived or deferred. In the case of an immediate termination, the supersedeas bond must be paid to the trial court before the writ of restitution is issued. The amount of the bond varies depending on the amount of rent due (from the date of judgment until the next periodic rental date), costs, and attorney fees. Additionally, you must pay your monthly rent to the court on or before the monthly due date during the appeal to remain in the property while the appeal is being heard.

6 PERSONAL PROPERTY



- This does not apply to mobile homes.
- Your landlord must hold your personal property for 21 days after the constable serves the writ of restitution, but you must pay the landlord for the cost of removal and storage (NOT the judgment amount) to recover your personal property. Certain personal items are excluded from this requirement. See [A.R.S. § 33-1368\(E\)-\(F\)](#) for additional information related to personal property left in a rental unit after an eviction.

7 SECURITY DEPOSIT



- This does not apply to mobile homes.
- Your landlord can apply your refundable security deposit to unpaid rent and other lawful charges after an eviction. See [A.R.S. § 33-1321\(D\)](#) for more information on obtaining a refund of your security deposit from your landlord.

This is the time set for the Country Meadows Eviction calendar.

Most cases today are evictions for non-payment of rent, so that's what I will talk about.

When I call your case, please come forward. Before I take the bench I will have verified that the file contains all the necessary paperwork. If something is missing I will ask for it when the parties come forward.

Please understand that once the lawsuit has been filed, the landlord is entitled to add court costs and attorney fees to the rent and late fees that are owed to date. You can avoid a judgment against you if you pay the full amount owed before the judgment is signed.

You may file a written answer to the complaint before I call the case or you may answer orally when you come forward. You may also file a written counterclaim.

If I determine that you may have a legal defense or there are facts in dispute, I will set the case for trial. The trial might be heard today but could also be continued to the next eviction calendar. You can only request a jury if there are facts in dispute that a jury can decide.

We understand that tenants fall on hard times for all sorts of reasons and it is no reflection on you as a tenant that you haven't been able to pay your rent. But the judge must follow the law. And the law does not consider hardship as a legal defense to the non-payment of rent.

A legal defense might be that you did pay the rent, that the landlord accepted a partial payment, or that you were not given proper notice.

The law does not allow tenants to withhold rent for any reason not authorized by law. There are situations where the tenant may pay to obtain a service the landlord is not providing, like water or heating, or may find reasonable substitute housing in the meantime. And can then discount the money spent from the rent owed. But the tenant must have first given the landlord reasonable notice and then actually obtain the services or the housing. Tenant may not simply stop paying rent.

You might be entitled to recover damages because you believe you were paying more rent than you should have if the landlord was not complying with the rental agreement. But you might have to do that in a separate lawsuit.

If you are ordered evicted, the judgment will say that you must move out in 5 days. We know that does not give you much time but that is what the law says and the judge cannot change that without agreement from the landlord. The judgment will also include past due rent, late fees, other fees that may be in the lease, unpaid utilities, court costs and attorney fees. The landlord may be entitled to some other damages but only if they are proved and were included in the complaint.

Once a judgment is signed it will be on your record and rental history. If you pay the full amount of the judgment, the landlord must file a document called a satisfaction of judgment with the court indicating the debt was paid. But it will remain on your record. The only way to get a judgment removed from your record is to have the landlord vacate the judgment. That is something you would have to work out with him.

We find that many times after a judgment is signed, landlords are willing to work with the tenants. They are under no obligation to reinstate the lease even if you pay everything that you owe. But many times they work with the tenants to help them stay in the rental. You should talk to your landlord to see if you can come to some kind of agreement. Be sure to get any agreement you make in writing.

Most landlords today will be represented by an attorney. Many of them might offer to talk to you and you may talk to the attorney if you want. As officers of the court, they have an obligation to be truthful with you and not mislead you, but they are defending their clients, not you. If you reach an agreement with them they can turn it in to the judge and you don't have to stay or you can stay and talk to the judge.

If you are being evicted for some other reason that is not failure to pay rent, a lot of the information I have just given still applies to you. But I will explain anything that is different in your case when you come forward.

JUSTICE COURT EVICTION ACTION

If you want to file an Eviction Action (Complaint & Summons Tenant Eviction) . . .




AN EVICTION (Forcible Detainer/Special Detainer) action is filed for alleged violations of the lease or rental agreement or of the Arizona Residential Landlord and Tenant Act.

The rental property subject to the action must be located in the justice court precinct (venue).




You must give the tenant proper notice and you must wait until the business day after the expiration of the tenant's notice before filing the eviction action in the justice court. The justice court does not provide the initial notice to vacate forms; if you need more information on the type of notice you must deliver to the tenant you may refer to the Arizona Residential Landlord Tenant Act online at www.azcourts.gov/PublicServices/CivilLaw/EvictionsSmallClaims.aspx.

You may file an eviction action in the **justice court** if the total amount due **does not exceed \$10,000.00**. *If the amount exceeds \$10,000.00 you must file in the Superior Court.*

Please STOP...

| | |
|---|---|
|  | If the location of the rental property is not located in this justice court precinct. |
|  | If the total amount due exceeds \$10,000.00. |
|  | If you did not serve the tenant with the proper notice. |

Please PROCEED...

| | |
|---|---|
|  | If you are filing within the correct jurisdiction / venue. |
|  | If you are claiming \$10,000.00 or less in rent or damages. |
|  | If you have properly served notice on the tenant and the time in the notice has completely expired. |

FORMS needed . . .

| | |
|---|---|
|  | Summons & Complaint Residential Eviction Action |
|---|---|

INSTRUCTIONS:

1. Obtain a copy of the Arizona Residential Landlord & Tenant Act and familiarize yourself with the contents.
2. Read the attached Information for Landlords and Tenants.
3. Check the venue for your complaint on the court precinct map. You are responsible for filing your case in the correct court.

4. Complete the summons and complaint forms. Make 3 copies of the forms if you are filing against one person; make 4 copies if you are filing against two persons (such as a married couple), etc.
5. Bring the original and copies of the summons and complaint forms, together with a copy of the eviction notice served on the tenant, to file with the court clerk and pay the court filing fee.
6. Make arrangements with a licensed process server, Constable or law enforcement to serve the papers on the defendants. A list of process servers is available at the Justice Court.

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS A NOTICE OF CHANGE OF ADDRESS form must be filed with the court when a party changes their address.

INFORMATION FOR LANDLORDS AND TENANTS

General Information

This information page for landlords and tenants provides an overview of the Arizona Residential Landlord and Tenant Act and the references cited are to the applicable portion of the Arizona Revised Statutes. This information is provided for apartment and home rentals. The rules for renting a mobile home or a space for a mobile home are similar but are not covered by these pages. Mobile home parks are governed by a different set of statutes that can be found at A.R.S. §§ 33-1401 - 33-1501.

A landlord can bill separately for utilities but cannot require a tenant to sign a lease that requires a tenant to waive any rights under Arizona law. A.R.S. §§ 33-1314.01 & 33-1315. It is also illegal for a landlord to allow someone to live in a residence rent free in return for the landlord not maintaining the property. A.R.S. § 33-1316. In addition, a landlord cannot refuse to rent a residence on the basis that the potential tenant has children. A.R.S. § 33-1317. Landlords must also register with the county assessor. A.R.S. § 33-1902.

From the tenant's perspective, perhaps the most important thing to remember is that a tenant has a duty to pay rent and to pay that rent on time. If a tenant fails to do so, the landlord will likely bring an eviction action. There is no provision in Arizona law that allows a tenant to withhold rent because the landlord is being disagreeable or because a landlord broke oral promises to a tenant. Except as explained below, a tenant may not withhold rent.

Tenant Obligations

In addition to the obligation to pay rent on time, a tenant must do the following under Arizona law. A.R.S. §§ 33-1341 & 33-1344.

- Keep the residence clean and safe
- Remove and dispose of trash
- Keep all plumbing fixtures clean
- Use electrical appliances, heating and air-conditioning systems and plumbing in a reasonable manner
- Not deliberately or negligently damage the property or allow someone else to do so
- Unless agreed otherwise, use the property only as a residence

Access by Landlord to Residence A.R.S. § 33-1343

A tenant cannot unreasonably withhold consent to the landlord to enter the residence in order to inspect the premises or make repairs. Unless there is an emergency or unless it is impracticable to do so, the landlord must

give the tenant at least two days notice that he is going to enter the residence. The landlord can only enter at reasonable times.

Landlord Obligations

A landlord is required to do the following under Arizona law. A.R.S. §§ 33-1322 – 1324.

- Provide the tenant with the name and address of the property's owner and manager
- Provide the tenant with a free copy of the Arizona Landlord and Tenant Act
- Provide the tenant with a signed copy of the lease
- Provide the tenant with possession of the residence
- Comply with applicable building codes
- Make necessary repairs so that the residence is habitable
- Keep common areas clean
- Maintain all electrical, plumbing, heating, and air-conditioning equipment
- Provide for the removal of trash
- Supply running water and reasonable amounts of hot water

Security Deposits A.R.S. § 33-1321

A landlord can require that the tenant make a security deposit to cover any potential damages made to the property. The amount of the security deposit cannot be more than one and one-half month's rent. Upon move-in, the landlord is required to furnish the tenant with a signed copy of the lease, a form documenting any damages to the property, and written notification that the tenant may be present at the move out inspection. However, the tenant is required to ask the landlord when the move out inspection will occur. If a tenant requests the security deposit back after he has moved out, the landlord must return it or provide an itemized list of all of the deductions taken for property damage and the balance of the deposit within 14 days. If the landlord fails to do so, the tenant can file suit in a justice court and recover twice the amount wrongfully withheld.

TENANT OPTIONS IF LANDLORD FAILS TO COMPLY

Self-Help for Minor Defects A.R.S. § 33-1363

If a landlord fails to make repairs and the problem can be fixed for either less than \$300.00 or an amount equal to one-half of the monthly rent (whichever is greater), the tenant can notify the landlord of his intention to repair the problem at the landlord's expense. The notification must be in writing. If the landlord does not fix the problem within 10 days from receiving the notice, the tenant can hire a licensed contractor, submit a repair bill to the landlord, and deduct the cost of the work from his rent. This provision does not apply if the damage was caused by the tenant or one of his guests. Sample notices are available at www.AZLawHelp.org

Failure to Supply Essential Services A.R.S. § 33-1364

If a landlord fails to provide running water, gas and/or electrical service, or fails to provide reasonable amounts of hot water, heat and/or cooling, then the tenant may give notice to the landlord that he is in breach of the lease. Sample notices are available at www.AZLawHelp.org. At that point the tenant has one of the following three options.

Option One: The tenant can arrange for utilities on his own and deduct the cost from the rent. With the utility company's approval, a tenant group or group of tenants can pay a landlord's delinquent utility bill and deduct that amount from their rent.

Option Two: The tenant can file suit and recover damages based on the decreased fair rental value of the residence.

Option Three: The tenant can find substitute housing (e.g. a motel) during the period of the landlord's noncompliance. If this occurs, the tenant is excused from paying rent for as long as the landlord does not provide the essential service.

Other Noncompliance by the Landlord A.R.S. § 33-1361

If the landlord fails to comply with the lease in a material way, the tenant can deliver a written notice to the landlord explaining the failure and stating that the lease will terminate in 10 days. If the landlord's noncompliance is materially affecting the tenant's health and safety, then the same notice can state that the lease will end in 5 days. There are two exceptions. First, if the problem can be fixed before the date specified on the notice, then the lease will continue. Second, the problem cannot have been caused by the tenant or his guest.

Military Orders and Lease Provisions

Under the Service Members' Civil Relief Act, a military member can break his lease upon receipt of Permanent Change of Station orders or upon receipt of orders deploying him for at least 90 days. 50 App. U.S.C.A. § 535(a). If one of those events occurs, then the landlord cannot refuse to allow the military tenant to leave. This provision of federal law also applies to any of the military member's family members who may have responsibility under the lease. 50 App. U.S.C.A. § 535(a)(2). A military tenant who is either moving or being deployed is still responsible for any reasonable repair costs to the residence beyond normal wear and tear.

To terminate a lease under this law, the military member must provide the landlord with written notice and a copy of the orders. 50 App. U.S.C.A. § 535(c)(1)(A). The military member can either deliver this notice in person or mail it certified mail, return receipt requested, to his landlord. 50 App. U.S.C.A. § 535(c)(2).

Eviction (Forcible Detainer) Actions A.R.S. §§ 33-1368; 33-1377

An eviction is a type of lawsuit called a forcible detainer. An eviction/forcible detainer indicates that the tenant has remained in or on the property after the landlord has given written notice that the rental agreement has been terminated and that the tenant must leave the property. A landlord can file an eviction/forcible detainer action against a tenant for nonpayment of rent, if the tenant has breached the lease, or if the tenant has committed a crime. An eviction/forcible detainer actions seek the eviction of the tenant and the repossession of the rental property. They may also be filed if the tenant misrepresented information to the landlord or has unauthorized occupants in the residence.

Most eviction/forcible detainer actions involve an allegation that the tenant has not paid rent on time. If a tenant fails to pay rent, the landlord can give notice that he will terminate the lease if the rent is not paid within five days. After the five day notice, the landlord will most likely not be willing to accept partial payment because he will not be able to proceed with the case unless the tenant agrees in writing that the landlord can do so. A.R.S. § 33-1371. On day six, the landlord can file suit. The tenant's inability to pay the rent is not a legal defense to the lawsuit. However, the tenant does have some options.

The tenant can pay all of the rent and any late fees any time before the eviction/forcible detainer is filed to avoid eviction. If the action has been filed, then the tenant must pay all past due rent, late fees, attorney's fees and court costs. If the tenant does so before a judgment is entered, he can avoid eviction. After a judgment has been entered, reinstatement of the lease is solely at the landlord's discretion.

As a general rule, the only defense to an allegation of nonpayment of rent is that the rent was actually paid, in the manner and in the amount provided in the lease.

What Will Happen In Court

Eviction/forcible detainer cases are similar to other kinds of lawsuits; however, they move through the court system very quickly. The landlord begins the case by filing a summons and complaint and a copy of the eviction notice served on the tenant. The landlord then serves the summons and complaint, together with a Residential Eviction Information Sheet on the tenant by one of the acceptable methods. The landlord will have to pay a filing fee to the court. After receiving the lawsuit, the tenant should file an answer. The answer form gives the tenant several options to check and explain as to why the landlord should not prevail. The tenant will have to pay an answer fee to the court. If the tenant is unable to afford the answer, the tenant may apply for a waiver or deferral of that fee. If the tenant believes that the landlord owes him money, then the tenant may file a counterclaim.

The summons indicates that a trial will occur on the date listed on the summons. If the tenant fails to appear, and the landlord or his attorney is present, then a judgment will most likely be entered against the tenant. At the date and time listed on the summons, the justice of the peace will start calling cases. If both parties are there, the judge will ask the tenant whether the complaint is true. If the tenant says that the complaint is untrue, then the tenant will need to briefly tell the judge why. If the reason appears to be a legal defense, then the judge will need to take testimony from both sides and make a decision after a trial.

If a landlord receives a judgment against a tenant, he may apply for a writ of restitution for repossession of the residence in five days. There is a fee for issuing the writ. These writs are served by constables or the Mohave County Sheriff, who will direct the tenant to leave at that time. There is a fee for the service of the writ. The landlord can cut off utility services to the residence at that time but cannot dispose of or sell any of the tenant's personal property for 21 days. A.R.S. §§ 33-1368E – 33-1370.

A tenant can avoid the hassle, expense and embarrassment associated with a writ of restitution by turning in the keys to the landlord. Doing so ends the tenant's possession of the residence.

Appeal from a Judgment

A tenant may appeal an eviction/forcible detainer judgment to superior court. Within five days from the date of the judgment, the tenant must do the following.

- (1) File a Notice of Appeal.
- (2) File a Designation of Record.
- (3) Pay an appeal fee or file a request for a waiver or deferral of that fee.

If the tenant wants to stop the execution of the judgment, then he must also file a supersedeas bond. A supersedeas bond must be in an amount equal to the judgment and costs. Superior Court Rule of Civil Appellate Procedure 6(a)(1). In addition, a tenant must continue to pay rent to the court to stay an eviction action. Superior Court Rule of Civil Appellate Procedure 6(a)(5).

**JUSTICE COURT
EVICITION ACTION
ANSWER AND/OR COUNTERCLAIM**

If you want to file an . . .




- **Eviction Action Answer** (Forcible Detainer/Special Detainer) - (Deny or contest the allegations) **and – if applicable a**
- **Counterclaim** (A claim resulting from the landlord’s breach of the rental agreement or the Arizona Residential Landlord and Tenant Act)

ANSWER



If you wish to contest the allegations of an Eviction Action (Forcible Detainer/Special Detainer), you will be required to file a formal written **ANSWER** (and pay a court filing fee) stating your defenses to the complaint against you.

Non-payment of rent because you do not have sufficient funds (for whatever reason) is not a legal defense.

Please STOP...

| | |
|---|---|
|  | If you have not been served with a Summons and Complaint |
|  | If your court appearance date has passed or if a judgment has been entered. |
|  | If you are not contesting the complaint. |

Please PROCEED...

| | |
|---|--|
|  | If you are contesting the complaint. |
|  | If your court appearance date has not passed and no judgment has been entered. |

FORMS Needed...

| | |
|---|--|
|  | Answer – Eviction Action (Forcible/Special Detainer) |
|---|--|

COUNTERCLAIM

If you wish to file a counterclaim you must file it at the same time that you file your Answer.

A counterclaim may be considered in an Eviction Action (Forcible Detainer) **ONLY IF** the counterclaim is the result of the landlord’s breach of the rental agreement or the Arizona Residential Landlord and Tenant Act. The allegations of the counterclaim will be considered and decided at the time of trial.

If the counterclaim is a valid claim and the amount of your counterclaim exceeds \$10,000.00 the case will immediately be transferred to the Superior Court and appropriate filing fees will be assessed by the Superior Court before processing can commence.

FORMS Needed...



Counterclaim Eviction Action (Forcible/ Special Detainer) form

INSTRUCTIONS:

1. Review the Residential Eviction Information Sheet. You should have already been served with a copy of the Residential Eviction Information Sheet. It is included in this packet for your reference and convenience.
2. Information for Landlords and Tenants included in this packet
3. Complete the Answer form (and counterclaim form if applicable).
4. Make two copies of the Answer (and counterclaim form if applicable).
5. File the completed forms with the court clerk and pay the required court filing fee.
6. If you are filing a Counterclaim, it must be filed with your Answer.
7. Mail or deliver a copy of the Answer form (and Counterclaim form if applicable) to the plaintiff (landlord).

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS. A NOTICE OF CHANGE OF ADDRESS form must be filed with the court when a party changes their address.

INFORMATION FOR LANDLORDS AND TENANTS

General Information

This information page for landlords and tenants provides an overview of the Arizona Residential Landlord and Tenant Act and the references cited are to the applicable portion of the Arizona Revised Statutes. This information is provided for apartment and home rentals. The rules for renting a mobile home or a space for a mobile home are similar but are not covered by these pages. Mobile home parks are governed by a different set of statutes that can be found at A.R.S. §§ 33-1401 - 33-1501.

A landlord can bill separately for utilities but cannot require a tenant to sign a lease that requires a tenant to waive any rights under Arizona law. A.R.S. §§ 33-1314.01 & 33-1315. It is also illegal for a landlord to allow someone to live in a residence rent free in return for the landlord not maintaining the property. A.R.S. § 33-1316. In addition, a landlord cannot refuse to rent a residence on the basis that the potential tenant has children. A.R.S. § 33-1317. Landlords must also register with the county assessor. A.R.S. § 33-1902.

From the tenant's perspective, perhaps the most important thing to remember is that a tenant has a duty to pay rent and to pay that rent on time. If a tenant fails to do so, the landlord will likely bring an eviction action. There is no provision in Arizona law that allows a tenant to withhold rent because the landlord is being disagreeable or because a landlord broke oral promises to a tenant. Except as explained below, a tenant may not withhold rent.

Tenant Obligations

In addition to the obligation to pay rent on time, a tenant must do the following under Arizona law. A.R.S. §§ 33-1341 & 33-1344.

- Keep the residence clean and safe
- Remove and dispose of trash
- Keep all plumbing fixtures clean
- Use electrical appliances, heating and air-conditioning systems and plumbing in a reasonable manner
- Not deliberately or negligently damage the property or allow someone else to do so
- Unless agreed otherwise, use the property only as a residence

Access by Landlord to Residence A.R.S. § 33-1343

A tenant cannot unreasonably withhold consent to the landlord to enter the residence in order to inspect the premises or make repairs. Unless there is an emergency or unless it is impracticable to do so, the landlord must give the tenant at least two days notice that he is going to enter the residence. The landlord can only enter at reasonable times.

Landlord Obligations

A landlord is required to do the following under Arizona law. A.R.S. §§ 33-1322 – 1324.

- Provide the tenant with the name and address of the property's owner and manager
- Provide the tenant with a free copy of the Arizona Landlord and Tenant Act
- Provide the tenant with a signed copy of the lease
- Provide the tenant with possession of the residence
- Comply with applicable building codes
- Make necessary repairs so that the residence is habitable
- Keep common areas clean
- Maintain all electrical, plumbing, heating, and air-conditioning equipment
- Provide for the removal of trash
- Supply running water and reasonable amounts of hot water

Security Deposits A.R.S. § 33-1321

A landlord can require that the tenant make a security deposit to cover any potential damages made to the property. The amount of the security deposit cannot be more than one and one-half month's rent. Upon move-in, the landlord is required to furnish the tenant with a signed copy of the lease, a form documenting any damages to the property, and written notification that the tenant may be present at the move out inspection. However, the tenant is required to ask the landlord when the move out inspection will occur. If a tenant requests the security deposit back after he has moved out, the landlord must return it or provide an itemized list of all of the deductions taken for property damage and the balance of the deposit within 14 days. If the landlord fails to do so, the tenant can file suit in a justice court and recover twice the amount wrongfully withheld.

TENANT OPTIONS IF LANDLORD FAILS TO COMPLY

Self-Help for Minor Defects A.R.S. § 33-1363

If a landlord fails to make repairs and the problem can be fixed for either less than \$300.00 or an amount equal to one-half of the monthly rent (whichever is greater), the tenant can notify the landlord of his intention to repair the problem at the landlord's expense. The notification should be in writing. If the landlord does not fix the problem within 10 days from receiving the notice, the tenant can hire a licensed contractor, submit a repair bill to the landlord, and deduct the cost of the work from his rent. This provision does not apply if the damage was caused by the tenant or one of his guests. Sample notices are available at www.AZLawHelp.org

Failure to Supply Essential Services A.R.S. § 33-1364

If a landlord fails to provide running water, gas and/or electrical service, or fails to provide reasonable amounts of hot water, heat and/or cooling, then the tenant may give notice to the landlord that he is in breach of the lease. Sample notices are available at www.AZLawHelp.org. At that point the tenant has one of the following three options.

Option One: The tenant can arrange for utilities on his own and deduct the cost from the rent. With the utility company's approval, a tenant group or group of tenants can pay a landlord's delinquent utility bill and deduct that amount from their rent.

Option Two: The tenant can file suit and recover damages based on the decreased fair rental value of the residence.

Option Three: The tenant can find substitute housing (e.g. a motel) during the period of the landlord's noncompliance. If this occurs, the tenant is excused from paying rent for as long as the landlord does not provide the essential service.

Other Noncompliance by the Landlord A.R.S. § 33-1361

If the landlord fails to comply with the lease in a material way, the tenant can deliver a written notice to the landlord explaining the failure and stating that the lease will terminate in 10 days. If the landlord's noncompliance is materially affecting the tenant's health and safety, then the same notice can state that the lease will end in 5 days. There are two exceptions. First, if the problem can be fixed before the date specified on the notice, then the lease will continue. Second, the problem cannot have been caused by the tenant or his guest.

Military Orders and Lease Provisions

Under the Service Members' Civil Relief Act, a military member can break his lease upon receipt of Permanent Change of Station orders or upon receipt of orders deploying him for at least 90 days. 50 App. U.S.C.A. § 535(a). If one of those events occurs, then the landlord cannot refuse to allow the military tenant to leave. This provision of federal law also applies to any of the military member's family members who may have responsibility under the lease. 50 App. U.S.C.A. § 535(a)(2). A military tenant who is either moving or being deployed is still responsible for any reasonable repair costs to the residence beyond normal wear and tear.

To terminate a lease under this law, the military member must provide the landlord with written notice and a copy of the orders. 50 App. U.S.C.A. § 535(c)(1)(A). The military member can either deliver this notice in person or mail it certified mail, return receipt requested, to his landlord. 50 App. U.S.C.A. § 535(c)(2).

Eviction Action (Forcible Detainer Actions) A.R.S. §§ 33-1368; 33-1377

An eviction is a type of lawsuit called a forcible detainer. Forcible detainer means that the tenant has remained in or on the property after the landlord has given written notice that the rental agreement has been terminated and that the tenant must leave the property. A landlord can file an eviction action (forcible detainer action) against a tenant for nonpayment of rent, if the tenant has breached the lease, or if the tenant has committed a crime. An Eviction Action (forcible detainer action) seeks the eviction of the tenant and the repossession of the rental property. They may also be filed if the tenant misrepresented information to the landlord or has unauthorized occupants in the residence.

Most eviction (forcible detainer) actions involve an allegation that the tenant has not paid rent on time. If a tenant fails to pay rent, the landlord can give notice that he will terminate the lease if the rent is not paid within five days. After the five day notice, the landlord will most likely not be willing to accept partial payment because he will not be able to proceed with the case unless the tenant agrees in writing that the landlord can do so. A.R.S. § 33-1371. On day six, the landlord can file suit. The tenant's inability to pay the rent is not a legal defense to the lawsuit. However, the tenant does have some options.

The tenant can pay all of the rent and any late fees any time before the eviction (forcible detainer) is filed and avoid eviction. If the action has been filed, then the tenant must pay all past due rent, late fees, attorney's fees and court costs. If the tenant does so before a judgment is entered, he can avoid eviction. After a judgment has been entered, reinstatement of the lease is solely at the landlord's discretion.

As a general rule, the only defense to an allegation of nonpayment of rent is that the rent was actually paid, in the manner and in the amount provided in the lease.

WHAT WILL HAPPEN IN COURT

Eviction (forcible detainer) cases are similar to other kinds of lawsuits; however, they move through the court system very quickly. The landlord begins the case by filing a summons and complaint and a copy of the eviction notice served on the tenant. The landlord then serves the summons and complaint, together with a Residential Eviction Information Sheet on the tenant by one of the acceptable methods. There is a filing fee for the landlord. After receiving the lawsuit, the tenant should file an answer. The answer form gives the tenant several options to check and explain as to why the landlord should not prevail. There is an answer fee for the tenant. If the tenant is unable to afford the answer, the tenant may apply for a waiver or deferral of that fee. If the tenant believes that the landlord owes him money, then the tenant may file a counterclaim.

If the tenant fails to appear, and the landlord or his attorney is present, then a judgment will most likely be entered against the tenant.

At the date and time listed on the summons, the justice of the peace will start calling cases. If both parties are there, the judge will ask the tenant whether the complaint is true. If the tenant says that the complaint is untrue, then the tenant will need to briefly tell the judge why. If the reason appears to be a legal defense, then the judge will need to take testimony from both sides and make a decision after a trial.

If a landlord receives a judgment against a tenant, he may apply for a writ of restitution for repossession of the residence in five days. There is a fee for issuing a writ. These writs are served by constables, who will direct the tenant to leave at that time. The landlord can cut off utility services to the residence at that time but cannot dispose of or sell any of the tenant's personal property for 21 days. A.R.S. §§ 33-1368E – 33-1370.

A tenant can avoid the hassle, expense and embarrassment associated with a writ of restitution by turning in the keys to the landlord. Doing so ends the tenant's possession of the residence.

APPEAL FROM A JUDGMENT

A tenant may appeal a forcible detainer judgment to superior court. Within five days from the date of the judgment, the tenant must do the following.

- (1) File a Notice of Appeal.
- (2) File a Designation of Record.
- (3) Pay an appeal fee or file a request for a waiver or deferral of that fee.

If the tenant wants to stop the execution of the judgment, then he must also file a supersedeas bond. A supersedeas bond must be in an amount equal to the judgment and costs. Superior Court Rule of Civil Appellate Procedure 6(a)(1). In addition, a tenant must continue to pay rent to the court to stay an eviction action. Superior Court Rule of Civil Appellate Procedure 6(a)(5).

_____ **Justice Court, State of Arizona**

CASE NUMBER: _____

Plaintiff / Counter-defendant
Name / Address / Phone

Defendant /Counter-claimant
Name / Address / Phone

COUNTERCLAIM (Forcible Detainer / Special Detainer)

Defendant, having filed an answer to plaintiff's complaint, now counterclaims as follows:

Identify the breach of the Residential Landlord and Tenant Act or the breach of the rental contract that has resulted in the alleged damages that is the basis of this counterclaim:

I gave the plaintiff written notice of the alleged breach. Attached is a copy of the notice that I gave. It was given to the plaintiff (or to their representative) on _____, in the following manner (e.g. mailed, hand delivered, etc.): _____

I am asking for judgment against the counter-defendant(s) herein named in the sum of \$ _____. I am also asking for costs of court incurred herein and interest at the legal rate from the date of judgment. I am entitled to this relief because:

I state under penalty of perjury that the foregoing is true and

Date: _____

Counterclaimant

I CERTIFY that I mailed / delivered a copy of this COUNTERCLAIM to:

Plaintiff at the above address or, Plaintiff's attorney

Street _____

City, State _____

Zip _____

Date: _____

By _____
Counterclaimant

**JUSTICE COURT
EVICTION ACTION
REPLY TO COUNTERCLAIM**

If you want to file a Reply to a Counterclaim in an ...



EVICTION ACTION (FORCIBLE DETAINER/SPECIAL DETAINER)

If you are contesting the allegations made in a Counterclaim, you are required to file a formal written REPLY to the Counterclaim. The allegations of the Counterclaim and your Reply will be considered and decided at the time of trial.


There is no fee to file a reply to counterclaim.

FAILURE TO FILE A REPLY COULD RESULT IN A DEFAULT JUDGMENT AGAINST YOU.

Please STOP...

| | |
|--|---|
|  | If you have not received a Eviction Action (Forcible Detainer) Counterclaim |
|  | If your court appearance date has passed or if judgment has been entered. |

Please PROCEED...

| | |
|---|---|
|  | If you are replying to a counterclaim within the prescribed time period. The reply should be filed prior to the scheduled court date. |
|---|---|

FORMS Needed:

| | |
|---|----------------------------|
|  | Reply to Counterclaim form |
|---|----------------------------|

INSTRUCTIONS:

1. Complete the Reply form.
2. File the completed Reply form with the court clerk, before the scheduled court date/time.
3. Deliver a copy of the Reply to Counterclaim to the defendant (tenant) as instructed by the court clerk.

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS A NOTICE OF CHANGE OF ADDRESS form must be filed with the court when a party changes their address.

_____ Justice Courts, State of Arizona
SELECT A COURT FROM THE DROP DOWN ARROW AT RIGHT>>>

CASE NUMBER: _____

| | |
|--|--|
| | |
| | |
| | |
| Plaintiff(s) Name / Address / Phone | Defendant(s) Name / Address / Phone |
| | |
| | |
| | |
| Attorney for Plaintiff(s) Name / Address / Phone | Attorney for Defendant(s) Name / Address / Phone |

MOTION to VACATE JUDGMENT **MOTION TO MODIFY JUDGMENT**
 ORAL ARGUMENT REQUESTED BY AGREEMENT

I am the Plaintiff Defendant in this case.

I would like the court to:

On penalty of perjury I state that the foregoing is true and correct.

Date: _____ Plaintiff Defendant

I CERTIFY that I have mailed / will mail a copy of this MOTION to:

Plaintiff at the above address or, Plaintiff's attorney Defendant at the above address or, Defendant's Attorney

Date: _____ By _____ Plaintiff Defendant

NOTICE TO MOVING PARTY: *If the time to appeal the judgment has expired, service by process server or service by any other methods of service provided for service of summons in Rule 4, 4. 1, or 4.2 Rules of Civil Procedure, is required. Proof of service must be filed with the court.*

If the time to appeal the judgment has not expired the motion is required to be served by first class mail.

NOTICE TO RESPONDENT: *You have 10 judicial days after service of this motion to file a written response, if you wish to do so. If no response is given, the Court will consider the relief requested and will enter an order without hearing any objection you may have.*

**INSTRUCTIONS for FILING and SERVING a MOTION TO VACATE or MODIFY
JUDGMENT**

CIVIL / EVICTION ACTION

1. **Check one** (1) of the boxes on the form (Vacate or Modify).
2. **Complete** the Motion form. Explain the reason why you feel the judgment should be vacated, set aside or modified. If you defaulted, you must show a blameless defense for your failure to appear. You may attach any supporting documents. *(NOTE: Now is not the time to explain your allegations or defenses of the case -only why the judgment should be vacated or modified).*
3. **Sign** the motion form.
4. **Return** the completed form to the court clerk and pay the appropriate filing fee (if applicable).
5. **Serving the Motion** on the other party. The other party must be served with a copy of the motion.
 - If the time to appeal the judgment has not expired**, the other party may be served by first class mail.
 - If the time to appeal the judgment has expired**, the other party must be served in the manner provided for service of summons in Rule 4, 4.1 or 4.2 Rules of Civil Procedure. Most generally a licensed process server is used to serve court papers.
 - Proof of service must be filed with the court. Your process server is required to file an affidavit with the court stating the date, the time, where and upon who service was made and to provide you with a copy of the affidavit.
6. **If you want to stay enforcement of the judgment** you must post a supersedeas bond(s). The stay becomes effective when the bond(s) is posted. The amount of the supersedeas bond will be set by the court.
7. **The opposing party has ten (10) judicial days** after service of the motion (or, if expedited, within the time fixed by the Judge) to file a written response. Any response filed must also be served upon you by first class mail. If the opposing party does not file a written response the court will consider the relief requested and enter an appropriate order.
8. **The court will consider** your request and any supporting documentation offered and the opposing party's response, if any.
9. **The court will rule on the motion** either without a hearing, or will set the matter for hearing and oral argument. If a hearing is set the court will notice all parties of the hearing date and you must appear and be prepared to present your argument to the court as to why the judgment should (or should not) be vacated or modified as requested.
10. **The court will mail** a copy of its ruling to all parties.