

# Evictions: Information for Landlords and Tenants (Houses, Apartments and Mobile Homes)

## General Information

The Arizona Residential Landlord and Tenant Act applies to a lease for an apartment, a house or a mobile home. [A.R.S. § 33-1301 - 33-1377](#).

If the lease is for a space in a mobile home park, then a different set of laws apply. [A.R.S. § 33-1401 - 33-1501](#).

Under Arizona law, some things are illegal to put into a lease. For example, a landlord cannot let someone live somewhere rent free in return for not maintaining the property. [A.R.S. § 33-1316](#). A landlord also cannot refuse to rent a place to someone because they have children. [A.R.S. § 33-1317](#). A landlord is also required to register the property with the county assessor and list the property owner's name, address and telephone number. [A.R.S. § 33-1902](#).

**A tenant must pay the rent and must pay that rent on time.** If a tenant does not pay the rent, the landlord will likely start 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 is 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](#) & [A.R.S. § 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 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 keep the landlord from going into the residence to inspect it or to make repairs. However, 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 also only enter at reasonable times.

## Landlord Obligations

A landlord is required to do the following under Arizona law. [A.R.S. § 33-1322 - 1323, 1324](#).

- Give the tenant the name and address of the property owner and manager
- Tell the tenant how to get a free copy of the Arizona Landlord and Tenant Act
- Give the tenant a signed copy of the lease
- Give the tenant 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](#)

### Moving In

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. When the tenant moves in, the landlord must give the tenant a signed copy of the lease, a form recording any damages to the property, and a written notice that the tenant may be present at the move out inspection.

### Moving Out

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 or she has moved out, the landlord must, within 14 days, either give it back or mail an itemized list of everything subtracted from the deposit for property damage. Any amount left over must be given to the tenant at that time. If the landlord does not do so, the tenant can file suit in a justice court and may recover twice the amount wrongfully withheld.

## **Tenant Options if Landlord Is Not Following The Lease**

### **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 or an amount equal to one-half of the monthly rent (whichever is greater), the tenant can notify the landlord that he is going 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 repair work from his rent. This provision does not apply if the damage was caused by the tenant or one of his guests.

### **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. 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 or her lease for any of the following four reasons: (1) the lease was signed before starting active duty, (2) the lease was signed by a reserve or guard member being recalled to active duty for at least 180 days, (3) upon receipt of Permanent Change of Station orders or (4) upon receipt of deployment orders where the deployment period is at least 90 days.

[50 U.S.C. App. § 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 U.S.C. App. § 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 U.S.C. App. § 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 U.S.C. App. § 535\(c\)\(2\)](#). Leases that end under this law end on the last day of the month following the month where proper notice was given. For example, if the lease is for one year and the notice of termination was given on July 20, the effective date of termination would be August 31.

## **Domestic Violence Victims and Lease Provisions**

[A.R.S. § 33-1318](#) If a tenant is a victim of domestic violence, she can break her lease if she provides written notice to her landlord. As proof, the tenant should provide either a copy of the Order of Protection or the police report. If the landlord requests, the tenant must provide documentation showing that the Order of Protection has been submitted to be served. If the tenant falsely claims to be a victim of domestic violence in order to end her lease early, she may be charged with a criminal offense and may have to pay her landlord treble damages.

## **Landlord Options if Tenant Is Not Following The Lease**

If the tenant is not following the requirements of the lease, the landlord can begin the process to start an eviction action. Eviction actions require notice and the type of notice and the time the tenant has to fix the problem depends on the nature of the allegation. (These time standards are different for tenants renting a space in a mobile home park.)

## **Non-Payment of Rent**

Before a lawsuit requesting that the tenant be evicted for non-payment of rent can be filed, the tenant must be given a five-day notice and an opportunity to pay the amount due in full. The eviction lawsuit can be filed on or after the sixth calendar day.

## **Material Non-Compliance**

If the landlord alleges a material noncompliance with the lease, (e.g. violating the rules of the apartment complex, unauthorized pets) then the landlord must give the tenant a ten-day notice and an opportunity to come into compliance with the terms of the lease. The eviction lawsuit can be filed on or after the eleventh day.

## **Material Non-Compliance Affecting Health and Safety**

If the landlord alleges a material noncompliance with the lease that affects health and safety, then the landlord must give the tenant a five-day notice and an opportunity to come into compliance with the terms of the lease. The eviction lawsuit can be filed on or after the sixth day.

## **Material Non-Compliance Affecting Health and Safety**

If the landlord alleges that the tenant has committed a material and irreparable breach, then the landlord can deliver a notice of immediate termination of the rental agreement. The lawsuit requesting an eviction can be filed on the same day. Examples of a material and irreparable breach include but are not limited to gang activity, the discharge of a weapon on the premises or inflicting serious bodily harm on another.

## **Eviction Actions**

There are two types of eviction actions. Under the rules that govern eviction actions, an eviction is a type of lawsuit called a forcible or special detainer. A special 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 against a tenant for nonpayment of rent, if the tenant has breached the lease, or if the tenant has committed a crime. Eviction 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 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 lawsuit is filed and avoid eviction. If the eviction 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 in 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 Must Be In The Lawsuit and Other Court Documents**

Eviction cases are governed by the [Arizona Rules of Procedure for Eviction Actions](#). The lawsuit consists of two main documents. The summons tells the tenant when and where to appear. The complaint tells the tenant what the landlord is requesting. The rules require that a total of four documents be served on the tenant: (1) The summons; (2) Residential Eviction Information Sheet; (3) The complaint and (4) A copy of any notice must be attached to the complaint.

After the tenant receives these documents, he or she should file an answer. The answer form gives the tenant several options to check and explain his or her position. If the tenant is unable to afford the answer, the tenant may apply for a waiver of that fee. If the tenant believes that the landlord owes him money, then the tenant may file a [counterclaim].

## **What Will Happen In Court**

Eviction cases are similar to other kinds of lawsuits; however, they move through the court system very quickly. The summons indicates that a trial will occur on the date listed on the summons; but due to the extremely high volume of cases in Maricopa County, a trial may or may not occur on that date. However, 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. The trial may or may not occur that day depending on the court's schedule and workload. If either side needs a delay, they may ask for it but continuances will be granted for no more than three business days.

If a landlord receives a judgment against a tenant, five days after the date of the judgment writ of restitution may be obtained for repossession of the residence. There is a filing fee for the writ. See our Filing Fees at <http://www.azcourts.gov/court filing fees/JusticeCourtFilingFees.aspx> There will also be a charge for the constable's mileage. 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. § 33-1368\(E\) – 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 eviction action 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 the appeal fee or file a request for a waiver of that fee.
4. Post a cost bond or file an affidavit in lieu of that bond.

If the tenant wants to stop the execution of the judgment, then he must also file a supersedeas bond. The two supersedeas bonds explained here have separate purposes.

### **Stop collection:**

A supersedeas bond to stop collection of the money award of the judgment must be in an amount equal to the judgment and costs. Superior Court Rules of Civil Appellate Procedure 6(a)(1).

### **Stop the eviction process:**

A supersedeas bond to stop the eviction or repossession by the landlord must be the pro rated amount of rent from the date of the judgment to the next rent due date, together with costs and attorney's fees, if any. [A.R.S. § 12-1179\(D\)](#) and Arizona Rules of Procedure for Eviction Actions Rule 17.b(2).

In addition, a tenant must continue to pay rent on time to the court to continue the eviction stay. The court can issue a writ of restitution when rent payments are not timely received. Superior Court Rule of Civil Appellate Procedure 6(a)(5).

## **Additional Information for Landlords and Tenants (Mobile Home Spaces)**

### **Relationships and Statutes are Different**

**There is a separate set of statutes that govern mobile home spaces. It's called the Arizona Mobile Home Parks Residential Landlord and Tenant Act.**

[A.R.S. § 33-1401 – 33-1501](#). Mobile home parks rent lots to tenants who pay monthly rent to their landlords. The dwelling is owned by the tenant, not the landlord. Therefore, the cost of erecting the dwelling is the tenant's, not the landlord's. If the tenant moves, he must dispose of the dwelling. He can take it with him or he can sell it to another party. In these cases it is not the landlord who will be choosing who lives on the rental premises, but the former tenant. The landlord can only approve or disapprove the choice. [A.R.S. § 33-1452E\(3\)](#). Special Rules on Leases

The initial tenancy must be in writing. [A.R.S. § 33-1413A](#).

The tenant, but not the landlord, can demand a four year lease. [A.R.S. § 33-1413\(K\)](#).

A four year lease does not necessarily freeze rent but it will allow the tenant to know how much rent will be due over the next four years.

Rent increases are highly regulated by statute. When a lease expires, the landlord can unilaterally increase rent by giving the tenant a 90 day notice of the new amount. [A.R.S. § 33-1413\(G\)](#); [A.R.S. § 33-1432\(F\)](#).

If the new rent exceeds 10% of the Consumer Price Index, then the tenant becomes eligible for relocation assistance from the State Mobile Home Relocation Fund. [A.R.S. § 33-1476.04](#).

Late charges of five dollars per day are allowed if rent is not paid by the seventh of the month. [A.R.S. § 33-1414\(C\)](#).

Consequently, if rent is paid by the sixth, there is no late charge; after that, the fee is five dollars per day retroactive to the rental due date. [A.R.S. § 33-1414A\(4\)](#).

### **Termination Notices**

Rather than a five day notice, a seven day notice for non-payment of rent is required. [A.R.S. § 33-1476\(E\)](#).

If there is a non-compliance that does not involve health and safety, then the tenant has 14 days to cure it or 30 days to move out. [A.R.S. § 33-1476D\(1\)](#).

If there is a non-compliance that involves health and safety, then the tenant has 10 days to cure it or 20 days to move out. [A.R.S. § 33-1476D\(2\)](#).

If there is an immediate and irreparable breach, then an immediate written notice “may” be delivered. [A.R.S. § 33-1476D\(3\)](#).

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**Filing Fees:** <http://www.azcourts.gov/courtfilingsfees/JusticeCourtFilingFees.aspx>

**Arizona Revised Statutes online:**

<http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=33>

**Arizona Rules of Procedure for Eviction Actions:**

<http://www.azcourts.gov/rules/RecentAmendments/MoreRules/RulesofProcedureforEvictionActions.aspx>

**Superior Court Rules of Appellate Procedure Civil:**

<http://www.azcourts.gov/rules/RecentAmendments/MoreRules/SuperiorCourtRulesofAppellateProcedureCivil.aspx>