

1 State of Arkansas
2 93rd General Assembly
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4
5 By: Representative Rye
6

A Bill

HOUSE BILL 1019

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE CIVIL EVICTION
9 PROCESS; TO CREATE AN EVICTION PROCESS FOR FAILURE TO
10 PAY RENT; AND FOR OTHER PURPOSES.

Subtitle

14 TO AMEND THE LAW CONCERNING THE
15 CIVIL EVICTION PROCESS; TO CREATE AN
16 EVICTION PROCESS FOR FAILURE TO PAY RENT.

17
18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code Title 18, Chapter 17, Subchapter 9, is
22 repealed.

23
24 ~~Subchapter 9 — Eviction Proceedings~~

25
26 ~~18-17-901. — Grounds for eviction of tenant.~~

27 ~~(a) — A landlord or his or her agent may commence eviction proceedings~~
28 ~~against a tenant in a district court having jurisdiction over the eviction~~
29 ~~proceeding, when:~~

30 ~~(1) — The tenant fails or refuses to pay the rent when due or when~~
31 ~~demand;~~

32 ~~(2) — The term of tenancy or occupancy has ended; or~~

33 ~~(3) — The terms or conditions of the rental agreement have been~~
34 ~~violated.~~

35 ~~(b) — For residential rental agreements, nonpayment of rent within five~~
36 ~~(5) days of the date due constitutes legal notice to the tenant that the~~



1 ~~landlord has the right to begin eviction proceedings under this chapter.~~

2
3 ~~18-17-902. Eviction proceeding.~~

4 ~~(a)(1)(A) When grounds exist for eviction of a tenant under this~~
5 ~~subchapter, a landlord or his or her agent may commence an action for~~
6 ~~eviction by filing with a district court having jurisdiction a complaint and~~
7 ~~supporting affidavit of eviction that specifies the grounds for the eviction.~~

8 ~~(B) The supporting affidavit shall be signed by a person~~
9 ~~with personal knowledge of the grounds for eviction.~~

10 ~~(2) The fee for filing an action under this chapter by a~~
11 ~~complaint with supporting affidavit of eviction shall be as provided in § 16-~~
12 ~~17-705.~~

13 ~~(b) Upon the filing by the landlord or his or her agent or attorney of~~
14 ~~a complaint and supporting affidavit of eviction, the district court shall~~
15 ~~issue an order requiring the tenant to vacate the occupied premises or to~~
16 ~~show cause why he or she should not be evicted by the court within ten (10)~~
17 ~~calendar days after the date of service of a copy of the order upon the~~
18 ~~tenant.~~

19
20 ~~18-17-903. Service of order — Posting and mailing requirements.~~

21 ~~(a) The copy of the order to vacate under § 18-17-902 may be served in~~
22 ~~the manner as is provided by law for the service of the summons in actions~~
23 ~~pending in the district court of this state.~~

24 ~~(b) When service in accordance with subsection (a) of this section has~~
25 ~~been unsuccessfully attempted and no person is found in possession of the~~
26 ~~premises, the copy of the order to vacate may be served by leaving it affixed~~
27 ~~to the most conspicuous part of the premises.~~

28
29 ~~18-17-904. Tenant ejected on failure to show cause.~~

30 ~~If the tenant fails to appear and show cause within the ten calendar-~~
31 ~~day period provided in § 18-17-902(b) as directed by the order or at the~~
32 ~~court appointed hearing date, the court shall enter judgment in favor of the~~
33 ~~plaintiff and direct the clerk to issue a writ of possession, and the tenant~~
34 ~~shall be evicted by the sheriff of the county.~~

35
36 ~~18-17-905. Trial of issue.~~

1 ~~If the tenant appears and contests eviction, the court shall hear and~~
 2 ~~determine the case as any other civil case.~~

3
 4 ~~18-17-906. Designation of parties in eviction.~~

5 ~~In any eviction proceeding in a district court, the landlord shall be~~
 6 ~~designated as plaintiff and the tenant as defendant.~~

7
 8 ~~18-17-907. Effect of judgment for plaintiff.~~

9 ~~If the judgment is for the plaintiff, the district court shall within~~
 10 ~~three (3) days issue a writ of eviction, and the tenant shall be evicted by~~
 11 ~~the sheriff of the county.~~

12
 13 ~~18-17-908. Effect of judgment for defendant.~~

14 ~~If the judgment is for the defendant, the tenant shall be entitled to~~
 15 ~~remain in possession until:~~

16 ~~(1) The termination of his or her tenancy by agreement or~~
 17 ~~operation of law;~~

18 ~~(2) Failure or neglect to pay rent; or~~

19 ~~(3) Eviction in another proceeding under this chapter or by the~~
 20 ~~judgment of a court of competent jurisdiction.~~

21
 22 ~~18-17-909. Appeal.~~

23 ~~Either party may appeal in an eviction case and the appeal shall be~~
 24 ~~heard and determined as other appeals in civil cases.~~

25
 26 ~~18-17-910. Bond required to stay eviction on appeal.~~

27 ~~(a) An appeal in an eviction case will not stay eviction unless at the~~
 28 ~~time of appealing the tenant shall give an appeal bond as in other civil~~
 29 ~~cases for an amount to be fixed by the court and conditioned for the payment~~
 30 ~~of all costs and damages that the landlord may sustain.~~

31 ~~(b) If the tenant fails to file the bond within five (5) days after~~
 32 ~~service of the notice of appeal, the appeal shall be dismissed.~~

33
 34 ~~18-17-911. Accrual of rent after institution of proceedings.~~

35 ~~(a)(1) After the commencement of eviction proceedings by the issuance~~
 36 ~~of an order to vacate or to show cause as provided in § 18-17-902, the rent~~

1 ~~for the use and occupancy of the premises involved shall continue to accrue~~
2 ~~so long as the tenant remains in possession of the premises at the rate as~~
3 ~~prevailed immediately before the issuance of the order to vacate or show~~
4 ~~cause.~~

5 ~~(2) The tenant shall be liable for the payment of the rent, the~~
6 ~~collection of which may be enforced as provided with respect to other rents.~~

7 ~~(b) The acceptance by the landlord of any rent, whether it shall have~~
8 ~~accrued at the time of the issuance of the order to vacate or to show cause~~
9 ~~or shall subsequently accrue, shall not operate as a waiver of the landlord's~~
10 ~~right to insist upon eviction or as a renewal or extension of the tenancy,~~
11 ~~but the rights of the parties as they existed at the time of the issuance of~~
12 ~~the order to vacate or to show cause shall control.~~

13
14 ~~18-17-912. Commercial leases.~~

15 ~~(a) In any action involving a commercial lease in which the landlord~~
16 ~~sues for possession and the tenant raises defenses or counterclaims under~~
17 ~~this chapter or the lease agreement:~~

18 ~~(1)(A) The tenant shall pay the landlord all rent that becomes~~
19 ~~due after the issuance of the order requiring the tenant to vacate or show~~
20 ~~cause as rent becomes due.~~

21 ~~(B) The landlord shall provide the tenant with a written~~
22 ~~receipt for each payment except when the tenant pays by check; and~~

23 ~~(2)(A) The tenant shall pay the landlord all rent allegedly owed~~
24 ~~before the issuance of the order to vacate or to show cause.~~

25 ~~(B) However, in lieu of the payment under subdivision~~
26 ~~(a)(2)(A) of this section the tenant may be allowed to submit to the court a~~
27 ~~receipt or cancelled check, or both, indicating that payment has been made to~~
28 ~~the landlord.~~

29 ~~(b)(1) If the amount of rent is in controversy, the court shall~~
30 ~~preliminarily determine the amount of rent to be paid to the landlord.~~

31 ~~(2)(A) If the tenant appears in response to the order to vacate~~
32 ~~or to show cause and alleges that rent due owed under § 18-17-911 and this~~
33 ~~section has been paid, the court shall determine the issue.~~

34 ~~(B) If the tenant has failed to comply with § 18-17-911~~
35 ~~and this section, the court shall issue a writ of possession, and the~~
36 ~~landlord shall be placed in full possession of the premises by the sheriff.~~

1 ~~(3) If the amount of rent due is determined at final~~
 2 ~~adjudication to be less than the amount alleged by the landlord, judgment~~
 3 ~~shall be entered for the tenant if the court determines that the tenant has~~
 4 ~~complied fully with the provisions of § 18-17-911, this section, and the~~
 5 ~~lease agreement.~~

6 ~~(4) If the court orders that the tenant pay all rent due and~~
 7 ~~accruing as of and during the pendency of the action, the judgment may~~
 8 ~~require the payments to be made to either the:~~

9 ~~(A) Commercial landlord; or~~

10 ~~(B)(i) Clerk of the district court who shall hold the~~
 11 ~~payments until the final disposition of the case.~~

12 ~~(ii)(a) If payments are to be made through the~~
 13 ~~district clerk's office, a fee of three percent (3%) of the rental payment~~
 14 ~~shall be added to the amount paid through the district clerk's office.~~

15 ~~(b) The fee of three percent (3%) shall be~~
 16 ~~retained by the district clerk's office to defray the costs of collection.~~

17 ~~(c) If the tenant fails to make a payment as provided in § 18-17-911~~
 18 ~~and this section, the tenant's failure to comply entitles the landlord to~~
 19 ~~execution of the judgment for possession, and upon application of the~~
 20 ~~landlord, the district court shall issue a writ of possession and the~~
 21 ~~landlord shall be placed in full possession of the premises by the sheriff or~~
 22 ~~his or her deputy.~~

23
 24 ~~18-17-913. Execution of writ of possession.~~

25 ~~In executing a writ of possession, the sheriff shall proceed in~~
 26 ~~accordance with the provisions of § 18-60-310.~~

27
 28 SECTION 2. Arkansas Code Title 18, Chapter 17, is amended to add an
 29 additional subchapter to read as follows:

30
 31 Subchapter 9 – Eviction Proceedings

32
 33 18-17-901. Applicability.

34 (a) A proceeding under this subchapter shall be limited to an action
 35 for eviction from a residential rental property due to a tenant's nonpayment
 36 of rent.

1 (b) An eviction proceeding under this subchapter shall not limit the
2 right of the tenant or the landlord to bring a separate action for relief
3 based on other claims arising out of the tenancy.

4
5 18-17-902. Notice to tenant.

6 (a) Before filing an action under this subchapter, the landlord or his
7 or her agent or attorney shall give the tenant written three-day notice to
8 pay rent or vacate the residential rental property.

9 (b) The notice shall state the amount of rent due to the landlord and
10 inform the tenant that failure to pay or vacate the residential rental
11 property within three (3) days may result in eviction.

12 (c) The landlord or his or her agent or attorney shall deliver the
13 notice to the tenant by any manner reasonably calculated to provide actual
14 notice to the tenant, including without limitation by:

15 (1) Personal delivery;

16 (2) Regular or certified mail; or

17 (3) Commercial delivery service.

18
19 18-17-903. Proper parties.

20 (a) In an eviction proceeding under this subchapter, the landlord
21 shall be designated as plaintiff and the tenant as defendant.

22 (b) The designations required under subsection (a) of this section
23 shall not be used:

24 (1) By public housing authorities as defined in § 14-169-207;

25 (2) For tenancies governed by a federal or state regulatory
26 scheme with prescribed eviction procedures inconsistent with this subchapter;
27 or

28 (3) In contracts for deed or other contracts involving the
29 permanent conveyance of real property.

30
31 18-17-904. Complaint – Requirements generally.

32 (a) A complaint for eviction due to nonpayment of rent shall:

33 (1) Include a verification or supporting affidavit signed by the
34 landlord or another person with personal knowledge of the grounds for
35 eviction; and

36 (2) Be filed in the county where the residential rental property

1 is located.

2 (b) A complaint for relief under this subchapter may be filed in:

3 (1) A circuit court; or

4 (2) A district court, if jurisdiction is established by the
 5 Supreme Court under Arkansas Constitution, Amendment 80, § 7, and if the
 6 eviction cases are assigned to district courts through the administrative
 7 plan under Supreme Court Administrative Order No. 14.

8 (c)(1) A complaint for eviction due to nonpayment of rent shall:

9 (A) Specify the residential rental property that is being
 10 unlawfully possessed by street address;

11 (B) Identify the individual or individuals who are in
 12 possession of the residential rental property;

13 (C) State the:

14 (i) Nature of the lease agreement;

15 (ii) Amount of rent past due; and

16 (iii) Frequency with which rent payments are due;

17 (D) Identify the date when:

18 (i) Rent was due;

19 (ii) Rent was not paid; and

20 (iii) Written demand for rental payment due on the
 21 residential rental property was made;

22 (E) State that the landlord is lawfully entitled to
 23 possession of the residential rental property; and

24 (F) Include the following statement: "I (name of person
 25 making the statement) do certify that all of the statements within this
 26 Complaint are true and accurate to the best of my knowledge and this eviction
 27 is not being filed based on the following reasons: discrimination based on
 28 the defendant's race, color, national origin, religion, familial status, or
 29 disability."

30 (2) A complaint shall be accompanied by a copy of the written
 31 three-day notice to pay rent or vacate the residential rental property.

32 (3) If a complaint is based on a written lease agreement, a copy
 33 of the lease agreement shall be attached to the complaint.

34
 35 18-17-905. Court costs and attorney's fees.

36 (a) As used in this section, "prevailing party" means a party that:

1 (1) Initiated the enforcement of a right or a remedy under a
 2 lease agreement or this subchapter and substantially prevailed on the right
 3 or remedy asserted; or

4 (2) Substantially prevailed in defending against a right or
 5 remedy asserted by the opposing party.

6 (b) In a contested action for eviction due to nonpayment of rent, the
 7 court shall award the prevailing party court costs.

8 (c) The court may award the prevailing party reasonable attorney's
 9 fees if the court determines that the opposing party:

10 (1) Did not act in good faith;

11 (2) Willfully performed an act prohibited by the lease agreement
 12 or this chapter; or

13 (3) Willfully refrained from performing an act required by the
 14 lease agreement or under this subchapter.

15 (d) A court shall not award a landlord attorney's fees or court costs
 16 in an uncontested action for eviction.

17
 18 18-17-906. Hearing – Service.

19 (a)(1) When a complaint for eviction due to nonpayment of rent is
 20 filed under this subchapter, the court shall order a hearing to be held not
 21 later than fourteen (14) days from the date on which the complaint is filed
 22 or the next available court date, whichever is later.

23 (2) However, this section does not preclude the court from
 24 setting an earlier hearing.

25 (b)(1) A copy of the file-marked complaint and notice of hearing shall
 26 be served upon the tenant:

27 (A) At least three (3) days before the date of the
 28 hearing; and

29 (B) In accordance with the rules of service under the
 30 Arkansas Rules of Civil Procedure.

31 (2) If service cannot be made on the tenant, the court may set a
 32 new date for the hearing.

33 (c) The notice to the tenant required under subdivision (b)(1) of this
 34 section shall include the following language:

35
 36 SUMMONS AND NOTICE OF EVICTION HEARING

1 Your landlord has filed a complaint for your eviction due to your nonpayment
2 of rent.

3 A hearing on the complaint for eviction is scheduled for _____,
4 20__ in (location).

5 At the hearing, you will be given the opportunity to respond to the
6 landlord's complaint.

7 (1) If you wish to remain in the property, you must prove that either you
8 paid the rent due or you have a legal defense excusing you from paying rent.
9 You have the right to have an attorney represent you in the hearing.

10 (2) If you do not appear at the hearing, or if the landlord proves that you
11 have not paid rent, the Court will immediately order the sheriff to evict you
12 and return possession of the residential rental property to the landlord.

13 (3) If you appear at the hearing and do not prove you paid the rent due or
14 present a defense for not paying rent, the court will order you to pay court
15 costs.

16 (4) If the court finds you did not act in good faith or willfully violated
17 your lease agreement, you can also be ordered to pay the landlord's
18 attorney's fees.

19
20 18-17-907. Hearing – Written objection or answer not required.

21 (a) Due to the expedited nature of the hearing under § 18-17-906, a
22 tenant is not required to file a written objection or answer to dispute
23 possession.

24 (b) At the possession hearing, the tenant may:

25 (1) Object orally to the landlord's request for possession;

26 (2) Offer proof of payment of rent; or

27 (3) Raise defenses to excuse nonpayment.

28
29 18-17-908. Continuances.

30 (a) If the court grants a continuance to either party at the
31 possession hearing, the court shall order the tenant to continue making his
32 or her rental payments into the court registry as they become due:

33 (1) In accordance with the lease agreement; or

34 (2) If the terms of the lease agreement are disputed, in an
35 amount to be determined by the court.

36 (b) Unless the court finds good cause to order otherwise, the clerk

1 shall disburse any rent paid by the tenant and held in the registry of the
 2 court to the landlord within five (5) days of the rent being deposited into
 3 the registry of the court.

4 (c) A tenant's failure to make the rental payments required by
 5 subsection (a) of this section is grounds for the court to order an immediate
 6 writ of possession.

7
 8 18-17-909. Effect of judgment for landlord.

9 If judgment is for the landlord, the court shall order the clerk to
 10 issue a writ of possession, and the tenant shall be evicted by the sheriff of
 11 the county in which the residential rental property is located according to
 12 the process outlined in § 18-60-310.

13
 14 18-17-910. Effect of judgment for tenant.

15 If judgment is for the tenant, the tenant may remain in possession of
 16 the residential rental property, under the terms of the lease agreement,
 17 until the:

18 (1) Termination of his or her tenancy by agreement or by
 19 operation of law; or

20 (2) Tenant is evicted in another proceeding under this
 21 subchapter or by judgment of a court with jurisdiction.

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