

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1019

By: Representative Rye

For An Act To Be Entitled

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

Subtitle

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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repealed.

~~Subchapter 9 – Eviction Proceedings~~

~~18-17-901. Grounds for eviction of tenant.~~

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

~~(1) The tenant fails or refuses to pay the rent when due or when
demanded;~~

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

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

~~(b) For residential rental agreements, nonpayment of rent within five~~



~~(5) days of the date due constitutes legal notice to the tenant that the landlord has the right to begin eviction proceedings under this chapter.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~18-17-909. Appeal.~~

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

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

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

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

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

~~(a)(1) After the commencement of eviction proceedings by the issuance~~

~~of an order to vacate or to show cause as provided in § 18-17-902, the rent for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises at the rate as prevailed immediately before the issuance of the order to vacate or show cause.~~

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

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

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

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

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

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

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

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

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

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

~~(B) If the tenant has failed to comply with § 18-17-911 and this section, the court shall issue a writ of possession, and the~~

~~landlord shall be placed in full possession of the premises by the sheriff.~~

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

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

~~(A) Commercial landlord; or~~

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

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

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

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

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

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

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

Subchapter 9 – Eviction Proceedings

18-17-901. Applicability.

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

of rent.

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

18-17-902. Notice to tenant.

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

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

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

- (1) Personal delivery;
- (2) Regular or certified mail; or
- (3) Commercial delivery service.

18-17-903. Proper parties.

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

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

- (1) By public housing authorities as defined in § 14-169-207;
 - (2) For tenancies governed by a federal or state regulatory scheme with prescribed eviction procedures inconsistent with this subchapter;
- or

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

18-17-904. Complaint – Requirements generally.

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

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

(2) Be filed in the county where the residential rental property is located.

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

(1) A circuit court; or

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

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

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

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

(C) State the:

(i) Nature of the lease agreement;

(ii) Amount of rent past due; and

(iii) Frequency with which rent payments are due;

(D) Identify the date when:

(i) Rent was due;

(ii) Rent was not paid; and

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

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

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

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

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

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

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

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

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

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

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

(1) Did not act in good faith;

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

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

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

18-17-906. Hearing – Service.

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

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

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

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

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

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

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

SUMMONS AND NOTICE OF EVICTION HEARING

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

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

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

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

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

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

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

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

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

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

- (1) Object orally to the landlord's request for possession;
- (2) Offer proof of payment of rent; or
- (3) Raise defenses to excuse nonpayment.

18-17-908. Continuances.

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

- (1) In accordance with the lease agreement; or
- (2) If the terms of the lease agreement are disputed, in an amount to be determined by the court.

(b) Unless the court finds good cause to order otherwise, the clerk shall disburse any rent paid by the tenant and held in the registry of the court to the landlord within five (5) days of the rent being deposited into the registry of the court.

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

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

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

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

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

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

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

