

## **ANSWER AND/OR COUNTERCLAIM INSTRUCTIONS EVICTIION ACTION**

**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** 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.
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](http://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](http://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. 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).