

JUSTICE COURT EVICTIION 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 <http://www.azcourts.gov/selfservicecenter/Eviction-Actions>.

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 Sheriff's Office, 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).

Yuma Justice Court Precinct One

250 W. 2nd Street Suite A. Yuma, AZ 85364 928-817-4100

CASE NUMBER: _____

() _____

() _____

Plaintiff(s) Name / Address / Phone

Defendant(s) Name / Address / Phone

COMPLAINT (*Eviction Action*)

☐ Immediate ☐ Residential

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED, PLEASE READ CAREFULLY THE ALLEGATIONS AGAINST YOU LISTED BELOW.

1. This court has jurisdiction to hear this case. The rental is within this court's judicial precinct and is located at: _____. The business name of the property, if any, is _____.
2. The Plaintiff wants you evicted and wants possession of the rental because of the reasons in section 5.
3. Any required written notice was served on the Defendant on _____ and was served:
☐ by hand, or ☐ by certified mail.
4. A copy of the notice that was served is attached.
5. The Plaintiff is the owner or is authorized by law to file this case on behalf of the owner.

The Plaintiff claims (check and complete all that apply):

☐ **SUBSIDIZED HOUSING:** Total rent per month is \$ _____.
Tenant's portion of rent per month is \$ _____.

☐ **RENT OWED:** The Defendant has failed to pay the rent owed. The rent is unpaid since _____.
There is a prior unpaid balance of \$ _____. The rental agreement requires rent of \$ _____ to be
paid on the _____ day of each ☐ month ☐ week. The rental agreement provides for late fees calculated
in the following manner: _____.

Notice: If you are a residential tenant and the only claim your landlord makes is that you have not paid your rent, you may contact your landlord or your landlord's attorney and offer to pay all of the rent due, plus any reasonable late fees, court costs and attorney's fees. If you pay these amounts before a judgment is entered, then this case will be dismissed and your rental agreement will be reinstated and will continue.

☐ **NON-COMPLIANCE:** After getting a notice, the Defendant failed to do the following:

_____ on this date: _____, at the following location _____.

☐ **IRREPARABLE BREACH:** The Defendant has committed a material and irreparable breach.
Specifically, on this date _____, at the following location _____.

the Defendant did the following: _____

_____.

[] **OTHER ALLEGATIONS OF NON-COMPLIANCE ON WHICH EVICTION ACTION IS BASED:** State the date or dates notice of non-compliance was given and attach a copy of each notice, if applicable, to this Complaint:

_____.

6. As of the filing date the Defendant owes the following:

Rent (current and prior months accrued since filing) totaling. .	\$ _____	
Late fees: (if any in written agreement).	\$ _____	
Other fees or charges (as authorized by law).	\$ _____	(Add more lines for specific fees and charges)
Concessions (if any in written agreement)	\$ _____	
Reimbursable court costs	\$ _____	
Attorney’s fees (if allowed)	\$ _____	
Other allegations of damages (as authorized by law).	\$ _____	
Total Amount Requested	\$ _____	

7. The Plaintiff requests a Judgment for the amounts owed above and for possession of the rental.
8. WRIT OF RESTITUTION: The Plaintiff requests the court issue a Writ of Restitution returning the rental to the Plaintiff’s possession 5 calendar days after the date the Judgment. If the eviction is for the material and irreparable breach explained above, return of possession is requested 12 to 24 hours from the time of the Judgment.
9. By signing this complaint, I am agreeing that the allegations written are true and correct to the best of my knowledge.

Date: _____

Plaintiff / Attorney for Plaintiff

RESIDENTIAL EVICTION INFORMATION SHEET

Notice: A landlord must provide a tenant with written notice saying why the eviction process has started. The tenant should have received this notice before this lawsuit was filed.

Rent cases: If this lawsuit has been filed for not paying rent, the tenant can stop it and continue living in the residence by paying all rent now due, late fees, attorney's fees and court costs. After a judgment has been granted, reinstatement of the lease is solely in the landlord's discretion. Inability to pay rent is not a legal defense and the judge cannot give more time to pay, even if the tenant is having financial problems.

Before Court: Eviction cases move through the court system very quickly. If the tenant disagrees with the landlord's allegations, the tenant is encouraged to file a written answer. The answer form available from the court allows the tenant to admit or deny the allegations and explain his or her position. If the tenant cannot afford to pay the answer fee, he or she may apply for a waiver of that fee. If a tenant believes that the landlord owes him or her money, the tenant may under some circumstances file a counterclaim. The summons states that a trial will occur on the date listed, but due to the high volume of cases, a trial may not occur then. If the tenant fails to appear, and the landlord or his attorney is present, a judgment will probably be entered against the tenant. Tenants can represent themselves or arrange for lawyers to represent them. The court will not provide a lawyer.

At Court: At the time listed on the summons, the judge will start calling cases. If both parties are present, the judge will ask the tenant whether the complaint is true. If the tenant says no, he or she will need to briefly tell the judge why. If the reason appears to be a legal defense, the judge will need to hear testimony from both sides and make a decision after a trial. After talking to the landlord or its attorney, a tenant may wish to agree to what the landlord is requesting by signing a "stipulation." A stipulation is an agreement under which the parties resolve the dispute on the basis of what the agreement says. Only matters contained in the written agreement can be enforced. These agreements should be clear and understandable by both parties. Most stipulations include judgments against tenants. See below.

Continuances: Either party may ask that the court date be delayed. The court will agree only if there is a very good reason. A delay will be no more than three business days. There is no assurance a delay will be granted and parties should come to court prepared for trial and bring necessary witnesses and documents.

After a Judgment: If a landlord receives a judgment, it may apply for a writ of restitution to remove the residents. Writs of Restitution are served by constables, who will direct the residents to leave. A tenant may avoid the difficulties associated with a writ of restitution by vacating the property and returning the keys to the landlord. This ends his or her possession of the residence. If the tenant wants to continue to live in the residence after a judgment has been entered, the tenant will need to obtain the landlord's approval and sign a new lease. A tenant will have five (5) days to vacate the premises unless evicted for criminal activity, in which case the tenant has only twelve (12) to twenty four (24) hours to vacate. A judgment will probably appear on a tenant's credit report for several years. Parties wishing to appeal from a judgment have five days to do so after the judgment is entered and can obtain forms and information from the court filing counter. If a tenant wants to remain in the rental home during the appeal, the tenant must also pay a "supersedeas bond" to suspend the judgment while the case is being reviewed. If the tenant prevails the court will dismiss the case.

Sources of Additional Information: You can get copies of the Arizona Residential Landlord Tenant Act, the Arizona Mobile Home Parks Residential Landlord and Tenant Act and the Long Term Recreational Vehicle Rental Space Act from a library or from the Secretary of State's office or web page: www.azsos.gov.

Yuma Justice Court Precinct One

CASE NUMBER: _____

() _____

Plaintiff(s) Name / Address / Phone

() _____

Defendant(s) Name / Address / Phone

SUMMONS (Eviction Action) [] Amended

THE STATE OF ARIZONA TO THE DEFENDANT(S) NAMED ABOVE. YOU ARE HEREBY SUMMONED TO APPEAR.

An **Eviction Case** has been filed against you. A court hearing has been scheduled.

Date: _____ **Time:** 8:30 A.M.
At the Yuma Justice Center, 250 W. 2nd Street, Yuma, AZ 85364
Courtroom: A #2006 **Floor:** 2nd

Please arrive early.

REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES SHOULD BE MADE TO THE COURT AS SOON AS POSSIBLE.

If an interpreter is needed, please contact the court in writing as soon as possible. No Cost for Interpreter
Si necesita interprete, favor de notificar a la corte por escrito lo mas pronto posible. Sin Costo alguno para interprete

1. You have a right to come to court.
2. If you do not agree with the claims against you on the attached complaint, you must come to court at the date, time, and location listed above and explain your reasons to the judge.
3. If you do not agree with the claims in the complaint, you also may file a written answer admitting or denying some or all the claims and pay the answer fee. (See number 5.)
4. If you have a statutory basis to file a counterclaim, which is limited to damages resulting from the landlord's breach of the lease or violation of the Residential Landlord Tenant Act, it must be in writing and served upon the opposing party. ARS section 33-1365.
5. If you cannot afford the filing fee, you may apply for a deferral or waiver of the filing fee at the court.
6. **IF YOU FAIL TO APPEAR**, a judgment will likely be entered against you, granting the relief specifically requested in the complaint, including removing you from the rental.
7. To learn more see the attached Residential Eviction Information Sheet or contact the court.

Date: _____ Justice of the Peace _____

The laws about this case are found in the Arizona Residential Landlord and Tenant Act. For more information on the Act, eviction actions, and your rights, please visit the Arizona Department of Housing website, the Maricopa County Justice Courts website; www.AZLawHelp.org or www.AZCourtHelp.org.