

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 311 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

As Engrossed: S2/19/09

A Bill

HOUSE BILL 1213

4
5 By: Representative Patterson
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND AND CLARIFY VARIOUS PROVISIONS OF
10 THE ARKANSAS RESIDENTIAL-LANDLORD TENANT ACT OF
11 2007 THAT CONCERN LANDLORD REMEDIES AND EVICTION
12 PROCEEDINGS; FOR OTHER PURPOSES.
13

Subtitle

14
15 AN ACT TO AMEND AND CLARIFY VARIOUS
16 PROVISIONS OF THE ARKANSAS RESIDENTIAL
17 LANDLORD-TENANT ACT OF 2007 THAT CONCERN
18 LANDLORD REMEDIES AND EVICTION
19 PROCEEDINGS.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 18-17-706 is hereby amended to read as
25 follows:

26 18-17-706. Payment of rent into court.

27 In any action in which the landlord sues for possession and the tenant
28 raises defenses or counterclaims pursuant to this chapter or the rental
29 agreement:

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

33 (ii) ~~The and the~~ landlord shall provide the tenant with a
34 written receipt for each payment except when the tenant pays by check.

35 (B) Rent ~~must~~ shall not be abated for a condition caused by the



1 deliberate or negligent act or omission of the tenant, a member of his or her
2 family, or other person on the premises with his or her permission or who is
3 allowed access to the premises by the tenant~~+~~.

4 (2) The tenant shall pay the landlord all rent allegedly owed before
5 the issuance of the ~~rule~~ order, provided that in lieu of the payment the
6 tenant may be allowed to submit to the court a receipt and cancelled check,
7 or both, indicating that payment has been made to the landlord;

8 (3)(A) Should the tenant not appear and show cause within ten (10)
9 days, the court shall issue a ~~warrant of ejection~~ writ of possession
10 pursuant to this subchapter.

11 (B)(i) Should the tenant appear in response to the ~~rule~~
12 order and allege that rent due under subdivision (1) or (2) of this section
13 has been paid, the court shall determine the issue.

14 (ii) If the tenant has failed to comply with
15 subdivision (1) or (2) of this section, the court shall issue a ~~warrant of~~
16 ~~ejection~~ writ of possession and the landlord shall be placed in full
17 possession of the premises by the sheriff, ~~deputy, or constable; and.~~

18 (4)(A) If the amount of rent due is ~~determined~~ found at final
19 adjudication to be less than alleged by the landlord, judgment shall be
20 entered for the ~~tenant if he or she has complied fully with the provisions of~~
21 ~~this section~~ amount found due to the landlord.

22 (B) If the court finds at final adjudication that no rent
23 is due and no damages are due the landlord, judgment shall be entered for the
24 tenant.

25
26 SECTION 2. Arkansas Code 18-17-707 is hereby amended to read as
27 follows:

28 18-17-707. ~~Undertaking~~ Bond on appeal and order staying execution.

29 (a) Upon appeal to the circuit court, the case shall be heard in a
30 manner consistent with ~~other appeals from the~~ the rules of the *circuit* court
31 as soon as is feasible after the appeal is docketed.

32 (b)(1) It is sufficient to stay execution of a judgment for ~~ejection~~
33 possession that the tenant sign ~~an undertaking~~ a bond that he or she will pay
34 to the landlord the amount of rent, determined by the court in accordance
35 with ~~§~~ §§ 18-17-705 and 18-17-706, as it becomes due periodically after the
36 judgment was entered.

1 (2) Any ~~clerk or~~ circuit judge shall order a stay of execution
2 upon the ~~undertaking~~ bond.

3 (c) The ~~undertaking~~ bond by the tenant and the order staying execution
4 may be substantially in the following form:

5
6 "State of Arkansas County of

7 _____ Landlord

8 vs.

9 _____ Tenant

10 Bond to Stay

11 Execution on Appeal to Circuit Court

12 Now comes the tenant in the above entitled action and respectfully shows the
13 court that a writ of ~~eviction~~ possession was issued against the tenant and
14 for the landlord on the ____ day of ____, 20____, by the ~~circuit~~ district
15 court. Tenant has appealed the judgment.

16 Pursuant to the findings of the ~~circuit~~ district court, the tenant is
17 obligated to pay rent in the amount of \$_____ per ____, due on the
18 ____ day of each ____.

19 Tenant ~~undertakes~~ bonds to pay the periodic rent hereinafter due according to
20 the findings of the court and moves the circuit court to stay execution on
21 the writ of ~~eviction~~ possession until this matter is heard on appeal and
22 decided by the circuit court.

23 This the ____ day of ____, 20

24 _____
25 _____ Tenant

26
27 Upon execution of the bond, execution on the judgment of eviction is stayed
28 until the action is heard on appeal and decided by the circuit court. If
29 tenant fails to make any rental payment within five (5) days of the due date,
30 upon application of the landlord, the stay of execution shall dissolve, the
31 appeal by the tenant to the circuit court on issues dealing with possession
32 ~~must~~ shall be dismissed and the sheriff ~~may~~ shall dispossess the tenant.

33 This the ____ day of ____, 20

34 _____
35 _____ Judge"

1 (d) If the tenant fails to make a payment within five (5) days of the
2 due date according to the ~~undertaking~~ bond and order staying execution, the
3 clerk, upon application of the landlord, shall issue a writ of ~~eviction~~
4 possession to be executed pursuant to § 18-17-904.

5 ~~(e)(1)(A) Upon appeal to the Supreme Court or to the Court of Appeals,~~
6 ~~it is sufficient to stay execution of a writ of eviction that the tenant sign~~
7 ~~an undertaking that he or she will pay to the landlord the amount of rent,~~
8 ~~determined by order of the judge of the circuit court, as it becomes due~~
9 ~~periodically after judgment was entered.~~

10 ~~(B) The judge of the court having jurisdiction shall order~~
11 ~~stay of execution upon the undertaking.~~

12 ~~(2) The tenant's failure to comply with the terms of the~~
13 ~~undertaking entitles the landlord to execution of the judgment for possession~~
14 ~~in accordance with the provisions of subsection (d) of this section.~~

15
16 SECTION 3. Arkansas Code § 18-17-901(a), concerning the commencement
17 of an eviction proceeding against a tenant, is hereby amended to read as
18 follows:

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

22
23 SECTION 4. Arkansas Code § 18-17-902 is hereby amended to read as
24 follows:

25 18-17-902. Eviction proceeding.

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

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

33 (2) The fee for filing an action under this chapter by a
34 complaint with supporting affidavit of eviction shall be ~~twenty-five dollars~~
35 ~~(\$25.00)~~ as provided in § 16-17-705.

36 (b) Upon the filing by the landlord or his or her agent or attorney of

1 ~~an~~ a complaint and supporting affidavit of eviction, the district court shall
2 issue an order requiring the tenant to vacate the occupied premises or to
3 show cause why he or she should not be evicted ~~before~~ by the court within ten
4 (10) calendar days after the date of service of a copy of the order upon the
5 tenant.

6
7 SECTION 5. Arkansas Code § 18-17-903 is hereby amended to read as
8 follows:

9 18-17-903. Service of ~~rule~~ order – Posting and mailing requirements.

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

13 ~~(b)(1)~~ When service in accordance with subsection (a) of this section
14 has been unsuccessfully attempted and no person is found in possession of the
15 premises, the copy of the ~~notice~~ order to vacate may be served by leaving it
16 affixed to the most conspicuous part of the premises.

17 ~~(2) (A) When service as provided in subdivision (b)(1) of this~~
18 ~~section has been attempted unsuccessfully, a copy of the order may be served~~
19 ~~by affixing it to the most conspicuous part of the premises and mailing a~~
20 ~~copy of the notice.~~

21 ~~(B) On the first unsuccessful attempt to serve the order,~~
22 ~~a copy of the notice shall be affixed to the most conspicuous part of the~~
23 ~~premises.~~

24
25 SECTION 6. Arkansas Code § 18-17-904 is hereby amended to read as
26 follows:

27 18-17-904. Tenant ejected on failure to show cause.

28 If the tenant fails to appear and show cause within the ~~ten (10) days~~
29 ten calendar-day period as directed by the order or at the court appointed
30 hearing date, the court shall enter judgment in favor of the plaintiff and
31 direct the clerk to issue a writ of ~~eviction~~ possession, and the tenant shall
32 be evicted by the sheriff of the county.

33
34 SECTION 7. Arkansas Code § 18-17-906 is hereby amended to read as
35 follows:

36 18-17-906. Designation of parties in eviction.

1 In any ~~trial~~ eviction proceeding in a ~~before the circuit district~~ court
2 ~~in an eviction case~~, the landlord ~~may~~ shall be designated as plaintiff and
3 the tenant as defendant.

4
5 SECTION 8. Arkansas Code § 18-17-907 is hereby amended to read as
6 follows:

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

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

11
12 SECTION 9. Arkansas Code § 18-17-908 is hereby amended to read as
13 follows:

14 18-17-908. Effect of ~~verdict~~ judgment for defendant.

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

- 17 (1) The termination of his or her tenancy by agreement or operation of
18 law;
- 19 (2) Failure or neglect to pay rent; or
- 20 (3) Eviction in another proceeding under this chapter or by the
21 judgment of a court of competent jurisdiction.

22
23 SECTION 10. Arkansas Code § 18-17-911 is hereby amended to read as
24 follows:

25 18-17-911. Accrual of rent after institution of proceedings.

26 Statute text

27 (a) After the commencement of eviction proceedings by the issuance of
28 ~~a rule~~ an order to vacate or to show cause as provided in § 18-17-902, the
29 rental for the use and occupancy of the premises involved shall continue to
30 accrue so long as the tenant remains in possession of the premises, at the
31 rate as prevailed immediately before the issuance of the ~~rule~~ order to vacate
32 or show cause, and the tenant shall be liable for the payment of the rental,
33 the collection of which may be enforced ~~by distress~~ as provided with respect
34 to other rents.

35 (b) The acceptance by the landlord of any rent, whether it shall have
36 accrued at the time of ~~issuing the rule~~ the issuance of the order to vacate

1 or to show cause or shall subsequently accrue, shall not operate as a waiver
 2 of the landlord's right to insist upon eviction, ~~nor or~~ as a renewal or
 3 extension of the tenancy, but the rights of the parties as they existed at
 4 the time of the issuance of the ~~rule order to vacate or to show cause~~ shall
 5 control.

6
 7 SECTION 11. Arkansas Code § 18-17-912 is hereby amended to read as
 8 follows:

9 18-17-912. Commercial leases.

10 (a) In any action involving a commercial lease in which the landlord
 11 sues for possession and the tenant raises defenses or counterclaims pursuant
 12 to this chapter or the lease agreement:

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

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

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

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

24 ~~(b)(1) If a jury trial is requested and upon motion of either party or~~
 25 ~~upon his or her own motion, the circuit judge may order that the commercial~~
 26 ~~lease eviction case be heard at the next term of court following the tenant's~~
 27 ~~appearance.~~

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

30 ~~(3)(4)(2)(A)~~ If the tenant appears in response to the ~~rule order~~
 31 to vacate or to show cause and alleges that rent due ~~as provided by owed~~
 32 under § 18-17-911 and this section has been paid, the court shall determine
 33 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 ~~eviction~~ possession, and
 36 the landlord must be placed in full possession of the premises by the

1 sheriff, ~~deputy, or constable.~~

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

7 ~~(5)(4)~~ If the court orders that the tenant pay all rent due and
8 accruing as of and during the pendency of the action ~~as provided by this~~
9 ~~subchapter~~, the writ judgment may require the payments to be made to either
10 the:

11 (A) ~~Directly to the commercial~~ Commercial landlord; or

12 (B)(i) ~~to the clerk~~ Clerk of the district court, ~~to be~~
13 ~~held~~ who shall hold the payments until the final disposition of the case; ~~or~~

14 ~~(B) (i) Through the circuit judge's office.~~

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

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

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

28
29 SECTION 12. Arkansas Code § 18-17-913 is hereby amended to read as
30 follows:

31 18-17-913. Execution of writ of ~~eviction~~ possession.

32 (a) In executing a writ of ~~eviction~~ possession, the sheriff shall
33 proceed in accordance with the provisions of § 18-60-310 ~~to the premises,~~
34 ~~present to the occupants a copy of the writ, and give the occupants twenty-~~
35 ~~four (24) hours to vacate voluntarily.~~

36 (b) ~~If the occupants refuse to vacate within twenty four (24) hours or~~

1 ~~the premises appear unoccupied, the sheriff shall announce his or her~~
2 ~~identity and purpose.~~

3 ~~(c) If necessary, the sheriff may then enter the premises by force,~~
4 ~~using the least destructive means possible, in order to effectuate the~~
5 ~~eviction.~~

6 ~~(d) If the premises appear to be occupied and the occupant does not~~
7 ~~respond, the sheriff shall leave a copy of the writ taped or stapled at each~~
8 ~~corner and attached at the top of either the front or back door or in the~~
9 ~~most conspicuous place.~~

10 ~~(e) Twenty four (24) hours following the posting of the writ, if the~~
11 ~~occupants have not vacated the premises voluntarily, the sheriff may then~~
12 ~~enter the premises by force, using the least destructive means possible, in~~
13 ~~order to effectuate the eviction.~~

14
15 */s/ Patterson*

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17 **APPROVED: 3/06/2009**
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