

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

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 600

5 By: Senator Bond
6 By: Representatives Capp, Sabin
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE CIVIL EVICTION
10 PROCESS; TO CREATE AN EVICTION PROCESS FOR FAILURE TO
11 PAY RENT; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE LAW CONCERNING THE CIVIL
16 EVICTION PROCESS; TO CREATE AN EVICTION
17 PROCESS FOR FAILURE TO PAY RENT.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 18, Chapter 17, Subchapter 9, is
23 repealed.
24

25 ~~Subchapter 9~~
26 ~~—Eviction Proceedings~~
27

28 ~~18-17-901.—Grounds for eviction of tenant.~~

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

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

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

35 ~~(3) The terms or conditions of the rental agreement have been~~
36 ~~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.~~

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~~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.~~

1 ~~(a)(1) After the commencement of eviction proceedings by the issuance~~
2 ~~of an order to vacate or to show cause as provided in § 18-17-902, the rent~~
3 ~~for the use and occupancy of the premises involved shall continue to accrue~~
4 ~~so long as the tenant remains in possession of the premises at the rate as~~
5 ~~prevailed immediately before the issuance of the order to vacate or show~~
6 ~~cause.~~

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

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

15
16 ~~18-17-912. Commercial leases.~~

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

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

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

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

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

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

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

36 ~~(B) If the tenant has failed to comply with § 18-17-911~~

1 and this section, the court shall issue a writ of possession, and the
2 landlord shall be placed in full possession of the premises by the sheriff.

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

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

11 (A) Commercial landlord; or

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

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

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

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

25
26 ~~18-17-913. Execution of writ of possession.~~

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

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

32
33 Subchapter 9
34 - Eviction Proceedings

35
36 18-17-901. Applicability.

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

4 (b) An eviction proceeding under this subchapter shall not limit the
5 right of either party to bring a separate action for relief based on other
6 claims arising from the tenancy.

7
8 18-17-902. Notice to tenant.

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

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

15 (c) The landlord, his or her agent, or attorney shall deliver the
16 notice to the tenant by any manner reasonably calculated to provide actual
17 notice to the tenant, including without limitation by personal delivery,
18 regular or certified mail, or commercial delivery service.

19
20 18-17-903. Proper parties.

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

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

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

26 (2) In tenancies governed by a federal or state regulatory
27 scheme with prescribed eviction procedures inconsistent with this chapter; 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 rental property is located.

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

2 (1) A circuit court; or

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

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

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

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

12 (C) Explain the nature of the lease agreement, the amount
13 of rent past due, and the frequency with which rent payments are due;

14 (D) Identify the date when rent was due and not paid;

15 (E) Identify the date when written demand for the property
16 was made;

17 (F) State that the landlord is lawfully entitled to
18 possession of the property; and

19 (G) Include the following statement: "I certify that all
20 of my statements in this Complaint are true and correct and that I am not
21 filing this eviction for any discriminatory reason based on my tenant's race,
22 color, national origin, religion, familial status, or disability."

23 (2) A complaint shall be accompanied by a copy of the three-day
24 notice to pay rent or vacate made in writing for the property.

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

27
28 18-17-905. Court costs and attorney's fees.

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

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

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

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

1 (c) The court may award the prevailing party reasonable attorney's
2 fees if the court determines that the other party did not act in good faith,
3 willfully performed an act prohibited by the lease or this chapter, or
4 willfully refrained from performing an act required by the lease or this
5 subchapter.

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

8
9 18-17-906. Hearing – Service.

10 (a)(1) When a complaint for eviction due to nonpayment of rent is
11 filed under this subchapter, the court shall order a hearing to be held not
12 later than twenty-one (21) days from the date on which the complaint is filed
13 or the next available court date, whichever is later.

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

16 (b)(1) A copy of the complaint and notice of hearing shall be served
17 upon the tenant:

18 (A) At least five (5) days before the date of the hearing;
19 and

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

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

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

26
27 SUMMONS AND NOTICE OF EVICTION HEARING

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

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

32 At the hearing, you will be given the opportunity to respond to the
33 landlord's complaint. If you wish to remain in the property, you must prove
34 that either 1) you paid the rent due or 2) you have a legal defense excusing
35 you from paying rent. You have the right to have an attorney represent you in
36 the hearing.

1 If you do not appear at the hearing, or if the landlord proves that you have
2 not paid rent, the Court will immediately order the sheriff to evict you and
3 return possession of the rental property to the landlord. If you appear at
4 the hearing and do not prove you paid the rent due or present a defense for
5 not paying rent, the court will order you to pay court costs. If the court
6 finds you did not act in good faith or willfully violated your lease, you can
7 also be ordered to pay the landlord's attorney's fees.

8
9 18-17-907. Hearing – Written objection or answer not required.

10 (a) Due to the expedited nature of this proceeding, a tenant is not
11 required to file a written objection or answer to dispute possession.

12 (b) At the possession hearing, the tenant may object orally to the
13 landlord's request for possession, offer proof of payment of rent, or raise
14 defenses to excuse nonpayment.

15
16 18-17-908. Continuances.

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

20 (1) In accordance with the lease; or

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

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

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

30
31 18-17-909. Effect of judgment for landlord.

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

35
36 18-17-910. Effect of judgment for tenant.

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

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

5 (2) The tenant is evicted in another proceeding under this
6 subchapter or by the judgment of a court of competent jurisdiction.

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