

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S2/19/09

A Bill

HOUSE BILL 1213

5 By: Representative Patterson
6
7

For An Act To Be Entitled

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 AN ACT TO AMEND AND CLARIFY VARIOUS
15 PROVISIONS OF THE ARKANSAS RESIDENTIAL
16 LANDLORD-TENANT ACT OF 2007 THAT CONCERN
17 LANDLORD REMEDIES AND EVICTION
18 PROCEEDINGS.
19
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
36 deliberate or negligent act or omission of the tenant, a member of his or her



1 family, or other person on the premises with his or her permission or who is
2 allowed access to the premises by the tenant~~+~~.

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

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

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

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

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

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

24
25 SECTION 2. Arkansas Code 18-17-707 is hereby amended to read as
26 follows:

27 18-17-707. ~~Undertaking~~ Bond on appeal and order staying execution.

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

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

36 (2) Any ~~clerk or~~ circuit judge shall order a stay of execution

1 upon the ~~undertaking~~ bond.

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

4
5 "State of Arkansas County of

6 _____ Landlord

7 vs.

8 _____ Tenant

9 Bond to Stay

10 Execution on Appeal to Circuit Court

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

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

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

22 This the _____ day of _____, 20

23 _____
24 _____ Tenant

25
26 Upon execution of the bond, execution on the judgment of eviction is stayed
27 until the action is heard on appeal and decided by the circuit court. If
28 tenant fails to make any rental payment within five (5) days of the due date,
29 upon application of the landlord, the stay of execution shall dissolve, the
30 appeal by the tenant to the circuit court on issues dealing with possession
31 ~~must~~ shall be dismissed and the sheriff ~~may~~ shall dispossess the tenant.

32 This the _____ day of _____, 20

33 _____
34 _____ Judge"

35
36 (d) If the tenant fails to make a payment within five (5) days of the

1 due date according to the ~~undertaking~~ bond and order staying execution, the
 2 clerk, upon application of the landlord, shall issue a writ of ~~eviction~~
 3 possession to be executed pursuant to § 18-17-904.

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

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

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

14
 15 SECTION 3. Arkansas Code § 18-17-901(a), concerning the commencement
 16 of an eviction proceeding against a tenant, is hereby amended to read as
 17 follows:

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

21
 22 SECTION 4. Arkansas Code § 18-17-902 is hereby amended to read as
 23 follows:

24 18-17-902. Eviction proceeding.

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

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

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

35 (b) Upon the filing by the landlord or his or her agent or attorney of
 36 ~~an~~ a complaint and supporting affidavit of eviction, the district court shall

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

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

8 18-17-903. Service of ~~rule~~ order – Posting and mailing requirements.

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

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

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

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

23
24 SECTION 6. Arkansas Code § 18-17-904 is hereby amended to read as
25 follows:

26 18-17-904. Tenant ejected on failure to show cause.

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

32
33 SECTION 7. Arkansas Code § 18-17-906 is hereby amended to read as
34 follows:

35 18-17-906. Designation of parties in eviction.

36 In any ~~trial~~ eviction proceeding in a ~~before the circuit~~ district court

1 ~~in an eviction case~~, the landlord ~~may~~ shall be designated as plaintiff and
2 the tenant as defendant.

3
4 SECTION 8. Arkansas Code § 18-17-907 is hereby amended to read as
5 follows:

6 18-17-907. Effect of ~~verdict~~ judgment for plaintiff.

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

10
11 SECTION 9. Arkansas Code § 18-17-908 is hereby amended to read as
12 follows:

13 18-17-908. Effect of ~~verdict~~ judgment for defendant.

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

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

21
22 SECTION 10. Arkansas Code § 18-17-911 is hereby amended to read as
23 follows:

24 18-17-911. Accrual of rent after institution of proceedings.
25 Statute text

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

34 (b) The acceptance by the landlord of any rent, whether it shall have
35 accrued at the time of ~~issuing the rule~~ the issuance of the order to vacate
36 or to show cause or shall subsequently accrue, shall not operate as a waiver

1 of the landlord's right to insist upon eviction, ~~nor~~ or as a renewal or
2 extension of the tenancy, but the rights of the parties as they existed at
3 the time of the issuance of the ~~rule~~ order to vacate or to show cause shall
4 control.

5
6 SECTION 11. Arkansas Code § 18-17-912 is hereby amended to read as
7 follows:

8 18-17-912. Commercial leases.

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

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

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

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

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

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

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

29 ~~(3)(4)(2)(A)~~ If the tenant appears in response to the ~~rule~~ order
30 to vacate or to show cause and alleges that rent due ~~as provided by~~ owed
31 under § 18-17-911 and this section has been paid, the court shall determine
32 the issue.

33 (B) If the tenant has failed to comply with § 18-17-911
34 and this section, the court shall issue a writ of ~~eviction~~ possession, and
35 the landlord must be placed in full possession of the premises by the
36 sheriff, ~~deputy, or constable~~.

1 ~~(4)~~(3) If the amount of rent due is determined at final
2 adjudication to be less than the amount alleged by the landlord, judgment
3 shall be entered for the tenant if the court determines that the tenant has
4 complied fully with the provisions of § 18-17-911, this section, and the
5 lease agreement.

6 ~~(5)~~(4) If the court orders that the tenant pay all rent due and
7 accruing as of and during the pendency of the action ~~as provided by this~~
8 ~~subchapter~~, the writ judgment may require the payments to be made to either
9 the:

10 (A) ~~Directly to the commercial~~ Commercial landlord; or
11 (B)(i) ~~to the clerk~~ Clerk of the district court, ~~to be~~
12 ~~held who shall hold the payments~~ until the final disposition of the case; ~~or~~

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

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

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

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

27
28 SECTION 12. Arkansas Code § 18-17-913 is hereby amended to read as
29 follows:

30 18-17-913. Execution of writ of ~~eviction~~ possession.

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

35 ~~(b)~~ If the occupants refuse to vacate within twenty four (24) hours ~~or~~
36 ~~the premises appear unoccupied, the sheriff shall announce his or her~~

1 ~~identity and purpose.~~

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

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

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

13
14 */s/ Patterson*
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