

Landlord-Tenant Evictions, Court, and Litigation

Joseph W. Price II

Quattlebaum, Grooms & Tull, PLLC

111 Center Street, Suite 1900

Little Rock, Arkansas 72201

Telephone: 501-379-1772

Facsimile: 501-379-3872

Email: jprice@qgtlaw.com

What Eviction Procedure Applies?

- 4 types of eviction procedures
 - Unlawful-Detainer Procedure
 - Ark. Code Ann. § 18-60-301 *et seq.*
 - Civil-Eviction Procedure
 - Ark. Code Ann. § 18-17-101 *et seq.*
 - Criminal/Municipal Procedure
 - Ark. Code Ann. § 18-16-101
 - Criminal-Activity Procedure
 - Ark. Code Ann. § 18-16-501 *et seq.*
- Commercial Lease
 - Unlawful detainer is only procedure, unless criminal-activity procedure applies.
 - One provision of the Arkansas Residential Landlord Tenant Act applies to Commercial Leases
 - Ark. Code Ann. § 18-17-912

UNLAWFUL DETAINER

Unlawful-Detainer Eviction

- Provide demand and notice to cure consistent with the lease.
- Provide three-day quit and demand letter consistent with the statute.
- File Lawsuit
- Serve Writ of Possession

Unlawful-Detainer Eviction

• Unlawful Detainer

- A person is guilty of unlawful detainer if the person:
 - Holds over after the end of the Lease period;
 - Fails to pay rent when due;
 - Fails to maintain the premises in a safe, healthy, or habitable condition; or
 - Causes a nuisance.
 - See Ark. Code Ann. § 18-60-304.
- *Unlawful detainer is common to all property evictions.*

Unlawful-Detainer Eviction

- **Step One: Demand To Cure As Required by Lease**
- **Step Two: Vacate Letter**
 - If the defect is not cured after the required time to do so, send a notice to vacate.
 - State the date the tenancy began
 - State the promise the Tenant made in the Lease
 - State HOW the Tenant broke the promise

Unlawful-Detainer Eviction

● Step Two: Vacate Letter (cont'd.)

- Notice to Vacate (cont'd.)
 - Include the following phrase:
 - “Demand is made that you quit, deliver, and surrender possession of the Premises to the Owner within [XX] DAYS from your receipt of this letter.”
 - State that the letter itself, exercising remedies, or entering into negotiations with Tenant **does not** waive Owner’s right to exercise its rights and remedies in a court of law.
 - *This protects you, and allows for you to proceed with eviction if no settlement can be reached between Landlord and Tenant.*

Unlawful-Detainer Eviction

● **Step Two: Vacate Letter (cont'd.)**

- “Demand is made that you quit, deliver, and surrender possession of the Premises to the Owner within [XX] DAYS from your receipt of this letter.”
- **How many days should you put in the letter?**
 - Some federal properties (i.e., HUD, RD, and tax credit) do not allow 3-day notices to vacate.
 - *Check the Lease!!!*
 - How many days’ notice are required under the Lease?
 - That’s the number of days you put in the vacate letter.

Unlawful-Detainer Eviction

- **Step Three:** If tenant fails to vacate within 3-business days, you file a lawsuit for unlawful detainer with affidavit supporting the eviction.
 - See example complaint and affidavit.
- Although some clerks will put the requisite language in the summons, to be safe, I always submit a notice of intention to issue writ of possession and serve it with the complaint.
 - See Ark. Code Ann. § 18-60-307 for exact language.
 - See example notice and summons

Unlawful-Detainer Eviction

- The tenant must object within 5 business days AND deposit the disputed funds into the Court's registry.
 - See example objections; almost anything will work.
- If they do one but not the other, you will have to file a motion with the Court, requesting that the Court order the Clerk to issue the writ of possession.
 - See example motion and writ of possession
- For commercial leases, tenant must also deposit all rent allegedly owed.
 - See Ark. Code Ann. § 18-17-912
- **Step Four:** By statute, the Sheriff must serve the writ of possession and be present for the lockout.
 - You are at mercy of Sheriff, and you must be diligent.
 - Sheriff may post the writ on the front door if defendant cannot be found within 8 hours. Defendant has 24 hours after service or posting to vacate.
 - See Ark. Code Ann. § 18-60-310

Unlawful-Detainer Eviction

- Why may unlawful-detainer statute be preferred?
 - Age - 1981
 - Damages
 - Only amount equal to the rental value for each month for the time of unlawful detention when residential eviction.
 - However, when property is used for mixed or commercial use, landlord is entitled to receive 3x the rental value per month for the time of unlawful detention.
- See flowchart

CIVIL EVICTION

The Arkansas Residential Landlord-Tenant Act
of 2007

Scope and Jurisdiction

- Who is excluded?

- Ark. Code Ann. § 18-17-202

- Nursing homes, dormitories, lease/rent to own, fraternity/sorority houses, hotels, extended stays apartments, condos, farm residences, and shelters

- Who has jurisdiction?

- Ark. Code Ann. § 18-17-203

- District Court or “appropriate court of this state”

The Lease

- The lease is a contract between the landlord and the tenant.
 - See Ark. Code Ann. § 18-17-301(11).
- Who's Who?
 - **Owner**—the person with legal title to the property, including a mortgagee (such as a Bank).
 - See Ark. Code Ann. § 18-17-301(7).
 - **Landlord**—the person who *leases* the property to the tenant; can be an owner, a lessor, or a sublessor.
 - See Ark. Code Ann. § 18-17-301(5).
 - **Tenant**—the person entitled under the lease to occupy the premises.
 - See Ark. Code Ann. § 18-17-301(15).

The Lease (cont'd.)

Example:

Larry forgot to include a term with his Lease. Is he doomed?

- If the tenant is a “roomer” who pays weekly, the term is week-to-week.
 - See Ark. Code Ann. § 18-17-401(c)
 - *What's a roomer?*
 - A person occupying a dwelling that has no toilet, bathtub/shower, refrigerator, stove, or kitchen sink.
 - See Ark. Code Ann. § 18-17-301(12).
- For all other tenancies, the term is month-to-month.
 - See Ark. Code Ann. § 18-17-401(c).

The Lease (cont'd)

- A word about good faith...
 - Arkansas law requires landlords to act “in good faith.”
 - Ark. Code Ann. § 18-17-302.
 - Good faith means “honesty in fact in the conduct of the transaction concerned.”
 - Ark. Code Ann. § 18-17-302(4).

The Lease (cont'd.)

- Parts of a Lease

- **Default**

- Tenant Default:

- Failure to pay rent when due for five (5) days
 - Failure to perform any obligations in the Lease
 - Intentional destruction of property; criminal activity

- Landlord Default:

- Failure to comply with repair requests within seven (7) days' written notice by Tenant of Landlord's default.

Rent

- **Rent is payable without demand.**
 - Automatically due at the time stated in the Lease.
 - Amounts due are stated in the Lease.
 - Typically payable at the beginning of the month, and in equal installments each month.
 - *See Ark. Code Ann. § 18-17-401(b).*
- **Rent is due at the place stated in the Lease**
 - Rental office
 - Property management firm's office
 - Owner's home or office

Tenant Obligations

● **Ark. Code Ann. § 18-17-601**

- Comply with appropriate building and housing codes;
- Keep dwelling unit safe and reasonably clean;
- Dispose of garbage, rubbish, and other waste in a clean and safe manner;
- Keep plumbing fixtures reasonably clean;
- Use all facilities and appliances in a reasonable manner;

Tenant Obligations (cont'd.)

- **Ark. Code Ann. § 18-17-601 (cont'd.)**

- Do not deliberately destroy, damage, impair, or remove any part of the premises;
- Conduct himself or herself in a manner that will not disturb other tenants (e.g., no garage bands);
- Comply with all other terms of the Lease.

- **Put these requirements in your Lease agreements, even though Tenants are required to follow them by law.**

Tenant Obligations (cont'd.)

● Consent

- Tenants cannot unreasonably withhold consent to the Landlord to enter the premises in order to:
 - Inspect the premises;
 - Make repairs or improvements;
 - Supply necessary or agreed-to services;
 - Investigate Lease or community-rule violations;
 - Investigate possible criminal activity;
 - Show the premises to potential purchasers or tenants
- *See Ark. Code Ann. § 18-17-602(a).*
- **Put this in your Lease!**

Tenant Obligations (cont'd.)

• Locks

- Tenants cannot change the locks on the premises without the Landlord's permission.
 - *See Ark. Code Ann. § 18-17-602(b).*

• Illegal Activities

- Tenants can only occupy the premises as a residence, and cannot conduct any illegal activities on the premises.
- Tenants can occupy the premises for other reasons, but this must be put in the Lease.
- *See Ark. Code Ann. § 18-17-603.*

Notice

- **GET EVERYTHING IN WRITING!!!!**
- **A word about notice...**
 - A person HAS notice if he has
 - Actual knowledge of it,
 - Received a notice or notification of it.
 - See Ark. Code Ann. § 18-17-303(a)(1).
 - A person GIVES notice if she has
 - Taken steps *reasonably calculated* to inform the other person of something.
 - See Ark. Code Ann. § 18-17-303(b)(1).

Notice (cont'd.)

- **Notice from Landlord to Tenant is provided if...**
 - The Landlord delivers a letter by hand to the Tenant.
 - The Landlord delivers a letter by certified mail at:
 - Tenant's current address (if known), or
 - Tenant's last-known address (if the current address is not known)
 - See Ark. Code Ann. § 18-17-303(b)(2)(C)(i).
 - *Get proof that you mailed something to your Tenant from your mail carrier **in writing!***
 - See Ark. Code Ann. § 18-17-303(b)(2)(C)(ii).

Notice (cont'd.)

- **Notice from Tenant to Landlord is provided if...**
 - The Tenant delivers a letter by hand to the Landlord, or
 - The Tenant delivers a letter to the place stated in the Lease.
 - *See Ark. Code Ann. § 18-17-303(b)(2)(A)-(B).*

Termination (cont'd.)

- **First thing to do ... provide NOTICE!**

- If a tenancy is *month-to-month*...
 - One month's notice is required.
 - *See Seidenstricker Farms v. Warren N. Doss & Etta A. Doss Family Tr.*, 372 Ark. 72, 77, 270 S.W.3d 842, 846 (2008).
- If a tenancy is *week-to-week*...
 - One week's notice is required.
 - *See id.*

Eviction

● Eviction

- Begins when the Tenant breaches the Lease
 - Failure to pay rent
 - Holding over after the end of the rental period
 - Non-compliance with Lease agreement (e.g., to keep the apartment safe, sanitary, and habitable)
- *Get everything in writing. Store all communications with tenant in a safe location, where it can be accessed when (not if) you go to court.*

Eviction (cont'd.)

● **Step One: Demand Letter**

- Send a demand letter.
 - State the date the tenancy began
 - State the promise the Tenant made in the Lease
 - E.g., promise to pay rent on the first of the month, promised to refrain from conducting criminal activity on the premises, etc.
 - State HOW the Tenant broke the promise
 - E.g., failure to pay rent when due, failure to respect quiet hours, etc.
 - Provide required notice to cure the defect.

Eviction (cont'd.)

● Step One: Demand Letter

- Required notice to cure defects:
 - *Noncompliance* (e.g., failure to maintain a safe, clean, and habitable dwelling) – **14 days**
 - See Ark. Code Ann. § 18-17-701(a)
 - *Emergency Noncompliance* (e.g., defect in the Premises that materially affects health and safety) – **14 days, but Landlord may immediately enter to make repairs.**
 - See Ark. Code Ann. § 18-17-702(a)
 - *Failure to Pay Rent* – **5 days**
 - See Ark. Code Ann. § 18-17-701(b)
 - *Holdover Tenants* – **NO NOTICE.**
 - See Ark. Code Ann. § 18-17-703

Eviction (cont'd.)

- **Failure to cure defects within the time stated in the demand letter terminates the Lease.**
 - *See Ark. Code Ann. §§ 18-17-701(a)(2) & (b); 18-17-702(b).*

Eviction (cont'd.)

● **Step Two: Commence Eviction Proceedings**

- A landlord may commence eviction proceedings against a tenant when
 - The Tenant fails to pay rent when due or demanded,
 - The term of the Lease has ended, or
 - The terms and conditions of the Lease have been violated.
 - *See Ark. Code Ann. § 18-17-901(a)*
- Failure to pay rent within five (5) days of the date due is automatic notice to the Tenant that Landlord may commence eviction proceedings.
 - *See Ark. Code Ann. § 18-17-901(b)*

Eviction (cont'd.)

● Step Two: Commence Eviction Proceedings

- **HOWEVER**, just because the law says that notice is automatically provided does not mean that you should not provide notice.
- ***Still advisable*** to provide a demand letter and a notice-to-vacate letter.

Eviction (cont'd.)

● **Step Two: Commence Eviction Proceedings**

- File an action for eviction in district court. (Ark. Code Ann. § 18-17-902(a)(1)(A)).
- Complaint (state *facts* that state a claim for eviction). *See* Ark. R. Civ. P. 8(a).
 - This is where the demand and notice-to-vacate letters come in.
 - E.g., Tenant agreed to pay \$500 in rent on the first of each month. Tenant failed to pay \$500 in rent on the first of July, as promised. Tenant is in breach of the Lease. A three-day notice to quit was provided to Tenant. Tenant remains in possession of the Premises.

Eviction (cont'd.)

● **Step Two: Commence Eviction Proceedings**

- Attach a supporting affidavit to the complaint.
 - “The supporting affidavit shall be signed by a person with personal knowledge of the ground for eviction.”
 - Ark. Code Ann. § 18-17-902(a)(1)(B).
- Pay a filing fee.
 - See Ark. Code Ann. §§ 16-17-705; 18-17-902(a)(2).

Eviction (cont'd.)

● **Step Three: Order to Show Cause**

- District court issues an order to vacate, and an order to show cause as to why the Tenant should not be evicted.
- Tenant required to show cause within ten (10) calendar days after receiving the order.
 - *See Ark. Code Ann. § 18-17-902(b)*

Eviction (cont'd.)

● **Step Four: Serve the Tenant with the Order**

- How to provide service of process?
 - Process server
 - Personal service (with the Tenant, personally)
 - Be sure to include an affidavit swearing to personal service of process!
 - Certified mail, return receipt requested, with restricted delivery to the Tenant – NOT recommended
 - Upon Tenant's attorney (if known), and attorney agrees to accept service on behalf of the Tenant.
 - See Ark. Code Ann. § 18-17-903(a); Ark. R. Civ. P. 4.

Eviction (cont'd.)

● Step Four: Serve the Tenant with the Order

- Service of process (cont'd.)
 - *Example:* Ted has left the apartment and is not in possession of it. No other known addresses for Ted exist, and Ted is not represented by an attorney. How can Larry, a landlord, serve Ted with the Order?
 - **IF** personal service has been attempted (meaning: try personal service **first**), and Ted cannot be found, a copy of the order can be attached to the apartment's front door.
 - See Ark. Code Ann. § 18-17-903(b).

Eviction (cont'd.)

● **Step Five: Hearing (A.C.A. §§ 18-17-905 to 908)**

- Court hearing to determine if Tenant can show cause as to why he or she should not be evicted.
- *Tenant fails to appear—*
 - Court issues a writ of possession.
- *Tenant appears—*
 - Fails to show cause to not be evicted:
 - Court issues writ of possession.
 - Shows cause to not be evicted:
 - Court orders that Tenant remain in possession until failure to pay rent, Lease term ends, noncompliance with Lease.

Eviction (cont'd.)

● **Step Six: Appeal**

- Either party may appeal a decision in an eviction case. *See Ark. Code Ann. § 18-17-909.*

● **Step Seven: More Rent**

- Rent is still due and payable to Landlord, even after eviction proceedings have begun, if the Tenant remains in possession.
- Rent accrues until:
 - Tenant vacates
 - Sheriff executes court-ordered writ of possession.
 - *See Ark. Code Ann. § 18-17-911*

Eviction (cont'd.)

● Step Eight: Sheriff Executes Writ of Possession

- *Example:* Dan did not pay rent for three months. Larry evicted Dan, and the court issued a writ of possession. Larry calls Sheriff Joe and asks when he can evict Dan. Sheriff Joe says that he can't do it for at least a week because he's working on a murder case and it's taking up all of his time. What can Larry do?
 - **NOTHING!!!!!!!!!!**
 - Arkansas law DOES NOT allow self-help.

Eviction (cont'd.)

• **NO Self Help**

• **Self help** includes:

- Changing the locks
- Physically removing the Tenant from the premises
- Physically removing the Tenant's belongings from the premises
- Shutting off the Tenant's electricity or water
- Making physical or verbal threats to the Tenant to leave
- Blocking the Tenant's car from leaving the parking lot.
- Basically, ask yourself: "Would this create a scene?"
 - Then DON'T DO IT.

Evictions for Criminal Activity or Common Nuisances

Criminal-Activity Eviction

- Ark. Code Ann. § 18-16-501
 - Owner, Landlord, Prosecuting Attorney, or City Attorney may invoke this section against a tenant who uses property or allows another person to use the tenant's property as a common nuisance.
- Ark. Code Ann. §§ 5-74-109, 16-105-402, & 18-16-502 defines what a common nuisance is.
 - Examples includes drug houses, illegal gambling, prostitution ring, moonshining, etc.
 - Common nuisance = Criminal activity

Criminal-Activity Eviction

- **Step One:** File a complaint with district or circuit court
 - It does not appear that notice is required if you proceed under these statutes.
 - However, I would always advise to follow lease as to notice.
 - Complaint must name the tenant, located of premises, and the basis for the eviction
 - *See Ark. Code Ann. §§ 18-16-503 & -504*

Criminal Activity Eviction

- **Step Two:** Serve Complaint Summons and Notice of Intention to Evict For Criminal Activity
 - This is the same type of notice of intention to issue writ of possession.
 - Should be included in summons as well, but I would make it a separate documents
 - The specific language that needs to be included is in Ark. Code Ann. § 18-16-505
 - Tenant has five days to object or a writ of possession will be issued.

Criminal-Activity Eviction

- **Step Three:** Hearing, if defendant objects
 - Plaintiff must present evidence sufficient to make a prima facie case of the criminal activity that has been facilitated at the property.
 - Defendant can present rebuttal evidence.
 - *See Ark. Code Ann. § 18-16-506*
- **Step Four:** Service of writ of possession
 - Sheriff must serve writ. Sheriff may post the writ on the front door if defendant cannot be found within 8 hours. Defendant has 24 hours after service or posting to vacate.
 - *See Ark. Code Ann. § 18-16-507*

Criminal-Activity Eviction

- Damages and attorneys fees are recoverable.
 - *See Ark. Code Ann. § 18-16-508*
- A landlord, owner, or agent of same are immune from civil liability for breach of an express or implied covenant concerning the possession or quiet enjoyment of the leased property.
 - *See Ark. Code Ann. § 18-16-509*

IS IT CRIMINAL NOT TO PAY RENT?

Ark. Code Ann. § 18-16-101

Municipal-Court Eviction

- Provide 10-days notice.
- Have citation or ticket issued.
- Tenant may contest citation, but will have to provide deposit of rent due.
- Attend a hearing to present evidence.
- If tenant is found to have not paid rent or vacate after notice, guilty of misdemeanor and \$25.00-a-day fine for each day tenant remains on property.
- Possible 90 days in jail if fail to pay fine.
- See flowchart

Arkansas Blog

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Posted By [Max Brantley](#) on Fri, Apr 17, 2015 at 11:36 AM



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The efforts are noteworthy because the real estate lobby — with help from Gov. **Asa Hutchinson's** chief insurance regulator, **Allen Kerr** — defeated a broadly supported landlord-tenant proposal in the 2015 legislature. The Marshall Project wrote about the first defendant, Artoria Smith, whose case led to the first victory.

Every time a pro-tenant bill goes down in flames, the realtors, bankers, and insurance lobbyists offer the same refrain: **TAKE THIS TO COURT**; it's not a legislative matter. "There are remedies for that," said Allen Kerr, Arkansas' Insurance Commissioner, back in March after yet another proposal to help renters failed to gain momentum at the state Capitol. "It's the court system..."

Because most renters do not have a lawyer, and most cases never make it beyond arraignment, the law has only been appealed ten times since 1968, never successfully. The constitutionality of the statute had also not been ruled on since the 2001 amendment that required defendants to pay their rent before proceeding to trial. Smith and the legal aid organizations of Arkansas seem to have taken that advice.

Without much fanfare, they have quickly launched an all-out assault on the failure-to-vacate law in courts around the state. First, Smith appealed her guilty verdict — and won. A usually-conservative circuit judge in Pulaski County, Herbert Wright, ruled that the manner in which she had been treated was unconstitutional on the grounds that it chilled her fundamental right to due process and a trial (and constituted debtors' imprisonment, to boot). "The fact that Arkansas's sui generis law is — by definition — an 'unusual' punishment only further convinces this Court that the statute is facially unconstitutional," Judge Wright concluded.

As a result of *Arkansas v. Smith*, renters in Little Rock — Arkansas' largest and most populous jurisdiction — no longer face criminal prosecution if they fall behind in paying rent [This is debatable. A circuit court ruling isn't the same as Supreme Court precedent, though it has been influential.] Ever since, legal aid attorneys have been mounting a district-by-district operation to take down the law.

"We will use [Smith's] case as persuasive authority in similar cases," says Jason Auer of Legal Aid of Arkansas, which is spearheading the effort.

Craighead County, in Northeast Arkansas, was the next to fall. The D.A. there issued a memo saying that he would no longer approve arrest warrants regarding nonpayment of rent. In at least 12 other counties in the western part of the state, more cases are pending. Johnson says that Legal Aid of Arkansas is "trying to fly under the radar" by filing these briefs almost surreptitiously, before the realtors' groups take notice. "If the realtors knew where the next one was coming, they would immediately go to that county and exert all their political and financial sway over the judges and D.A.'s, who are all elected... The goal is to go county-by-county before their lobbyists find out."

The secret is out. In addition to the case in Pulaski, we've reported on similar rulings in Woodruff and Poinsett counties.

Good advice, Commissioner Kerr.

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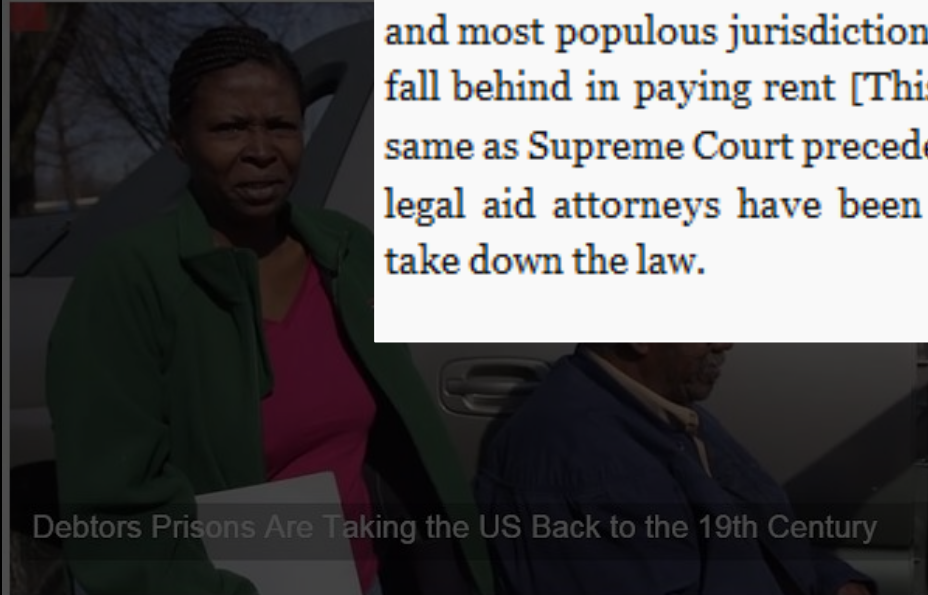
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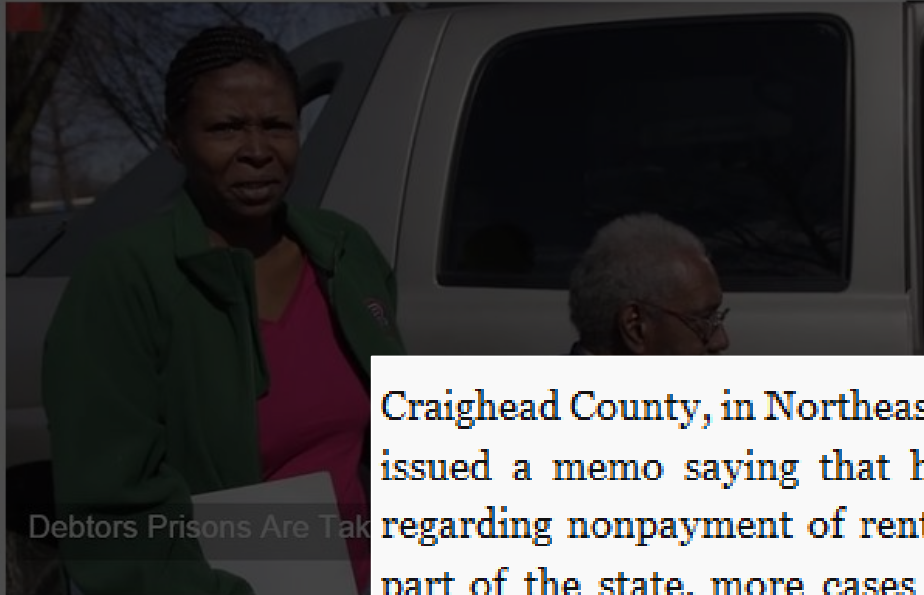
The secret is out. In addition to the case in Pulaski, we've reported on similar rulings in Woodruff and Poinsett counties.

Good advice, Commissioner Kerr.

Arkansas Blog

The quiet court assault on Arkansas's unfair landlord-tenant law

Posted By [Max Brantley](#) on Fri, Apr 17, 2015 at 11:36 AM



Debtors Prisons Are Taking

A STATE'S SHAME: Arkansas's worst-in-the-country is

We've written repeatedly about Arkansas's worst-in-the-country in part because we are the only state with a criminal eviction statute after reporting her landlord's legal battle to attack the criminal eviction statute. Three circuit judges have now found the statute unconstitutional.

The Marshall Project writes about the criminal eviction statute after reporting her landlord's legal battle to attack the criminal eviction statute. Three circuit judges have now found the statute unconstitutional.

The efforts are noteworthy because the Marshall Project's chief insurance regulator, Allen Kerr – a member of the 2015 legislature. The Marshall Project won the first victory.

Craighead County, in Northeast Arkansas, was the next to fall. The D.A. there issued a memo saying that he would no longer approve arrest warrants regarding nonpayment of rent. In at least 12 other counties in the western part of the state, more cases are pending. Johnson says that Legal Aid of Arkansas is “trying to fly under the radar” by filing these briefs almost surreptitiously, before the realtors’ groups take notice. “If the realtors knew where the next one was coming, they would immediately go to that county and exert all their political and financial sway over the judges and D.A.’s, who are all elected... The goal is to go county-by-county before their lobbyists find out.”

Every time a pro-tenant bill goes down in flames, the realtors, bankers, and insurance lobbyists offer the same refrain: TAKE THIS TO COURT; it's not a legislative matter. “There are remedies for that,” said Allen Kerr, Arkansas' Insurance Commissioner, back in March after yet another proposal to help renters failed to gain momentum at the state Capitol. “It's the court system...”

Because most renters do not have a lawyer, and most cases never make it beyond arraignment, the law has only been appealed ten times since 1968, never successfully. The constitutionality of the statute had also not been ruled on since the 2001 amendment that required defendants to pay their rent before proceeding to trial. Smith and the legal aid organizations of Arkansas seem to have taken that advice.

Without much fanfare, they have quickly launched an all-out assault on the failure-to-vacate law in courts around the state. First, Smith appealed her guilty verdict – and won. A usually-conservative circuit judge in Pulaski County, Herbert Wright, ruled that the manner in which she had been treated was unconstitutional on the grounds that it chilled her fundamental right to due process and a trial (and constituted debtors' imprisonment, to boot). “The fact that Arkansas's sui generis law is – by definition – an ‘unusual’ punishment only further convinces this Court that the statute is facially

The secret is out. In addition to the case in Pulaski, we've reported on similar rulings in Woodruff and Poinsett counties.

Good advice, Commissioner Kerr.

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CR 2014-2707

ARTORIA SMITH

DEFENDANT

ORDER

Comes now for consideration the Defendant's Motion to Dismiss, and based upon a review of the pleadings and briefs of both parties and all other matters considered, the Court DOTH FIND:

The Defendant in this case is charged with a misdemeanor violation of Ark. Code Ann. §18-16-101, commonly known as Arkansas's "failure to vacate" law. The parties stipulate that Smith and her landlord, Primo Novero, entered into an oral lease agreement sometime prior to July, 2014. After an alleged breach of their oral contract, Novero gave the Defendant notice on July 9, 2014, that she had 10 days to vacate the premises under the criminal statute, and she did not do so. The Defendant was convicted under the statute in the Little Rock District Court on August 6, 2014, and a timely misdemeanor appeal to this Court followed. The Defendant filed the instant Motion to Dismiss on October 27, 2014, arguing that the failure to vacate statute was unconstitutional.

The Defendant asserts that the statute violates both the Arkansas and United States Constitutions. She specifically argues that it violates her rights to equal protection and due process, that it unconstitutionally chills her right to a trial, that it violates the state and federal prohibition on debtor's prisons, and that it constitutes cruel and unusual punishment. The State's response notes that the Arkansas Supreme Court has not passed on the constitutionality of the

Another judge strikes down Arkansas criminal eviction law

Posted By [Max Brantley](#) on Wed, Apr 15, 2015 at 6:25 AM



Woodruff Circuit Judge Richard Proctor has ruled from the bench in a case in Augusta that the state's criminal eviction law is unconstitutional. He'll be preparing an order to that effect.

The case was typical. The defendant allegedly failed to pay rent, was served a 10-day notice to vacate and did not. He was charged under the criminal eviction statute, convicted in district court of a misdemeanor and sentenced to a fine of \$4,175 and \$3,448 in restitution and a 30-day jail sentence, suspended on the ground that he vacate the property. He appealed to circuit court.

Pulaski Circuit Judge Herb Wright [ruled similarly in January](#). There are a host of issues with the speedy criminal eviction procedure — lack of due process, cruel and unusual punishment and the prohibition against debtor's prison.

Some unscrupulous landlords love it, though. Efforts to amend the state's landlord tenant law with a long-discussed mild revision acceptable to many legitimate landlords failed in the recent legislative session. It was not a good session to be poor in Arkansas.

Happily, for now, the courts provide some relief from unconstitutional practices supported by the legislature.

As memorialized in the video above, Arkansas has been widely touted as having the worst landlord-tenant laws in the country.

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Arkansas: The Worst Place to Rent in America



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THE ATTORNEY GENERAL
STATE OF ARKANSAS
DUSTIN McDANIEL

Darnisa Evans Johnson
Deputy Attorney General
Criminal Department

Direct dial: (501) 682-8075
E-mail: Darnisa.Johnson@arkansasag.gov

November 5, 2014

Dustin Duke
1300 West 6th Street
Little Rock, AR 72201

RE: *State of Arkansas v. Artoria Smith;*
Pulaski County Circuit Court, 60CR-14-2707

Dear Mr. Duke:

This letter acknowledges receipt of the *Motion to Dismiss and Brief in Support of Motion to Dismiss* in the above-referenced matter in which the constitutionality of an Arkansas statute is at issue. It is our understanding that the pleading has been served upon our office solely because of the requirement of Ark. Code Ann. § 16-111-106 (1987), which gives the Attorney General a discretionary right to appear in any case where a state statute is challenged as being unconstitutional.

After a review of the pleadings, we understand the prosecutor will defend the statute, and, therefore, do not desire to participate as an active party litigant at this time. We do reserve the right to participate at a later time or in any appeal involving the constitutionality of the statute in question. Thank you for bringing this matter to our attention.

Sincerely yours,

DARNISA EVANS JOHNSON
Deputy Attorney General

DEJ:wc

cc: Mr. Michael Wright
Deputy Prosecutor
224 S. Spring Street
Little Rock, AR 72201



STATE OF ARKANSAS
Office of the Prosecuting Attorney
Second Judicial District

Scott Ellington
Prosecuting Attorney
P.O. Box 1736
Jonesboro, AR 72403
(870) 932-1513
Fax: (870) 336-4011

Christy Wilson
Executive Assistant

OFFICE OF THE PROSECUTING ATTORNEY
SECOND JUDICIAL DISTRICT
NOTICE OF SUSPENSION OF PROSECUTIONS FOR
FAILURE TO VACATE (CRIMINAL EVICTIONS)
PURSUANT TO ARKANSAS CODE ANNOTATED
SECTION 18-16-101:
FAILURE TO PAY RENT
REFUSAL TO VACATE UPON NOTICE
PENALTY BASED UPON THE STATUTE'S UNCONSTITUTIONALITY
PURSUANT TO AN ORDER OF
THE CIRCUIT COURT OF THE SIXTH JUDICIAL DISTRICT

Effective immediately, the Office of the Prosecuting Attorney of the Second Judicial District hereby gives notice that it will no longer review or approve criminal affidavits requesting arrest warrants for violations of ACA 18-16-101 Failure to Pay Rent – Refusal to Vacation upon Notice – Penalty, a/k/a "Failure to Vacate."

Further, the Office of the Prosecuting Attorney will suspend providing ten (10) day Notices to Vacate, as required by 18-16-101(b)(1).

This office will make available the Order declaring this statute unconstitutional, which was entered by The Honorable Herb Wright, Pulaski County Circuit Judge, on January 20, 2015. This office will make available copies of the law on Unlawful Detainer.

Scott Ellington
Prosecuting Attorney
Second Judicial District

United States Court of Appeals,
Eighth Circuit.

Lee A. MUNSON, Prosecuting Attorney of the Sixth
Judicial District of the State of Arkansas, Appel-
lant-Petitioner,

v.

Ruth GILLIAM et al., Appellees,
Ira Forrester and Hazel Forrester, Interve-
nors-Appellees,
Ron Moore and Marilyn (Higgins) Moore, Interve-
nors-Appellees,
The Honorable Terry L. Shell, United States District
Judge, Eastern District of Arkansas, Respondent.

No. 76-1657.

Submitted Sept. 16, 1976.

Decided Oct. 20, 1976.

Various persons who were charged in state court with criminal failure to pay rent sought injunction against the prosecutions. The District Court for the Eastern District of Arkansas, Terry L. Shell, J., granted preliminary injunction and state prosecuting attorney appealed and sought mandamus. The Court of Appeals, Markey, Chief Judge of the Court of Customs and Patent Appeals, sitting by designation, held that the evidence offered to show bad faith was insufficient to justify the injunction; that there was no showing that constitutional rights of the tenants could not be vindicated in state courts; and that it was constitutionally permissible for state to determine that a tenant who fails without justification to pay rent is in effect stealing property from the landlord and should be criminally punished.

Reversed and remanded.

543 F.2d 48
(Cite as: 543 F.2d 48)

rect, we do not find justification therein for the present Order of Injunction. The failure-to-vacate statute has

FN20. Under Arkansas law, a landlord being

The failure-to-vacate statute has been declared by the Arkansas State Supreme Court to be in the public interest. Poole v. State, 244 Ark. 1222, 428 S.W.2d 628 (1968). That a tenant who fails, without justification, to pay rent is in effect stealing property from the landlord and should be criminally punished, is a conclusion available to a state under the Constitution. If a valid claim or defense can be asserted by the tenant, a state court is fully prepared to decide the issue.

state court and legal processes. FN20. Bonnet v. Circuit Court of City of St. Louis, Mo., supra. Nor do we see any justification for transferring the function of the state courts to Munson which would be the effect of requiring him to determine all defenses prior to issuing an information, as set forth in the Order of Injunction.

FN18. As Munson described in his reply brief, Mr. William Oliver was found guilty in Municipal Court on June 8, 1976, of violating the statute and was fined \$230.00. Mr. Oliver chose not to intervene in the present case, but instead sought review by trial de novo in the Circuit Court as provided by Arkansas law. (Ark.Stat.Ann. s 44-509 (Repl.1964)). The District Court in the present case determined that Oliver's appeal could go forward despite the injunction, because he had been tried before the present action was filed and was merely appealing. Mr. Oliver raised a civil defense at his new trial and was acquitted by the Circuit Court. (emphasis added)

FN19. See Ark.R.Crim.P. 36.1 (Add.1976), Ark.R.Crim.P. 37 (Add.1976).

tion is not per se irreparable injury. See Steffel v. Thompson, 415 U.S. 452, 463 n. 12, 94 S.Ct. 1209 n. 12, 39 L.Ed.2d 505 n. 12 (1971). We find no prospect of irreparable harm reposing in the possibility of criminal prosecution herein.

FN21. After setting forth the colloquy as quoted in footnote 12, the Order states:

It is apparent from this exchange that the plaintiffs, the intervenors and the class will all suffer the irreparable harm of criminal prosecution before this Court can hear the case on its merits. (emphasis supplied)

Ongoing Audit

The preliminary injunction, as framed, requires "nothing less than an ongoing federal audit of state criminal proceedings." O'Shea v. Littleton, 414 U.S. 488, 500, 94 S.Ct. 669, 678, 38 L.Ed.2d 674 (1974). Some type of federal evidentiary hearing could be demanded prior to every prosecution under the statute. Any tenant who felt that the prosecutor was going forward with a criminal charge against him, without having asked him about a "cognizable" civil defense or without such defense being "discovered" by the prosecutor, could bring the matter into federal court.

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rights. The mere prospect of facing criminal prosecution is not per se irreparable injury. See Steffel v. Thompson, 415 U.S. 452, 463 n. 12, 94 S.Ct. 1209 n. 12, 39 L.Ed.2d 505 n. 12 (1971). We find no prospect of irreparable harm reposing in the possibility of criminal prosecution herein.

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Supreme Court of Arkansas.
 Brigiette DUHON, Appellant,
 v.
 STATE of Arkansas, Appellee.

No. CR89-21.
 July 10, 1989.

Tenant was convicted of willfully and unnecessarily holding dwelling after expiration of notice to vacate due to nonpayment of rent in the Jacksonville Municipal Court, and tenant appealed. Defendant was again convicted in de novo trial in the Circuit Court, Pulaski County, First Division, Floyd J. Lofton, J., and tenant appealed. The Supreme Court, Richard A. Reid, Special Chief Justice, held that: (1) proffered testimony of criminal justice professor regarding constitutionality of statute and statistical data gathered from municipal court records was inadmissible; (2) tenant did not establish waiver by landlord as defense to lease contract; (3) statute which tenant was charged with violating was not unconstitutional; (4) tenant was improperly convicted on 60 counts of violating statute; and (5) offense was "violation," as opposed to "misdemeanor," and thus sentence of 30 days' imprisonment could not be imposed on tenant.

Criminal cases are tried de novo upon appeal from municipal court to circuit court, and thus testi-

[4] Criminal Law 110 ↪ 481

A tenant wrongfully prosecuted under this act has a remedy and a landlord wrongfully utilizing this criminal act to evict tenants should be aware of the possible consequences. In *Parker v. Brush*, 276 Ark. 437, 637 S.W.2d 539 (1982), an action for malicious prosecution resulted in compensatory damages of \$5,000.00 and punitive damages of \$7,500.00 against a landlord.

criminal act to evict tenants should be aware of the possible consequences. In *Parker v. Brush*, 276 Ark. 437, 637 S.W.2d 539 (1982), an action for malicious prosecution resulted in compensatory damages of \$5,000.00 and punitive damages of \$7,500.00 against a landlord.

[12][13] Appellant moved that the trial judge recuse himself because of comments made during the plea and arraignment and asks us to transfer the case should it be remanded. Although we are not remanding the case for a new trial, some comment should be made.

At the plea and arraignment of appellant, after being advised that the attorneys for the appellant planned to attack the *511 constitutionality of the act, the trial judge made a comment that was unnecessary and improper. He said, "We haven't got time for—I'm not interested in paying Legal Services my tax money to make all this constitutional stuff."

A court proceeding in all its phases must not only be fair and impartial but must appear to be fair and impartial. *Burrows v. Forrest City*, 260 Ark. 712, 543 S.W.2d 488 (1976). This remark could have been interpreted to mean the court would not consider a constitutional argument, and it should not have been said.

Regardless of any designation appearing in the statute defining an offense, an offense is a violation for purposes of this code if the statute defining the offense provides that no sentence other than a fine, or fine or forfeiture, or civil penalty is authorized upon conviction.

Therefore, the appellant's offense is classified as a violation and she is subject to punishment only in accordance with the limitations of Ark.Code Ann. § 18-16-101. See Ark.Code Ann. § 5-4-201(c)(2) (1987).

The appellant's conviction is affirmed, but because she was charged with only one count, we modify her sentence to a fine of \$25.00.

Affirmed as modified.

*512 HOLT, C.J., and HAYS, J., not participating.
H. MURRAY CLAYCOMB, Special Justice, joins in the opinion.
HICKMAN and PURTLE, JJ., dissent.
GLAZE, J., concurs.

PURTLE, Justice.

Arkansas has won another distinction: it is the

posting a notice to vacate on a tenant's door did not constitute sufficient notice and was violative of due process. The *Gorman* case outlawed the use of self-help measures to regain property. The landlord had entered the property without any notice and removed the tenant's property. We have no argument with the principles advanced in these cases or the interests of the tenants they protect. We do not, however, feel they overcome the presumption of constitutionality. The mere fact that § 18-16-101 is unique or may not be prosecuted in a manner which appellant argues is proper does not overcome its presumption of validity. In the 1924 decision of *Replogle v. Little Rock*, 166 Ark. 617, 267 S.W. 353 (1924), cited by the appellant, the court said:

Constitutionality of an act must be tested not by what has been done under it, but by the power to act which it actually grants.

A tenant wrongfully prosecuted under this act has a remedy and a landlord wrongfully utilizing this criminal act to evict tenants should be aware of the possible consequences. In *Parker v. Bruch*, 276 Ark.

[14] We do agree with the appellant that the court erred in convicting her on sixty counts. Each day the tenant willfully and unnecessarily held the premises could have been considered a separate offense for which a fine of not less than \$1.00 nor more than \$25.00 per offense could have been imposed. But appellant was only charged with one count. At the time of trial the appellant was not occupying the premises and the prosecutor could have **836 determined the number of days or the separate offenses involved.

[15] We also find the court erred in imposing a sentence of 30 days imprisonment. While Ark.Code Ann. § 5-1- 107(a)(2) (1987) states an offense is a misdemeanor if it is so designated by a statute that is not a part of the criminal code and § 5-1-107(c) provides that such a statute with no limitations on a sentence to imprisonment is a class A misdemeanor, an exception is provided by Ark.Code Ann. § 5-1-108(b):

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Potential Counterclaims

• Unlawful Eviction/Constructive Eviction/Breach of Quiet Enjoyment

- *Fairpark, LLC v. Healthcare Essentials*, 2011 Ark. App. 146
 - The acts or omissions by the landlord that amount to constructive eviction cannot be defined.
 - Does the conduct effectively deprive the tenant of the use and benefit of the property for which it was rented?
 - It will depend on the materiality of the deprivation
 - Failure to address heat and air issues, as well as noise complaint, was breach of the lease that constructively evicted tenant.
- *Burdan v. Walton*, 286 Ark. 98 (1985)
 - Despite abandonment, tenant wins unlawful-eviction claim because landlord changed locks and discarded personal property prior to the expiration of the lease's term for which rent had been paid.

• Forcible Entry

- Ark. Code Ann. § 18-60-303
- Self-help provisions are invalid.
 - *Gorman v. Ratliff*, 289 Ark. 332 (1986)

• Trespass

- Ark. Code Ann. § 18-60-102

• Conversion

- Wrongful possession or disposition of another's property.
- See *Burdan v. Walton* or *Marcum v. Wengert*, 344 Ark. 153 (2001) as examples.

Potential Counterclaims

- Ejectment

- Ark. Code Ann. § 18-60-201 *et seq.*

- Abuse of Process

- (1) a legal procedure set in motion in proper form, even with probable cause, and even with ultimate success, but, (2) perverted to accomplish an ulterior purpose for which it was not designed, and (3) a willful act in the use of process not proper in the regular conduct of the proceeding. *Union Nat. Bank of Little Rock v. Kutait*, 312 Ark. 14, 16, 846 S.W.2d 652, 654 (1993)

- Malicious Prosecution

- *Thrifty Rent-A-Car v. Jeffrey*, 257 Ark. 904 (1975)
 - *Parker v. Brush*, 276 Ark. 437 (1982)

Appeal

- District Court to Circuit Court
 - District Court Rules 8 & 9
 - Appeal must be filed within 30 days of the **docket entry**.
- Circuit Court to Court of Appeals/Supreme Court
 - Arkansas Rules of Civil Procedure
 - Rules 54, 58, 62, 65.1
 - Arkansas Rules of Appellate Procedure – Civil
 - Rule 3(b) – Contents of Notice of Appeal
 - Rule 4 – Timing and Extensions
 - Notice of Appeals filed within 30 days from **entry of judgment, decree, or order**.
- Civil evictions are not stayed pending appeal unless appeal bond is filed within 5 days of service of notice of appeal.
 - Ark. Code Ann. §§ 18-17-909 & -910

Landlord-Tenant Issues In the News

<http://wreg.com/2015/02/05/renters-have-few-rights-in-arkansas/>

<http://www.nwahomepage.com/news/knwa/battling-bed-bugs-fayetteville-woman-takes-landlord-to-court>

<http://www.katv.com/story/24658239/preview-monroe-county-throwdown>

<https://www.youtube.com/watch?v=jiA2AfjP0fg>

Other Resources

- Arkansas Landlord/Tenant Handbook
 - <http://www.arkansasrealtors.com/wp-content/uploads/2013/03/2014-Landlord-Tenant-Handbook-FINAL.pdf>
- Arkansas Legal Services Partnership
 - <http://www.arlegalservices.org/files/FSLandlordTenantOverview.pdf>
 - <http://www.arlegalservices.org/system/files/FSLandlordTenantEvictions.pdf>