

## INFORMATION FOR TENANTS IN EVICTION ACTIONS

**THE LANDLORD IS SEEKING POSSESSION OF THE RENTAL PROPERTY** because of your alleged non-compliance with the rental agreement or to terminate the rental agreement. An eviction action has been filed in this court. You have been served with a copy of the notice to vacate, the summons and complaint and a copy of the Residential Eviction Information Sheet. The right to possession of the property is an issue for the judge to decide.

### **CURING THE NON-COMPLIANCE AND KEEPING POSSESSION:**

Most tenant non-compliance can be cured during the notice period, before a complaint is filed with the court. Example: If the notice was for unpaid rent and a tenant pays all rent and late charges, the tenant may continue residence in the rental property.

**EACH DEFENDANT NAMED** has the responsibility to defend against the action, or risk being held liable for plaintiff's claim.

**IF YOU ELECT TO REPRESENT YOURSELF** you have a responsibility to yourself and to the court to acquire a sufficient knowledge to complete the forms properly and to present your defenses, if any before the court. You should familiarize yourself with important information contained in: *Arizona Residential Landlord & Tenant Act and Arizona Rules of Procedure for Eviction Actions*. These publications may be accessed online at [www.azsos.gov](http://www.azsos.gov). Also, please read the additional information included in the handout provided in this packet **INFORMATION FOR LANDLORDS AND TENANTS**. If you choose to represent yourself, you will be held to the same standard as an attorney. There are certain steps you must follow. This information is provided to assist you in general procedure in processing your case.

**THE CLERKS IN THE JUSTICE COURT** are not attorneys and cannot give legal advice. The clerks' responsibility is to take your court filing, provide forms and explain court procedure. It is not the clerks' responsibility to advise you if you have a legal claim. The clerk is not responsible for any error you may make in filing, asserting or defending the claim.

**A FAILURE TO APPEAR** may result in a default judgment entered against you. The complaint alleges (among other things) that:

- > This court has venue over this matter (the property in dispute is located within the boundaries of the court's precinct).
- > The plaintiff is the owner of the property and is entitled to possession.

**CONTINUING THE COURT DATE:** Any request to continue the court date must be in writing and must be supported by affidavit. A continuance will only be granted for good cause and will not be granted for a period greater than three working days.

**AT THE SCHEDULED COURT DATE** you will be asked whether you admit (agree) or deny (disagree with) the allegation of non-payment of rent or other allegation of non-compliance in the landlord's complaint.

### **ADMIT:**

If you do not intend to dispute the allegation, the court will proceed to determine:

1. If you received a Notice of the alleged non-compliance
2. If the pleadings and service are sufficient
3. The amount the plaintiff is entitled to. The judgment may include an Order for:
  - a. Unpaid rent through the end of the month.

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- b. Reasonable late fees (only if provided for in a written agreement)
- c. Damages to the property
- d. Any unpaid utilities and rental concessions
- e. Attorney's fees if allowed (only if provided for in a written agreement)
- f. Court costs incurred
- g. Annual interest on the unpaid judgment
- h. Possession of the property returned to the owner

4. When a Writ of Restitution (an order for forcible eviction) will issue

**DENY:**

If you deny (dispute) the allegation of non-compliance, the judge may ask you WHY to determine if your reason is a legal defense that should be heard at trial. (Non-payment of rent simply because you do not have the money (for whatever reason) is NOT a legal defense.)

**THE ANSWER:** If you deny the allegation of non-compliance, you will be required to file a formal written ANSWER stating your defenses to the plaintiff's complaint and why the plaintiff should not obtain judgment. There is a fee for filing an answer. Refer to the court's fee schedule posted at the front counter. You must provide the plaintiff with a copy of your Answer. The judge may also request you post a bond with the court in the amount of the unpaid rent. The judge may ask the parties to meet to try to resolve any disputed issues and define the remaining trial issues. The trial may be held that same day or the court may reset the trial for a date not more than three (3) days away.

**COUNTERCLAIM:**

Unless specifically provided for by statute, a counterclaim may not be filed in an eviction action. The counterclaim: (1) must be in writing; (2) state specific facts claiming the landlord has violated the rental agreement or an applicable statute; (3) must state when and how any required notice(s) were sent to the landlord and summarize the content of such notices, and (4) the counterclaim must be served on the opposing party.

A counterclaim is filed at the same time the Answer is filed. If a counterclaim is filed, it will be considered and decided at the time of trial.

**PAY and STAY RIGHT BEFORE JUDGMENT IS ENTERED:** if the complaint has been filed pursuant to a five (5)-day notice for non-payment of rent - the tenant can stay *IF ALL RENT, LATE FEES AND OTHER CHARGES, ATTORNEY FEES, AND COURT FEES ARE PAID IN FULL* to the landlord before a judgment is entered.

**THE TRIAL:** Either party can request a jury trial. The plaintiff must request a jury trial in the complaint and the defendant must request a jury trial at or before the initial appearance; otherwise, a jury trial is waived and trial will be by a judge alone. The party requesting a jury will be assessed jury fees, if judgment is not found in favor of the requesting party.

If a jury trial is requested, the parties will be required to submit prepared jury instructions to the court before trial. If a jury is not requested, the judge will hear and decide the case (a bench trial). Both parties may be required to exchange disclosure (names of witnesses and a list of exhibits expected to be called or presented at trial).

The plaintiff will proceed first and may call witnesses and/or introduce exhibits. The defendant may cross-examine any witnesses or object to the admission of any exhibit. After the plaintiff rests, defendant will then present his case. The defendant may call witnesses and/or introduce exhibits that may prove or defend his position.

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**JUDGMENT:** The judgment order will include an order that the property be returned to the possession of the landlord and that a Writ of Restitution (an order for forcible eviction) will issue five days from the date of judgment or, in the case of an irreparable breach, not less than 12 nor more than 24 hours after judgment (or as soon thereafter as normal court hours allow). After judgment is entered, even if you pay the entire judgment amount, the plaintiff may still proceed with the eviction.

**WRIT OF RESTITUTION:** If a judgment is entered against you, the judge will order that a Writ of Restitution will issue. The writ will direct the constable to carry out the eviction.

**APPEAL:** Either party may appeal from a forcible detainer judgment by filing a Notice of Appeal within five (5) calendar days from the date of judgment or prior to the issuance of the Writ of Restitution.

If a judgment is issued for a material and irreparable breach, the Writ of Restitution will be carried out immediately (with 12 - 24 hours). The Notice of Appeal should be filed before the eviction is carried out.

The court cannot extend the time for appeal. Ask the court clerk for information regarding bonds and appeal costs.

**IMPORTANT INFORMATION REGARDING A STAY (STOP) OF THE RESTITUTION ORDER**

**PENDING APPEAL:** Filing a Notice of Appeal does not by itself stop enforcement of a Writ of Restitution.

A supersedeas bond (a bond set by the court) is the only means to stop the Writ of Restitution. The stop is effective WHEN the bond is posted.

You are not required to post a supersedeas bond to file an appeal. The appeal will proceed with or without a supersedeas bond. However, a supersedeas bond is the ONLY way to stay or stop the eviction process. The court cannot waive a supersedeas bond.

**DEFENDANT (TENANT) INSTRUCTIONS**

For a Residential Eviction Action Filed in the Justice Court

**File the Answer**

1. Bring **three (3)** copies of the answer form to the court identified in the summons and complaint and pay the appropriate filing fees.
2. You must provide a copy of your answer and any attachments filed with the court to the plaintiff(s) or plaintiff's attorney.

**Initial appearance in court:**

1. At the initial appearance (the date provided on the summons for you to appear in court) the court will call the case and identify the parties. The court will determine if the representatives are properly authorized to represent the parties to the action. *RPEA Rule 11(a)*.
2. The court may enter a default judgment against you if you fail to appear in person or through counsel. *RPEA Rule 13(b)(3)*.
3. If the complaint is contested, the court will order a trial on the merits. *RPEA 11(b)(1)*.