

TENANT'S RIGHTS AND RESPONSIBILITIES

Tenants and
Landlords
Welcome!



Not Affiliated
with the Court

Eviction Hearing coming up? Need to Know the Basics?
Come to DNA-- People's Legal Services'

EVICTIION CLINIC

WHAT	WHERE	WHEN
Meet with a Legal Services Attorney who can give you the information you need before your eviction hearing – or before a lawsuit is even filed!	Coconino County Courthouse's Jury Deliberation Room D 200 N San Francisco, Flagstaff, AZ 86001	Every Wednesday from 7:45 am until 8:15 am.

What does this cost? Nothing!

What do I need to bring? Any paperwork related to your eviction.

What if I can't make it? DNA does regular intakes on Tuesdays starting at 9am, and emergency intakes Monday – Friday. Come see us at 2323 E. Greenlaw Lane, Suite 1, Flagstaff, AZ 86004. Or call at (928) 774-0653.

NOTICE: This clinic is not able to provide representation in court, or case-specific advice. To apply for representation or specific advice, please contact DNA—People's Legal Services directly at (928) 774-0653. This clinic does provide information on common mistakes made by people representing themselves in eviction actions.

Sponsored by: DNA-People's Legal Services, Inc.
Housing Counseling Program

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THIS PAMPHLET WAS MOST RECENTLY UPDATED

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I. INTRODUCTION

As a tenant in Arizona, you have rights under the Arizona Residential Landlord and Tenant Act. It is important that you become aware of your rights as well as your obligations and that you assert these rights. This pamphlet is no substitute for legal counsel, but it offers some methods for dealing with common problems tenants face.

You can get a copy of the Act from the Secretary of State at the Capitol in Phoenix, or you can look up the Act in the Arizona Revised Statutes (A.R.S. §§33-1301 to 33-1381), which are available in the reference sections of most public or law libraries in the state. The Coconino County Law Library and Self-Help Center also provides free copies of the Act. The Act, and this pamphlet, do not apply to tenants in mobile homes (unless tenants rent both trailer and lot from the same person or company), tenants in public housing projects or public institutions, transient (short term) tenants in hotels and motels, and tenants in certain other situations. See A.R.S. §§33-1308, 33-1310(4). Other laws govern those tenancies.

II. BEFORE YOU RENT

Before you rent, there are certain things you can do to protect your rights and avoid problems:

- A. Make sure the dwelling fits your needs and your budget.
- B. Check the dwelling for defects and damage. Your landlord is required to provide you with a move in checklist specifying existing damages. A.R.S. §33-1321(C). Be sure you check this form for accuracy and, if you find damages that are not listed, have your landlord add them to the form. If your landlord fails to provide this form, you can use Form A at the back of this pamphlet. It will help you avoid being blamed for damages that existed before you moved in. If the landlord promises to make repairs, get his promises in writing.
- C. Find out whether you or the landlord is responsible for the utilities, including water, gas and electricity.
- D. Find out if a security deposit and/or a cleaning deposit are required. Also find out the amount of the deposits and whether the cleaning deposit is non-refundable when you move out.
- E. Know what the rules are and whether you can live with them. Are there restrictions concerning pets, parking, overnight guests, etc?
- F. Know what you are signing before you sign any document. There is a difference between a rental agreement and a lease.
 1. A rental agreement may be oral or written. The rent is usually payable monthly (or sometimes weekly), but the agreement does not commit you to any certain number of months (or weeks), and is renewable for each succeeding month (week) unless the landlord raises your rent or changes other terms or conditions with proper notice, or unless you terminate the agreement.

2. A lease may be oral or written but if for more than one year must be written. The rent is usually payable monthly, but a lease does commit you to pay a certain amount of rent for a certain number of months. You are protected from a rent increase for the amount of time that the lease lasts, but you are also obligated to stay in that dwelling for the stated time period. Should you decide to move before the lease expires, you are, in most cases, obligated to continue paying rent until the lease expires, subject to your landlord's duty to re-rent.
- G. Read any written rental agreement or lease, making sure every blank is filled in and checking whether it includes:
1. Names, addresses, and phone numbers of both owner and manager;
 2. Location (and apartment number) of the property that you are renting;
 3. Amount of rent; person responsible for paying utilities (electricity, gas, water, etc.);
 4. Amount of the security deposit, cleaning or redecorating deposit, if any;
 5. Rules and regulations for tenants, if any.

III. TENANT'S RIGHTS AND REMEDIES

A. YOU HAVE THE RIGHT TO CHOOSE WHERE YOU WANT TO LIVE

A landlord violates both state and federal law if he refuses to rent to you because of your race, color, handicap, national origin, sex, religion or because you have children. §41-1491.14 (Unless it is an adults only development that meets certain requirements). If you feel you are being discriminated against for one of those reasons, contact your local city or county attorney's office, the Civil Rights Division of the Attorney General's Office or the U.S. Department of Housing and Urban Development.

B. YOU HAVE A RIGHT TO A FAIR SECURITY DEPOSIT

The landlord cannot require you to pay deposits, whether for security, pets, cleaning, or other, that are more than one and one-half month's rent. A deposit may be non-refundable only if the landlord so states in writing. Unpaid rent, property damage or any charges provided in the lease or allowed under the law are covered by the security deposit. See A.R.S. §33-1321.

A security deposit must be refunded or accounted for within fourteen (14) (working) days (plus an additional five (5) days if mailed) after you moved out of the dwelling and have given the landlord written notice that you are moving and requesting that the landlord return your deposit (Form B). Any charges against your security deposit must be written out and itemized by the landlord. If the landlord does not return the security deposit or send you an itemized written statement of any reasonable charges against the deposit within fourteen (14) days (plus five (5) days for mailing), you can sue the landlord in Small Claims Court or Justice Court for the money owed you, plus damages equal to twice the amount wrongfully withheld.

C. YOU HAVE A RIGHT TO A HABITABLE AND SAFE PLACE TO LIVE

Arizona law requires that the landlord:

1. Meet the requirements of local building and health codes concerning the condition of your dwelling unit.
2. Make the necessary repairs to keep the dwelling in a livable condition.
3. Keep areas that are shared by all tenants, such as hallways, play grounds including swimming pools, in clean and safe condition.
4. Make sure that swimming pools on the rented property are properly fenced and secured to protect children.
5. Keep all the electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities in safe and working order.
6. Provide containers for trash and garbage as well as provide for the removal of their contents.
7. Supply running water and reasonable amounts of hot water at all times. At appropriate seasons the landlord must also provide reasonable amounts of heat and cooling. A.R.S. §33-1324.

The landlord and tenant can agree that the tenant will make minor repairs if they do so in writing. But the landlord cannot require a tenant to perform all of the landlord's duties to repair and maintain. A.R.S. §33-1324(C)(D).

If a problem arises where the landlord is not keeping the dwelling livable and safe, the best thing to do is to try to solve the problem by talking with your landlord. Should you fail, you may wish to contact a renters' advisory group or a lawyer.

D. WHAT YOU CAN DO IF THE LANDLORD DOES NOT KEEP THE DWELLING LIVABLE OR SAFE

See the packet, *Demand for Landlord to Fix Premises and Lawsuit for Damages*, in the Coconino County Law Library and Self-Help Center.

E. YOU HAVE A RIGHT TO SPEAK OUT AND TO ORGANIZE WITHOUT RETALIATION.

Your landlord cannot retaliate against you by raising your rent, reducing services or threatening to evict you within 6 months of your complaining about conditions of your dwelling to your landlord or to a government agency (such as the city housing/building inspector or the county health inspector) or your having joined a tenant organization. See A.R.S. §33-1381.

Organizing into tenant organizations is often an effective way to get results from a landlord. A group of persons is more powerful than an individual. Should a landlord retaliate against you for

joining a group or for complaining, you can sue in Small Claims Court or in Justice court for an amount equal to at least two months' rent, as well as defeat the rent increase, service decrease, or eviction if you prove that the landlord took action against you because you complained or joined a group. You can only claim retaliation, however, if your rent is fully paid and you are not responsible for the condition you are complaining about.

F. YOU HAVE A RIGHT TO PEACEFUL ENJOYMENT OF THE DWELLING.

Under A.R.S. §§33-1367, 33-1372 and 33-1374, your landlord cannot legally lock you out, bodily evict you without a court order, or take any of your personal belongings. Further, your landlord cannot, under any circumstances, turn off essential services such as electricity, water and heat, even if you're behind in rent. Should the landlord take such action, notify the landlord that he is in violation of Arizona law and that the services must be restored and/or your property must be returned. For example, if for any reasons the landlord turns off your utilities, you should demand that the utilities be restored. (Form J.) If the landlord locks you out of your dwelling, demand that the lock be removed. (Form H.) If the landlord takes any of your personal belongings, demand that the belongings be returned. (Form I.) If your landlord has locked you out or shut off utilities, you have a claim against him for an amount equal to two months' rent or twice your actual damages, whichever is greater. See A.R.S. §33-1367.

G. YOU HAVE A RIGHT TO PRIVACY.

Unless the has a court order or there is an emergency or it is otherwise not practical to do so, a landlord must give written notice at least two days in advance before entering your dwelling unit. A landlord may only enter at times that are reasonable. If the landlord enters your dwelling against your wishes without proper notice or without a court order or an emergency you can go to Superior Court and get a court order to stop the landlord from doing it again. A.R.S. §33-1343. You can sue in Small Claims Court or Justice Court for one month's rent or your actual damages. A.R.S. §33-1376. You must allow the landlord into the dwelling if he gives you proper notice and must not unreasonably refuse him entrance for the purposes of inspecting, making necessary or agreed repairs, decorations, alterations or improvements, supplying necessary or agreed services, or showing the dwelling to prospective or actual purchasers, lenders, tenants, workmen or contractors. A.R.S. §33-1343.

H. YOU HAVE A RIGHT TO PROPER NOTICE OF ANY INCREASE IN RENT OR DECREASE IN SERVICES.

Your landlord can raise rent or decrease services only if he gives proper notice. If you rent month-to-month, he must give you written notice thirty (30) days before the date the rent is due. If you rent week-to-week, he must give ten (10) days advance written notice. A.R.S. §33-1375. If the landlord fails to give proper notice, the notice is not sufficient and the existing rental rate or service level remains the same. If you have signed a lease, your landlord cannot raise your rent until the term of the lease is up.

I. YOU HAVE A RIGHT TO A PROPER EVICTION NOTICE.

If you have paid rent and have not breached any duty as a tenant, the landlord can still terminate your tenancy without having to give any reason, unless you have a lease for a specified term. The landlord must give at least thirty (30) days advance written notice prior to the date you are

required to pay rent, if you rent month-to-month. (If you rent week-to-week the landlord must give at least ten (10) days advance written notice.)

A landlord may not evict or attempt to evict you to punishing you or retaliating against exercising your rights as tenant. (See III-E above.) If you have a lease agreement, the landlord cannot evict you without a breach on your part until the lease expires.

If the landlord gives specific reasons why he believes you have breached your rental agreement or lease, such as failing to maintain the premises according to your duties as a tenant, or failing to follow proper rules and regulations adopted by the landlord, he can evict you if you do not correct your breach. (See IV-A below.)

If the landlord gives you an improper eviction notice, notify him that it is improper and that the rental agreement or lease is still valid.

IV. TENANT OBLIGATIONS.

A. YOU MUST ACCURATELY PROVIDE REQUESTED INFORMATION ON A RENTAL APPLICATION.

If your landlord discovers that you have falsified information your application, he may be able to terminate your tenancy. A.R.S. §33-1368A.

B. YOU MUST KEEP YOUR DWELLING CLEAN.

You must keep your dwelling reasonably clean, including removing waste from the dwelling, keeping plumbing fixtures clean, and not deliberately destroying any property. A.R.S. §33-1341. If you fail to maintain your dwelling, the landlord can give written notice saying you must move out in ten (10) days unless you fix the dwelling within ten (10) days. If your failure to maintain your dwelling seriously affects health and safety, the landlord can give you a notice saying you must move out in five (5) days unless you correct your breach within five (5) days. If you correct in time, then the tenancy does not terminate. A.R.S. §33-1368.

C. YOU MUST FOLLOW THE RULES AND REGULATIONS.

As long as the rules the landlord makes are reasonable, fair, and apply to all tenants, you must follow those rules. You and your guests must behave so as not to bother other tenants. A.R.S. §33-1341. The landlord can change rules during the tenancy, but he must give reasonable notice and the change must not be a major change from the original rental agreement. Your failure to follow proper rules can result in an eviction notice the same as for your failure to maintain your dwelling. A.R.S. §33-1368.

D. YOU MUST GIVE PROPER NOTICE BEFORE MOVING.

If you have a month-to-month rental agreement, you must give the landlord written notice of your intention to move at least 30 days before the rental due date. (If you have a week-to-week rental agreement, a ten-day notice is required.) A.R.S. §33-1375. You should also request the landlord to inspect the dwelling before you move. You are entitled to be present at a move-out inspection; (unless you are being evicted because you are a threat to your landlord). A.R.S. §33-

1321(C). If you have a lease, you will have to pay rent until the lease expires unless the landlord re-rents the dwelling or you terminate your lease because the landlord failed to maintain the dwelling (III D 1 and 2 above). If the landlord does rent to another tenant, you will only owe for the period after you moved out until the new tenant moved in. Ask the landlord to sign a written form releasing the rest of the lease. If he will not so agree, give him notice in writing that you are moving; if possible, inform the landlord of someone who could take your place. (Form L.) The landlord has a right to approve the new tenant, but if he unreasonably rejects the substitute or otherwise fails to make reasonable efforts to re-rent the unit, you have a defense if the landlord sues you for rent that becomes due after you move out. A.R.S. §33-1370.

Be sure to return your keys or make other arrangements for getting the keys to the landlord on the day you vacate the dwelling. The law says you have not given the dwelling back to the landlord until you return the keys. A.R.S. §33-1310(4).

E. YOU MUST PAY YOUR RENT.

If you have a problem paying your rent on time (and are not purposefully withholding it according to the procedure described above for self-help repairs), explain the situation to your landlord. The landlord may be willing to let you pay what is due in one or more partial payments. Hopefully, this will give you enough time to pay the rest of the money.

If the landlord has already given you an eviction notice but accepts partial payments, he cannot proceed to evict you without giving you a new eviction notice unless you signed an agreement to make payments and you then failed to make them. A.R.S. §33-1371.

If you cannot reach an agreement with the landlord, he must give you a written notice telling you that if you do not pay the rent within five (5) days the rental agreement will be terminated. A.R.S. §33-1368(B). If you are unable to pay the rent within the five (5) days, but the landlord has not yet filed a court action, offer to pay the rent in person with a witness or by certified mail, return receipt requested. You have a right to reinstate your rental agreement any time before judgment by offering to pay the unpaid rent plus attorney's fees and court costs. A.R.S. §33-1368(B). However, if the landlord terminates the rental agreement for your refusal to pay after a five (5) day notice, the court may award the landlord up to two months' rent as a penalty if your refusal to move was willful and not in good faith. A.R.S. §33-1375(C).

Because the landlord has a duty to lessen his damages, he cannot refuse to accept the unpaid rent after the five (5) days but before he files a court action.

If you have claims against the landlord for violating the Landlord Tenant Act, or your lease or rental agreement, which would reduce, eliminate, or exceed the landlord's claim for rent, and the landlord will not settle or compromise such claims, then you may wish to file a counterclaim in an eviction action for non-payment of rent. Alternatively, you can move out voluntarily, but the landlord can still sue you for unpaid rent or other damages.

If you are late in paying your rent, a landlord can charge a late fee only if specifically agreed to in writing. A late fee must be reasonable. A.R.S. §33-1312.

F. GOING TO COURT.

If the landlord gives proper notice to vacate, but you stay in the dwelling without offering to pay the past due rent, the landlord will probably file a Forcible Entry or Detainer (FED). Or, if you have otherwise breached your lease or rental agreement, your landlord can, after notice, file an FED. This is a court action which asks that the tenant be evicted and the property returned to the landlord. Note that the landlord, owner or attorney must file; an agent, manager, or management company may not sue for the landlord or owner. If an FED is filed against you, you will receive court papers which tell you when you have to go to court, usually about five days from the date of filing. You can represent yourself in court or a lawyer may do so. Even if you are unable to fulfill all your obligations as a tenant, you will have the right to tell your side of the story to the judge.

If the landlord is evicting you for not paying rent and you are not arguing that claim, you can pay the amount owed plus court costs and attorney's fees, if any, and reinstate the rental agreement any time before the judge makes a decision. If you cannot pay and you have no defense the judge will enter a judgment for rent, costs, fees and for possession.

If you lose in Court, the judge must give you at least five days to move out, unless you are evicted for an "irreparable breach" such as an assault or serious property damage. The judge may give you more time if you ask for it and have a compelling reason. If you have not moved out at the end of the time the judge sets, then the landlord may obtain a Writ of Restitution from the court which orders the sheriff or constable to forcibly move you out. If the landlord moves your belongings under the protection of the sheriff or constable, or if you abandon them the landlord must put them in a storage and notify you of his intention to sell them in 21 days if you do not pay for moving and storage and arrange to move them.

1. Storage of Belongings:

The landlord must take reasonable care of your belongings. He may store your belongings in an empty apartment on the premises or in a storage unit. The landlord must make a list of all of your belongings and let you know by certified mail where your belongings are stored and the costs for storage. To reclaim your property you are only required to pay the landlord the costs for removal of your property and reasonable storage fees. §33-1368 Your landlord may not demand that you pay back rent as a condition of releasing your belongings.

G. APPEALING A DECISION AGAINST YOU.

If you want to appeal the court's decision, you must file a Notice of Appeal and pay an appeal fee within five (5) calendar days after judgment. You must also pay a supersedeas bond within five (5) calendar days after judgment, in an amount set by the court to cover either costs, and accruing rent (if you wish to keep the landlord from evicting you while you appeal the case) or to cover damages and costs (if you only wish to keep the landlord from collecting on the judgment). You must also pay a bond to cover costs on appeal. The cost of this bond and the appeal fee may be waived if you cannot afford to pay them. The supersedeas bond for damages and costs or for ongoing rent and costs may not be waived. The forms for filing the appeal and applying for fee waivers are available at Justice Court. If you think you may appeal your case, make sure you ask

the judge right after your trial to set the bonds. If the bonds are not paid before the time set for the writ of restitution, you can be evicted.

About ten days after the bonds are set and paid to the Clerk of the Justice Court, you will receive a letter from the Clerk of the Superior Court telling you to pay a transfer/docketing fee. You may file to waive this fee as well. If this fee is not paid or waived, your appeal will be dismissed. You must also pay your monthly rent into court, or your case can be dismissed. The other party must also pay a docketing fee; if the other party fails to do so, you can get default judgment against them.

Once the other party pays his or her fee and a transcript is prepared, you are then required to file your written argument about why the Justice Court decision should be reversed. You will not be given a second trial; the appeal is based on the record (transcript) of the original trial, and on the parties' arguments.

Although you can represent yourself on appeal, it is best to consult a lawyer who knows the rules of procedure and evidence.

REMEMBER: This pamphlet is no substitute for legal counsel. It cannot cover all situations or cases; it only suggest some methods for dealing with common problems tenants will face.

FORM A: DWELLING CONDITION CHECKLIST

Tenant
 Address

CODE G = good F = fair U = unsatisfactory
In - Condition at Move-In Out - Condition at Move-In

INTERIOR																
	Kitch.		Bath 1		Bath 2		Liv. Rm.		Hall		Fam. Rm.		BR 1		BR 1	
	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out
Ceiling																
Walls																
Floors																
Window																
Doors																
Cabinets																
Electrical																
Ventilation																
Plumbing																
Refrig.																
Stove																
Oven																
Table																
Chairs																
Furniture																

DESCRIBE ANY UNSATISFACTORY CONDITIONS IN DETAIL:

EXTERIOR							
Walls		Doors		Roof		Yard	
In	Out	In	Out	In	Out	In	Out

REMARKS:

Move-in: _____
 Landlord _____ Date _____ Tenant _____ Date _____

Move-out: _____
 Landlord _____ Date _____ Tenant _____ Date _____

FORM B

DEMAND FOR SECURITY DEPOSIT

Dear Landlord:

I have moved out of the dwelling unit on (date)

Please return my security (and/or cleaning) deposit within fourteen (14)* days from date of receipt of this letter as required by law, A.R.S. §33-1321.

I will return to your office to pick up my deposit on (date)

OR

Please mail my deposit to me at the following address:

<input type="text"/>
<input type="text"/>
<input type="text"/>

Thank you for your cooperation.

Sincerely,

Signature: _____

Printed Name:

Street Address:

City, State, Zip:

Date:

*Fourteen (14) days if delivered personally; if mailed, add five (5) days. If mailed, send this and other notices contained in this Appendix by Certified Mail, Return Receipt Requested.

FORM H
LOCK-OUT

Dear Landlord:

On (date) I was locked out of my dwelling located at
(address)
(apartment number) # . I am writing to notify you that you are in violation of
Arizona law, A.R.S. 33-1367, which makes a lock-out illegal. Pursuant to A.R.S. 33-1367, you
may be liable for minimum statutory damages of two (2) months' rent or twice actual damages, if
proved. Please remove the locks immediately and let me back in to my home or I will take legal
action to recover possession of the premises and damages.

Sincerely,

Signature: _____

Printed Name:

Street Address:

City, State, Zip:

Date:

FORM I

SEIZURE OF PERSONAL BELONGINGS

Dear Landlord:

On (date) you took my personal belongings from the dwelling located at (address) (apartment number) # as follows:

I am writing to notify you that your act violates Arizona Law, A.R.S. 33-1372, which prohibits your seizure of my property for any reason. If you do not return all my belongings immediately, it may be necessary for me to take legal action against you.

Sincerely,

Signature: _____

Printed Name:

Street Address:

City, State, Zip:

Date:

FORM J

ILLEGAL UTILITY SHUTOFF

Dear Landlord:

On (date) you or your agent wrongfully shut off the
 electricity gas water for my dwelling. Your actions constitute a violation of the Arizona
Residential Landlord Tenant Act. A.R.S. 33-1367 provides that a landlord who intentionally or
willfully shuts off a tenant's utilities is subject to damages of two months' rent or twice actual
damages, whichever is greater. The Act provides that the only way a landlord may evict a tenant
is by legal action. Shutting off utilities in an attempt to force a tenant to pay a past due bill or to
make the tenant move violates the Act.

Please turn the utilities back on immediately to avoid being sued for two months' rent.

Sincerely,

Signature:

Printed Name:

Street Address:

City, State, Zip:

Date:

FORM K

NOTICE OF VACATING AND REQUEST FOR INSPECTION

Dear Landlord:

I am writing to inform you that I intend to vacate the dwelling located at

(apartment number) #	
as of (date)	

If you do not inspect, I will assume you accept the dwelling in as good condition as when I took possession, ordinary wear and tear excepted.

Sincerely,

Signature: _____

Printed Name:

--

Street Address:

--

City, State, Zip:

--

Date:

--

(See Also Form B, Demand for Security Deposit).

FORM L

NOTICE OF VACATING BEFORE LEASE EXPIRES

Dear Landlord:

On (date) I plan to move out of my dwelling located at

(apartment number) #

Because I wish to keep damages at a minimum, I am enclosing the names, addresses and phone numbers of persons who have expressed an interest in renting this dwelling on or about (date) at the same rent that I pay.

The names, addresses, and phone numbers are:

Name	Address	Phone Number

Sincerely,

Signature: _____

Printed Name:

Street Address:

City, State, Zip:

Date: