

OVERVIEW OF ARIZONA'S EVICTION PROCESS --TENANT'S PERSPECTIVE--

BY STAN SILAS OF
COMMUNITY LEGAL SERVICES, INC.
NOVEMBER 16, 2018

East Valley Bar Association

CLS Assessment of Eviction Trial for Qualified Tenant/Client

- **IS THIS A UNLAWFUL EVICTION?**
- **CAN TENANT PROVE IMPROPER TERMINATION?**
- **DOES TENANT HAVE VALID DEFENSES?**
(MAIN CONCERN IS SAVE TENANT'S HOUSING)
- **DOES TENANT NEED A LAWYER?**

Poverty Guidelines

2018 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

PERSONS IN FAMILY/HOUSEHOLD

POVERTY GUIDELINE

For families/households with more than 8 persons, add \$4,320 for each additional person.

1	\$12,140
2	\$16,460
3	\$20,780
4	\$25,100
5	\$29,420
6	\$33,740
7	\$38,060
8	\$42,380

Justice Court Case Activity Report

JUSTICE COURT CASE ACTIVITY FISCAL YEAR 2017

MARICOPA COUNTY
COUNTY TOTAL JUSTICE COURT

CASE TYPE	ALL CASES ON FILE					FISCAL YEAR 2016	
	PENDING 7/1/2016	CASES FILED		TOTAL FILED	TOTAL ON FILE	PENDING 7/1/2015	TOTAL FILED
		ORIGINAL FILINGS	TRANSFER IN				
DUI	19,633	7,091	57	7,148	26,781	19,157	8,077
SERIOUS TRAFFIC	2,568	1,357	6	1,363	3,931	2,440	1,316
OTHER TRAFFIC	<u>12,747</u>	<u>35,338</u>	<u>89</u>	<u>35,427</u>	<u>48,174</u>	<u>10,703</u>	<u>36,091</u>
TOTAL CR TRAF	34,948	43,786	152	43,938	78,886	32,300	45,484
TOTAL CV TRAF	35,466	118,750	48	118,798	154,264	25,318	122,924
MISDEMEANOR	54,723	12,144	61	12,205	66,928	53,616	11,443
MISDEMEANOR FTA	13,184	766	0	766	13,950	13,160	730
TRAFFIC FTA	<u>30,635</u>	<u>1,212</u>	<u>0</u>	<u>1,212</u>	<u>31,847</u>	<u>30,641</u>	<u>1,171</u>
TOTAL MISD	98,542	14,122	61	14,183	112,725	97,417	13,344
TOTAL FELONY	0	0	0	0	0	0	0
SMALL CLAIMS	5,104	10,743	30	10,773	15,877	5,064	11,383
FORCIBLE DETAINER	<u>774</u>	<u>61,934</u>	<u>70</u>	<u>62,004</u>	<u>62,778</u>	<u>1,094</u>	<u>61,493</u>
OTHER CIVIL	<u>29,500</u>	<u>64,183</u>	<u>762</u>	<u>64,945</u>	<u>94,445</u>	<u>35,616</u>	<u>60,653</u>
TOTAL CIVIL	35,378	136,860	862	137,722	173,100	41,774	133,529
NC PARKING	713	140		140	853	734	272
NC NON-PARKING	<u>10</u>	<u>17</u>		<u>17</u>	<u>27</u>	<u>14</u>	<u>40</u>
TOTAL NON-CR ORD	723	157		157	880	748	312
TOTAL	205,057	313,675	1,123	314,798	519,855	197,557	315,593
ORD PROTECTION				3,660			3,644
INJ HARASSMENT				2,218			2,381

Tenant's Property Interest

- **TENANTS HAVE A PROPERTY INTEREST IN THEIR RESIDENCE AND EVICTION PROCEEDINGS THAT DEPRIVE THEM OF THEIR PROPERTY INTEREST MUST COMPLY WITH DUE PROCESS REQUIREMENTS OF 14TH AMENDMENT TO U.S. CONSTITUTION.**
 - *Green v. Lindsey*, 456 U.S. 444, 451-52 (1982).
- **Foundation Development Corporation v. Loehmann's**, 163 Ariz. 438, 788 P.2D 1189 (Ariz. 1990), **RECOGNIZING COMMON LAW RIGHT TO TENANT'S PROPERTY INTEREST.**

Special or Forcible Detainer Action

- **A SPECIAL OR FORCIBLE DETAINER ACTION IS A LIMITED PROCEEDING DESIGNED TO PROVIDE A SPEEDY REMEDY TO GAIN POSSESSION OF PROPERTY. IT IS INTENDED TO PROVIDE “A SUMMARY, SPEEDY, AND ADEQUATE REMEDY FOR OBTAINING POSSESSION OF THE PREMISES WITHHELD BY A TENANT.” – AND ALLOW THE RIGHTFUL OWNER TO RETAIN – OR GAIN – POSSESSION OF THE PROPERTY.**
 - *Old Bros. Lumber Co .v. Rushing*, 64 Ariz. 199, 204, 167 P.2D 394, 397 (1946).

Right to Possession

- **THE ACTUAL RIGHT TO POSSESSION IS THE ONLY ISSUE TO BE DETERMINED IN A FORCIBLE DETAINER ACTION. *Id.* THIS STANDARD HAS BEEN REITERATED IN NUMEROUS DECISIONS.**
 - *Gangadean v. Erickson*, 17 Ariz. App. 131, 134, 495 P.2D 1338, 1341 (Ct.App.1972).
- **SPECIAL DETAINER ACTIONS TYPICALLY REFER TO THE NON-PAYMENT OF RENT.(TABLE 2) AS WITH THEIR PROGENITOR – THE FORCIBLE DETAINER – THESE ARE LIMITED ACTIONS AND THE ONLY DEFENSE IN NON-PAYMENT CASES IS THAT THE RENT WAS PAID. A.R.S. § 33-1368(B).**
 - COMMISSIONER MYRA HARRIS LC2013-000140-001DT

Inadequate Notice

- **INADEQUATE NOTICE/CASE STUDY**
 - **ALWAYS REVIEW A.R.S. § 33-1313 FOR NOTICE TO TENANT AND LANDLORD PROVIDED IN HAND OR BY REGISTERED OR CERTIFIED MAIL.**
- **A.R.S. 33-1368(A): MATERIAL AND IRREPARABLE BREACH UNDER CRIME FREE LEASE ADDENDUM**
- **TENANT/DEFENDANT HAS COMMITTED A MATERIAL AND IRREPARABLE BREACH**
 - **ON 1ST, 15TH, AND 17TH OF DECEMBER 2013, DEFENDANT MADE THREATS OF VIOLENCE TO NEIGHBORING TENANTS VIOLATING A.R.S. § 33-1341(7)**

Crime Free Lease Provision

- **SECTION 145 – CRIME FREE LEASE PROVISION:**
 - **“TENANT SHALL NOT ENGAGE IN ANY ACT OF VIOLENCE OR THREATS OF VIOLENCE WHICH JEOPARIZE THE HEALTH, SAFETY, AND WELFARE OF TENANTS.”**
 - **MR. JAZZ’S BEHAVIOR HAS FRIGHTENED THE TENANTS AND THUS WE ARE TERMINATING HIS LEASE IMMEDIATELY.**
- **NEW EVICTION COMPLAINT FILED 1/24/14.**
- **NEW TRIAL SET FOR 1/30/14**

SMI Tenant – Immediate Eviction (Seriously Mentally Ill)

Diagnosis Per A.R.S. § 36-550-4

- **NOTE DATES OF ALLEGED LEASE VIOLATIONS AND DATE COMPLAINT FILED. FACTS DESCRIBED WITHIN NOTICE IS INADEQUATE TO SUPPORT IMMEDIATE EVICTION. NO NEW NOTICE FILED FOR SECOND TRIAL. NO NEW ALLEGATIONS OF TENANT THREATS OCCURRED AFTER DECEMBER 2013 INCIDENTS.**
- **NO CLS LAWYER, SMI TENANT LOSES HOUSING AND SECTION 8 VOUCHER.**
- **UNDER A.R.S. § 33-1368(A), TENANT WILL BE EVICTED WITHIN 12-24 HOURS.**

Premature Filing

- **REVIEW NOTICES/COMPLAINT/SUMMONS TO ENSURE THEY ARE NOT SERVED PREMATURELY. A CAUSE OF ACTION MUST EXIST AND BE COMPLETED PRIOR TO THE COMMENCEMENT OF THE LAWSUIT AND IF IT IS NOT IT IS DEFECTIVE AS PREMATURE.**
 - *Jahnke v. Palomar Financial Corp.*, 22 Ariz. App. 369 (1974).
- **MEANS IF NON-PAYMENT OF RENT AT ISSUE. LANDLORD MUST WAIT UNTIL CURE PERIOD EXPIRED BEFORE FILING EVICTION ACTION.**

Nonpayment of Rent Calendar

November 2018

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Prior Violations

- **ALWAYS EXAMINE ALLEGED PRIOR VIOLATIONS BY TENANT AND ACCEPTANCE OF RENT WITH KNOWLEDGE OF PRIOR BREACH TO SEE IF LANDLORD WAIVED BREACH. A.R.S. § 33-1371(B). GIVES RISE TO AFFIRMATIVE DEFENSES TO LANDLORD'S CLAIM FOR POSSESSION.**
- **A.R.S. 33-1371(B).** Except as specified in subsection A of this section, acceptance of rent, or any portion thereof, with knowledge of a default by tenant or acceptance of performance by the tenant that varied from the terms of the rental agreement or rules or regulations subsequently adopted by the landlord constitutes a waiver of the right to terminate the rental agreement for that breach.
- ***Butterfield v. Duquesne Mining Co.***, 66 Ariz. 29, 32-33, 182 P.2d 102, 103-104 (1947).

Unlawful Eviction And Tenant's Waiver Defense

- Tenant received five day notice of intent to terminate lease for material health and safety breach, related to bedbug infestation dated 07/17/18. The written notice stated “ notice is further provided that failure to cure this breach within five (5) days of this notice will result, without further action by your landlord, in the termination of your right to continued habitation within the lease premises.” The tenant cured the alleged lease violation within the cure period and the landlord had actual knowledge of such.

[Continued on Next Slide]

Unlawful Eviction And Tenant's Waiver Defense (Continued)

- Landlord accepted rent from tenant on August 6, 2018, with knowledge of the prior written notice dated 07/17/18. On 08/28/18, Landlord issued a second written notice described as a TEN DAY (10) DAY NOTICE (NON-CURABLE) NOTICE OF INTENT TO TERMINATE LEASE FOR REPEATED MATERIAL HEALTH-AND SAFETY BREACH (A.R.S. 33-1368(A)). It alleged there were two lease violations for the same or similar violations one dated 07/17/18 and one dated 08/24/18. The landlord sought to evict the tenant for failing to maintain lease premises in clean and safe manner related to bedbug infestation inside her apartment. This written notice dated 08/28/18, alleged a tenant breach which was non-curable and resulted in lease termination within ten days. CLS argued that the tenant either cured the lease violation dated 07/17/18, or the landlord was not diligent in pursuing the matter for eviction and therefore waived it when the landlord accepted the August rent. As a result there was no same or similar lease violation from July as the one dated 08/24/18.

Affirmative Defenses & Counterclaims

- **TENANT'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**
- **SEE A.R.S. § 33-1365(A) AND RPEA RULE 8.**
- **TENANT'S COUNTERCLAIMS AGAINST LANDLORD FOR FAILURE TO MAINTAIN FIT PREMISES UNDER A.R.S. § 33-1324 MUST WAIT FOR ANOTHER HEARING AS BREACH OF CONTRACT/LEASE CLAIM, IF THE LANDLORD'S EVICTION IS ABOUT LEASE VIOLATIONS UNRELATED TO NONPAYMENT OF RENT. EXAMPLE: UNAUTHORIZED GUESTS/PETS.**

No Defense for Nonpayment of Rent

- **AN AFFIRMATIVE DEFENSE IF SUCCESSFUL WILL ONLY DEFEAT OR DIMINISH THE LANDLORD'S RECOVERY FOR POSSESSION. SEE PARTIAL PAYMENT ACCEPTED AND NO WRITEN AGREEMENT SIGNED BY TENANT UNDER A.R.S. § 33-1371(A).**
- **TENANT'S COUNTERCLAIM IS NOT AN AFFIRMATIVE DEFENSE TO THE LANDLORD'S CLAIM FOR NON-PAYMENT OF RENT. TENANT HAS NO VALID LEGAL DEFENSE FOR NONPAYMENT BUT SHOULD NOT BE DENIED RELIEF OTHERWISE.**

Diminution in Fair Rental Value Counterclaim

- **TENANT'S COUNTERCLAIM FOR DAMAGES BASED UPON DIMINUTION IN THE FAIR RENTAL VALUE OF THE DWELLING UNIT IS RESULT OF LANDLORD'S VIOLATION OF A.R.S. §§ 33-1324 AND 33-1364(A)(2) DUE TO REPEATED FLOODING INSIDE TENANT'S MOBILE HOME.**
- **TENANT'S COUNTERCLAIM AGAINST LANDLORD IS RECOGNIZED UNDER RPEA RULE 8 BECAUSE COUNTERCLAIM HAS STATUTORY BASIS UNDER A.R.S §§ 33-1324 AND 33-1364 AND LANDLORD'S CLAIM IS FOR NONPAYMENT OF RENT.**

Disclosure

- **DISCLOSURE UNDER RPEA RULE 10**
- **ALWAYS ASK FOR DISCLOSURE BECAUSE YOU WILL NOT USUALLY KNOW THE ANSWERS TO THE QUESTIONS YOU ASK DURING CROSS EXAMINATION BEFORE HAND.**
- **PROVIDE DISCLOSURE TO OTHER SIDE TO AVOID TRIAL DISPUTES WHEN INTRODUCE EXHIBITS.**

RPEA Disclosure Rule 10(a)

- **WHAT IS REQUIRED UNDER RPEA RULE 10(a):**
 - **1) A COPY OF ANY LEASE AGREEMENT;**
 - **2) LIST OF WITNESSES AND EXHIBITS;**
 - **3) IF NONPAYMENT OF RENT IS AN ISSUE AN ACCOUNTING OF CHARGES AND PAYMENTS FOR PRECEDING SIX MONTHS; AND**
 - **4) COPIES OF ANY DOCUMENTS THE PARTY INTENDS TO INTRODUCE AS EXHIBIT AT TRIAL.**

RPEA Rule 10 & A.R.S. § 33-1377(C)

- **RPEA RULE 10 FOR GOOD CAUSE SHOWN COURT MAY ORDER TAKING OF DEPOSITIONS. TRIAL MAY NOT BE POSTPONED FOR MORE THAN THREE DAYS IN JUSTICE COURT.**
- **A.R.S. § 33-1377(C).**
- **LANDLORD BAR WILL ALMOST NEVER GRANT CONTINUANCE ESPECIALLY IF IS TO CONDUCT DISCOVERY.**

Attorney Fees

- **ATTORNEY FEES**
- **LANDLORD BAR ALWAYS REQUEST ATTORNEY'S FEES IN EVICTION CASES UNDER A.R.S. §12-341.01.**
- **ARIZONA ASSOCIATION OF REALTORS' RESIDENTIAL LEASE AGREEMENT STATES, " THE PREVAILING PARTY IN ANY DISPUTE OR CLAIM BETWEEN TENANT AND LANDLORD ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE AWARDED ALL OF THEIR REASONABLE ATTORNEY FEES AND COSTS. LINES 214-216.**

Reasonable Attorney Fees & Costs

- **PRIVATE ATTORNEY REPRESENTING TENANTS WHO PREVAILS SHOULD REQUEST REASONABLE ATTORNEY FEES AND COSTS UNDER A.R.S. § 12-341.01.**
- **THERE ARE VERY FEW ATTORNEYS WHO REPRESENT TENANTS IN EVICTION ACTIONS. CLS/VLP COULD USE YOUR HELP TO PREVENT UNLAWFUL LOSS OF HOUSING. PLEASE JOIN US. WE NEED THE HELP.**

END

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