

Residential Landlord & Tenant Law Update
Presentation to East Valley Bar Association
Justice of the Peace Gerald A. Williams
North Valley Justice Court
19 February 2021

BEFORE COVID-19

I. Eviction Actions Are Quickly Moving Summary Proceedings With Limited Discovery

- A. Even when tenants appear (most cases result in a default judgment), a judgment will be entered (or the case will be dismissed) on the first court date in over 80% of the cases.
- B. Cases are often viewed as being an emergency by at least one, if not both sides.

II. Governing Law

- A. The Arizona Residential Landlord and Tenant Act. A.R.S. §§ 33-1301–33-1377. Additional guidance can be found in the Arizona Rules of Procedure for Eviction Actions (RPEA).
- B. The applicable law governing renting a mobile home or a space in a mobile home park is the Arizona Mobile Home Parks Residential Landlord and Tenant Act. A.R.S. §§ 33-1401 – 33-1501.
- C. The Recreational Vehicle Long-Term Rental Space Act controls evictions concerning recreational vehicles. A.R.S. §§ 33-2100 – 33-2148. Evictions concerning hotels, motels and short-term boarding houses are governed by A.R.S. §§ 33-301 – 33-302.

III. Common Types of Evictions

- A. Nonpayment of rent – requires a five day notice
- B. Material Breach – unauthorized animals or people
- C. Immediate – criminal conduct but criminal conviction is not required

IV. Defenses That Might Work

- A. Improper or Inadequate Notice
- B. Misconduct by Landlord

1. Counterclaim for Abuse of Access. A.R.S. §§ 33-1343D, 33-1376 (tenant’s remedies for abuse of access). If the tenant requests that the landlord provide maintenance to the residence, then the tenant waives receipt of any separate two-day advance notice, as long as the entry into the residence is limited to the purpose of the maintenance request. A.R.S. § 33-1342(B); RPEA 8.

2. Unlawful Ouster. While locking out a tenant is a common legal practice in commercial lease settings, there are substantial penalties for doing so in a residential context. A.R.S. § 33-1367 (tenant's remedies for landlord's unlawful ouster, exclusion of services).

3. Retaliatory eviction. A.R.S. § 33-1381.

C. Payment. Other than procedural due process problems, generally the only defense to non-payment of rent is that the rent was paid in the amount and in the manner provided in the lease.

D. Payment on the First Court Date. Arizona is a "pay and stay" jurisdiction and the tenant has a right to reinstate a lease after receiving a notice alleging non-payment of rent. In nonpayment of rent cases only, the tenant can pay all of the rent and any late fees any time before the lawsuit is filed and avoid eviction. If the eviction action has been filed, then the tenant must pay all past due rent, late fees, attorney's fees and court costs. If the tenant does so literally anytime before a judgment is entered, he or she can avoid eviction. However, after a judgment has been entered, reinstatement of the lease is solely in the landlord's discretion. A.R.S. § 33-1368(B); *Keenen v. Biles*, 199 Ariz. 266, 268, 17 P.3d 111, 113 (Ct. App. 2001) (Landlord can obtain judgment for rent, costs and attorney fees where property was returned to possession of landlord after special detainer action was filed, but prior to the award of judgment.).

E. Diminution of Rental Value

1. If a landlord "willfully diminishes" the value of the rental property (such as interrupting utility service), then tenant can recover either up to two month's rent or twice his actual damages. A.R.S. § 33-1367. *See also*, A.R.S. § 9-1303 (defines material affect on health and safety to tenants for purposes of municipal inspections).

2. If a landlord negligently fails to supply essential services, the tenant can "recover damages based on the diminution in the fair rental value of the dwelling unit." A.R.S. § 33-1364.

3. Tricky Counterclaim Issue. If the tenant is claiming that he withheld rent because the landlord did something to decrease the value of the rental property, a judge may direct that the tenant pay the undisputed amount of rent into the court (as a bond, which the court may call a "litigant deposit") prior to trial. A.R.S. § 33-1365; RPEA 8.

4. Note: This defense is largely inapplicable in mobile home park cases which have their own set of statutes. A counterclaim cannot be filed in a mobile home park case.

F. Tenant is a Domestic Violence Victim. This is not actually a "defense;" but a tenant may terminate a lease early if she is a victim of domestic violence and if certain prerequisites are met. A.R.S. § 33-1318.

G. Ownership of Real Property Is In Issue. This is not actually a "defense" either, but it should trigger the case being transferred to Superior Court. A.R.S. § 22-201(D). However, foreclosure actions cannot be challenged as part of an eviction action. *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996)(The validity of a trustee's deed cannot be challenged in a forcible

detainer action). In addition, a trustee's deed creates a presumption of compliance and is conclusive evidence that the trustee's sale of the deed of trust property was conducted regularly and in accordance with the required statutory notice provisions. A.R.S. § 33-811(B); *Hills v. Hills*, 299 B.R. 581 (Bankr. D. Ariz. 2002).

H. Landlord Accepted Partial Payment. If a landlord accepts partial payment, then the landlord cannot proceed with a residential eviction that month UNLESS at the time the partial payment is accepted, the tenant agrees contemporaneously and in writing that the landlord can still do so if the terms of the waiver agreement are not been met. A.R.S. § 33-1371. Again, this was the law, B.C. or Before COVID-19.

V. Attempted Defenses That Probably Won't Work

A. "A Rent Strike." In some jurisdictions, tenants can "rent strike" (e.g. "I knew I would get my landlord's attention if I stopped paying rent."). In Arizona, "A tenant may not withhold rent for any reason not authorized" by statute. A.R.S. § 33-1368(B).

B. Failure to List Residence As Rental Property. Landlords must also register with the county assessor. A.R.S. § 33-1902. There is no private right of action under this statute. It allows the tenant to give a 10 day notice for the landlord to comply with the statute and if the landlord does not do so, then the tenant can break the lease.

C. "Just Use My Security Deposit As Payment For My Rent" Security deposits and rent have very different purposes. The landlord can apply the security deposit to any unpaid rent, but he is not required to do so. A.R.S. § 33-1321(D).

D. Implied Warranty of Habitability. There is a long line of Arizona cases that have adopted the implied warranty of habitability; however, they are either construction defect cases or cases between a buyer and seller of real property. Arizona considered but rejected extending the implied warranty of habitability to landlord tenant cases. *See, Shirkey v. Crain & Associates Management Co. Inc.*, 129 Ariz. 128, 629 P.2d 95 (Ct. App. 1981)(Held that landlord was not liable for tenant's injuries after bathroom fixture came loose when landlord had no knowledge it was not properly installed). *See also*, A.R.S. § 12-552 (Actions involving development of real property design, engineering and construction improvements).

AFTER COVID-19

VI. Governor Ducey's Executive Orders

A. March 24, 2020 Order

1. The governor's order did not change any aspect of landlord and tenant law until the point where the constable arrived at the residence to serve the writ of restitution.

2. Applied to anyone in quarantine, any home with someone who had COVID-19, any individual who had a health condition that made that made them at risk due to COVID-19, and anyone who with a reduced salary.

3. Expired on July 24, 2020

B. Governor's Second Executive Order

1. Extended ban until October 31, 2020

2. Drastically changed criteria effective August 21, 2021 – medical basis was eliminated

3. Placed additional documentation requirements on tenants

VII. Coronavirus Aid, Relief and Economic Security (CARES) Act

A. Signed by President Trump on March 27, 2020

B. It included a 120-day moratorium on evictions for residential tenants who received federal housing assistance or who lived in a property with a federally backed mortgage.

C. Expired on July 25, 2020

VIII. CDC Declaration.

A. On September 4, 2020, the Center for Disease Control (CDC) added its own ban blocking residential evictions for nonpayment of rent until after December 31, 2020.

B. Based on inability to pay rent (not any medical reason)

C. The CDC order's definition of eviction, included "any action by a landlord, owner of a residential property, or other person with a legal right to pursue eviction or a possessory action ..." Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292, 55,293 (Sep. 4, 2020).

D. Both DOJ and the CDC said it did not mean that.

E. Extended when President Trump signed a spending bill until January 31, 2021

F. New CDC Director extended it until March 31, 2021.

G. In Arizona, there is a way for landlords to challenge a CDC declaration.

Gerald Williams and Miles Keegan, *Justices of the Peace, Pandemics and Evictions*, Ariz. Atty 24 (Feb. 2021).

**NOTICE OF INTENT TO TERMINATE RENTAL AGREEMENT
FOR NON-PAYMENT OF RENT
(FIVE DAY NOTICE)**

From: Landlord: _____

To: _____
& Any/All Occupants

Date: _____

Please be advised that the filing of an eviction lawsuit against you by the landlord is imminent because you have been in arrears on the payment of your rent for the above named premises. If legal action is instituted, not only is it likely that the court will award Judgment to the owner/management company for the below sum and order that you vacate the premise, but it is likely that you will be ordered to pay all court costs, attorney fees, and rental concessions. We would like to give you an opportunity to resolve this matter prior to the initiation of legal action. To do so, you must contact your property manager immediately and deliver the full sum due or sign a partial payment agreement if agreed to in writing by your landlord. Absent the above action, be advised that, pursuant to **A.R.S. 33-1368**, it is hereby demanded that you surrender the above-described premises or pay the entire amount owed within **FIVE days** from the date of this notice. Management expressly does not waive the right to bring an action against you for all unpaid rent from the date of your vacating the premises until such time as the property is re-rented or your fixed term lease expires, whichever comes first and any additional damages owed to the landlord pursuant to the lease. Please be further advised that your deposit may not be used for rent. The premises must be left in a clean and undamaged condition. You are liable for the full term if your lease and will be held to the full term of your lease or until the premises are re-rented. If you are on a month-to-month tenancy, then you are liable for all unpaid rent from the date you vacate the property and an additional thirty day period or the re-rent date, whichever comes first. Furthermore, you are also liable for any lease break fees and rental concessions.

AMOUNT OWED:

RENT: _____ FOR THE MONTH(S) OF _____

PREVIOUS BALANCE: _____

TAX: _____

LATE CHARGES:\$ _____ (CALCULATED AT \$ _____ PER DAY AS OF THE _____ OF THE MONTH WHICH WILL CONTINUE TO ACCRUE AT SAID RATE UNTIL PAID IN FULL)

OTHER: _____

TOTAL OWED AS OF THE DATE OF THIS NOTICE: \$ _____

THIS NOTICE IS SERVED BY: _____ DATE: _____
(Name of person serving the notice)

() Delivered in Hand to the Tenant or other occupant:

(the name of the person who got the notice)

() Certified Mail -Receipt Number: _____



Maricopa County Justice Courts

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: _____

DATE FILED: _____

ATTESTATION OF PLAINTIFF - CARES Act/CDC Order Compliance by Plaintiff

This claim does does not include rent for any period between March 27, 2020, through July 24, 2020, and, if so, the property was was not covered by the CARES Act.

The plaintiff received from a tenant, lessee, or resident of the residential property a declaration under the CDC order entitled "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19."

The Plaintiff has has not applied for or has received rental assistance from any source based on Defendant's rental obligation. If applicable, the amount received was \$ _____ and has been applied toward the obligations(a copy of the ledger is attached).

The Plaintiff has has not obtained a prior judgment against the defendant. If applicable, the amounts in the Complaint are exclusive of the damages awarded in the prior judgment.

INSTRUCTIONS TO PLAINTIFF:

Landlord must truthfully attest to the court whether during the March 27 through July 24, 2020 period of the moratorium the property subject of the eviction:

- 1) Had a federally backed mortgage loan*; or
- 2) Had a federally backed multifamily mortgage loan*; or
- 3) Participated in a covered program of the Violence Against Women Act of 1994 or the Rural Housing Voucher Program under section 542 of the housing Act of 1949 which include:
 - a) Public Housing
 - b) Section 8 Housing Choice Voucher Program
 - c) Section 8 project-based housing
 - d) Section 202 housing for the elderly
 - e) Section 811 housing for people with disabilities
 - f) Section 236 multifamily rental housing
 - g) Section 221(d)(3) Below Market Interest Rate (BMIR) housing
 - h) HOME
 - i) Housing Opportunities for Persons with AIDS (HOPWA)
 - j) McKinney-Vento Act homelessness programs;
 - k) Department of Agriculture • Section 515 Rural Rental Housing • Sections 514 and 516 Farm Labor Housing • Section 533 Housing Preservation Grants • Section 538 multifamily rental housing;
 - l) Department of Treasury Low-Income Housing Tax Credit; or
- 4) Was a federally backed multifamily mortgage loan under forbearance provided by the

CARES Act.

*"made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by [HUD] or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association."

Date

Plaintiff Signature



Maricopa County Justice Courts, Arizona

ATTENTION TENANTS

ATTENTION TENANTS

YOU CAN ASK FOR FREE LEGAL HELP BY CONTACTING:

Community Legal Services

1-800-852-9075

www.clsaz.org

(This legal help program is not part of the court.)

INFORMATION ON TEMPORARY HALT IN RESIDENTIAL EVICTION FOR NONPAYMENT OF RENT

You may have a **right to stay in your home** through January 31, 2021 even though you are unable to pay all of your rent during this time; but only if you can **accurately and truthfully** make **all five** of the following statements and you give your landlord a paper called a **declaration** that contains them:

- 1) You are using your best efforts to obtain all available government assistance for rent or housing;
- 2) You either (i) expect to earn no more than \$99,000 during the 2020 Calendar Year (or no more than \$198,000 when you file a joint tax return), (ii) were not required to report any income in 2019 to the IRS, or (iii) received an Economic Impact Payment (stimulus check) under the CARES Act;
- 3) You are unable to pay the full rent or make a full housing payment due to a large loss of household income, loss of normally paid hours or wages, a lay-off, or out-of-pocket medical expenses more than 7.5% of your total income;
- 4) You are using your best efforts to make timely partial payments that are as close to the full payment as your circumstances may permit, taking into account other bills you have to pay; and
- 5) If evicted, you would likely be homeless or be forced to move into a crowded living space such as a shelter or a residence with other people because you have no other available place to live for the same or lower cost.

There are multiple places tenants may obtain a CDC declaration form:

<http://justicecourts.maricopa.gov/Forms>, <https://www.azcourts.gov/eviction>,
<https://www.azcourts.gov/desalojo>, <https://www.azcourthelp.org>, or another agency that assists tenants.

Please read it carefully. If you sign the declaration when you know any statement is false, you may be charged and convicted with a felony and be required to pay a large fine or even be sent to jail.

If your landlord provides the judge a reason to believe, based on evidence, that any of the five statements in the declaration are not accurate, the court may schedule a hearing. At this hearing, before you can be evicted for nonpayment of rent, your landlord must prove at least one of the statements is not accurate. You may explain why you believe it is accurate and provide any documents you have that support your belief. Then the judge will decide whether to let you stay in your home or order you to move out because you have not kept up with your rent payments.



Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: _____

Landlord(s) Name / Address / Email / Phone

Tenant(s) Name / Address / Email / Phone

Attorney for Landlord(s) Name / Address / Email / Phone

Attorney for Tenant(s) Name / Address / Email / Phone

DECLARATION FOR EVICTION ACTION TEMPORARY HALT CDC Order 361(41 U.S.C 264 & 42 CFR 70.2)

I certify under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing are true and correct:

I have used best efforts to obtain all available government assistance for rent or housing; ¹

I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, layoffs, or extraordinary ² out-of-pocket medical expenses;

I am using best efforts to make timely partial payments that are as close to the full payment as my circumstances may permit, taking into account other non discretionary expenses;

If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options. ³

I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.

I further understand that at the end of this temporary halt on evictions, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Date: _____ Signature Declarant(s): _____

Note: This order needs to be given to the landlord, owner, or other person who has a right to evict and each individual listed on the lease must sign.

1. "Available government assistance means any governmental rental or housing payment benefits available to the individual or any household member.
2. An "extraordinary" medical expense is any unreimbursed medical expense likely to exceed 7.5% of one's adjusted gross income for the year.
3. "Available housing" means any available, unoccupied residential property, or other space for occupancy in any seasonal or temporary housing, that would not violate Federal, State, or local occupancy standards and that would not result in an overall increase of housing cost to you.



Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: _____

Plaintiff(s) Name / Address / Email / Phone

Attorney for Plaintiff(s) Name / Address / Email / Phone

Defendant(s) Name / Address / Email / Phone

Attorney for Defendant(s) Name / Address / Email / Phone

PANDEMIC MINUTE ENTRY EVICITION CASE STATUS

Date: _____

This eviction matter came before the Court on _____, 2021.

IT IS ORDERED

Defendant has signed a CDC Declaration and this matter is therefore continued to _____, 2021. Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

Judgment has been entered but there has been a CDC Declaration, so a writ will not be issued (tenants will not be removed) until after the CDC Order expires. **Tenants do NOT need to leave the property at this time.** The landlord may ask the court to have the constable remove tenants after the CDC protection expires (currently March 31, 2021) OR the landlord may file a motion to remove tenants sooner if the landlord believes it can prove that the CDC Declaration is false. Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

There was no evidence of a signed CDC Declaration, so judgment has been entered this day. However, tenants may be able to prevent the constable from enforcing a writ (removing the tenants) if a CDC Declaration is completed and provided to the landlord and the constable prior to removal from the property. Tenants should ensure that their address, email and phone numbers are up-to-date with the court; monitor and read their mail and email closely; and participate in their court dates.

Tenants can obtain a copy of the CDC Declaration at the justice court or online here:

www.azcourts.gov/eviction www.azcourthelp.org <https://clsaz.org/covid-19/>
<http://justicecourts.maricopa.gov/Notices/covid-19.aspx>

Tenants can find information on rental assistance here:

<https://housing.az.gov/general-public/eviction-prevention-assistance>

Tenants can ask for free legal help here (these programs are not part of the court):

Maricopa: 800-852-9075 www.clsaz.org

I CERTIFY that I delivered a copy of this document to:

Plaintiff at the above address Plaintiff's attorney Defendant at the above address Defendant's attorney

Date: _____ By _____
Clerk



Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: _____

Plaintiff(s) Name / Address / Email / Phone

Defendant(s) Name / Address / Email / Phone

Attorney for Plaintiff(s) Name / Address / Email / Phone

Attorney for Defendant(s) Name / Address / Email / Phone

FINDINGS ON FORCIBLE DETAINERS, MATERIAL NON-COMPLIANCE OR IMMEDIATE EVICTIONS

A hearing was held on _____ regarding Plaintiff's eviction complaint alleging:

- Material non-compliance with the lease
- Material and irreparable breach
- Forcible Detainer

Upon consideration of the admissible evidence and witnesses presented at the hearing, the Court makes the following findings:

- The parties received notice or service of today's proceeding.
- The court has jurisdiction of this matter.
- The CDC Order does not protect a tenant against a claimed forcible detainer or an eviction action based on a tenant, lessee, or resident: "(1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)."
- A lease was in effect and the plaintiff provided specific and valid notice of any alleged violations of the lease relied upon at the hearing.
- A lease was not in effect and the plaintiff provided specific allegations of a forcible detainer.
- The plaintiff did NOT meet its burden of proof in proving forcible detainer, a material non-compliance or a material and irreparable breach of the lease. Accordingly, this matter
 - Is continued to Date: _____ Time: _____
 - May proceed to judgment with a stayed writ.
- The plaintiff DID meet its burden of proof in proving a forcible detainer, a material non-compliance or a material and irreparable breach of the lease. The breach(es) that were proven and relied upon by the court are as follows:

Accordingly, JUDGMENT is entered in favor of the Plaintiff as provided in the separate Form of Judgment entered this day, and a writ of restitution may be issued as indicated on the judgment.

Date: _____
Justice of the Peace

I CERTIFY that I delivered / mailed a copy of this document to:			
<input type="checkbox"/> Plaintiff at the above address	<input type="checkbox"/> Plaintiff's attorney	<input type="checkbox"/> Defendant at the above address	<input type="checkbox"/> Defendant's attorney
Date: _____		By Clerk _____	



Maricopa County Justice Courts, Arizona

North Valley Justice Court 14264 W. Tierra Buena Ln., Surprise, AZ 85374 602-372-2000

CASE NUMBER: _____

Plaintiff(s) Name / Address / Email / Phone

Attorney for Plaintiff(s) Name / Address / Email / Phone

Defendant(s) Name / Address / Email / Phone

Attorney for Defendant(s) Name / Address / Email / Phone

RULING ON MOTION TO CONTEST CDC DECLARATION

Upon Written Motion:

This matter came before the Court on Plaintiff's written Motion to Contest the CDC Declaration, filed on _____. Upon review of the Motion and the evidence described in the Motion, the Court rules as follows:

The Court finds reason to believe based on evidence described in the motion for each statement that one or more specific statements in the declaration is materially inaccurate and a hearing is warranted to determine the accuracy of any statement identified in the motion. The motion is set to a contested hearing on _____. Plaintiff may not introduce any evidence not identified in the Motion.

The Court finds that the Motion did not find reason to believe based on evidence described in the motion for each statement that one or more specific statements in the declaration is materially inaccurate and therefore **DENIES** the Motion without hearing.

Following a Hearing:

This matter came before the Court on Plaintiff's Motion to Contest the CDC Declaration on _____.

All parties had notice of the hearing.

The Court finds that if Plaintiff did not prove, based on the evidence presented at the hearing, that one or more specific statements in the declaration is materially inaccurate and therefore **DENIES** the Motion.

This matter is therefore: Dismissed without prejudice Continued

The judge finds that the plaintiff proved at the hearing by a preponderance of the evidence that any statement identified in the motion is materially inaccurate. These findings are based upon the following:

Date: _____

Justice of the Peace

I CERTIFY that I delivered / mailed a copy of this document to:

Plaintiff at the above address Plaintiff's attorney Defendant at the above address Defendant's attorney

Date: _____ By _____
Clerk