

REFERENCE TITLE: landlord tenant; settlement conferences

State of Arizona
House of Representatives
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HB 2835

Introduced by
Representatives Villegas: Aguilar, Cavero, Connolly, Contreras P, Crews,
Gutierrez, Luna-Nájera, Mathis, Stahl Hamilton

AN ACT

AMENDING SECTIONS 12-1175, 33-1368 AND 33-1377, ARIZONA REVISED STATUTES;
RELATING TO THE ARIZONA RESIDENTIAL LANDLORD AND TENANT ACT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-1175, Arizona Revised Statutes, is amended to read:

12-1175. Complaint and answer; service and return; settlement conferences; notice and pleading requirements

A. When a party aggrieved files a complaint of forcible entry or forcible detainer, in writing and under oath, with the clerk of the superior court or a justice of the peace, summons shall issue ~~no~~ NOT later than the next judicial day.

B. The complaint shall contain a description of the premises of which possession is claimed in sufficient detail to identify ~~them~~ THE PREMISES and shall also state the facts that entitle the plaintiff to possession and authorize the action.

C. EXCEPT FOR AN ACTION PRESCRIBED BY SUBSECTION D OF THIS SECTION, the summons shall be served at least two days before the return day, and return made thereof on the day assigned for trial.

D. FOR AN ACTION FOR MATERIAL BREACH OF THE LEASE AS PRESCRIBED BY SECTION 33-1368, SUBSECTION A ONLY OR FOR FAILURE TO PAY RENT AS PRESCRIBED BY SECTION 33-1368, SUBSECTION B, THE COURT SHALL SCHEDULE A MANDATORY SETTLEMENT CONFERENCE FOR FIVE DAYS AFTER THE EVICTION NOTICE IS SERVED ON THE TENANT. THE LANDLORD AND TENANT SHALL APPEAR AT THE SETTLEMENT CONFERENCE AND SHALL PROVIDE THE COURT WITH COPIES OF THE LEASE, PAST DUE RENT NOTICES, RECEIPTS AND ANY OTHER DOCUMENTS RELEVANT TO THE SETTLEMENT CONFERENCE. IF THE LANDLORD DOES NOT APPEAR AT THE SETTLEMENT CONFERENCE, THE CASE IS DISMISSED. IF THE TENANT DOES NOT APPEAR AT THE SETTLEMENT CONFERENCE, THE COURT SHALL ENTER A DEFAULT JUDGMENT AGAINST THE TENANT. IF THE CASE IS NOT SETTLED AT THE SETTLEMENT CONFERENCE, THE CASE SHALL BE SET FOR AN EVICTION HEARING ON THE FIFTH BUSINESS DAY AFTER THE SETTLEMENT CONFERENCE. THE ELECTED JUSTICES OF THE PEACE SHALL PRESIDE OVER THEIR INDIVIDUAL SETTLEMENT CONFERENCES, EXCEPT IF THE JUSTICE OF THE PEACE IS UNABLE TO PRESIDE, THE SETTLEMENT CONFERENCE SHALL BE REFERRED TO ANOTHER ELECTED JUSTICE OF THE PEACE IN THAT COUNTY OR IN AN ADJACENT COUNTY. THE COURT SHALL TRACK ALL DATA RELATING TO MANDATORY EVICTION SETTLEMENT CONFERENCE RESULTS AND SHALL REPORT THIS DATA TO THE ADMINISTRATIVE OFFICE OF THE COURTS.

~~D.~~ E. Notwithstanding any other law, an agency of this state and an individual court may not adopt or enforce a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible entry or forcible or special detainer. The form of any notice or pleading that meets statutory requirements for content and formatting of a notice or pleading is sufficient to provide notice and to pursue an action for forcible entry or forcible or special detainer.

1 Sec. 2. Section 33-1368, Arizona Revised Statutes, is amended to
2 read:

3 33-1368. Noncompliance with rental agreement by tenant;
4 failure to pay rent; settlement conference;
5 utility discontinuation; liability for guests;
6 definition

7 A. Except as provided in this chapter, if there is a material
8 noncompliance by the tenant with the rental agreement, including material
9 falsification of the information provided on the rental application, the
10 landlord may deliver a written notice to the tenant specifying the acts
11 and omissions constituting the breach and that the rental agreement will
12 terminate on a date not less than ten days after receipt of the notice if
13 the breach is not remedied in ten days. For the purposes of this section,
14 material falsification includes the following untrue or misleading
15 information about the:

16 1. Number of occupants in the dwelling unit, pets, income of the
17 prospective tenant, social security number and current employment listed
18 on the application or lease agreement.

19 2. Tenant's criminal records, prior eviction record and current
20 criminal activity. Material falsification of information in this
21 paragraph is not curable under this section.

22 If there is a noncompliance by the tenant with section 33-1341 materially
23 affecting health and safety, the landlord may deliver a written notice to
24 the tenant specifying the acts and omissions constituting the breach and
25 that the rental agreement will terminate on a date not less than five days
26 after receipt of the notice if the breach is not remedied in five days.

27 ~~However,~~ If the breach is remediable by repair or the payment of damages
28 or otherwise, and the tenant adequately remedies the breach before the
29 date specified in the notice, the rental agreement will not terminate. If
30 there is an additional act of these types of noncompliance of the same or
31 a similar nature during the term of the lease after the previous remedy of
32 noncompliance, the landlord may institute a special detainer action
33 pursuant to section 33-1377 ten days after delivery of a written notice
34 advising the tenant that a second noncompliance of the same or a similar
35 nature has occurred. If there is a breach that is both material and
36 irreparable and that occurs on the premises, which may include an illegal
37 discharge of a weapon, homicide as prescribed in sections 13-1102,
38 13-1103, 13-1104 and 13-1105, prostitution as defined in section 13-3211,
39 criminal street gang activity as prescribed in section 13-105, activity as
40 prohibited in section 13-2308, the unlawful manufacturing, selling,
41 transferring, possessing, using or storing of a controlled substance as
42 defined in section 13-3451, threatening or intimidating as prohibited in
43 section 13-1202, assault as prohibited in section 13-1203, acts that have
44 been found to constitute a nuisance pursuant to section 12-991 or a breach
45 of the lease agreement that otherwise jeopardizes the health, safety and

1 welfare of the landlord, the landlord's agent or another tenant or
2 involving imminent or actual serious property damage, the landlord may
3 deliver a written notice for immediate termination of the rental agreement
4 and shall proceed under section 33-1377. The foregoing list of actions,
5 which may constitute a material and irreparable breach of a tenant's
6 lease, is not exhaustive.

7 B. A tenant may not withhold rent for any reason not authorized by
8 this chapter. If rent is unpaid when due and the tenant fails to pay rent
9 within five days after written notice by the landlord of nonpayment and
10 the landlord's intention to terminate the rental agreement if the rent is
11 not paid within that period of time, the landlord may terminate the rental
12 agreement by filing a special detainer action pursuant to section 33-1377.
13 Before the filing of a special detainer action, the rental agreement shall
14 be reinstated if the tenant tenders all past due and unpaid periodic rent
15 and a reasonable late fee set forth in a written rental agreement. After
16 a special detainer action is filed, the rental agreement is reinstated
17 only if the tenant pays all past due rent, reasonable late fees set forth
18 in a written rental agreement, attorney fees and court costs.

19 C. THE COURT, IN ANY SPECIAL DETAINER ACTION REGARDING UNPAID RENT
20 OR MATERIAL BREACH OF THE LEASE, SHALL SCHEDULE A MANDATORY SETTLEMENT
21 CONFERENCE FOR FIVE DAYS AFTER THE EVICTION NOTICE IS SERVED ON THE TENANT
22 AND SHALL PROCEED AS PRESCRIBED IN SECTION 33-1377. THE LANDLORD AND
23 TENANT SHALL APPEAR AT THE SETTLEMENT CONFERENCE AND SHALL PROVIDE THE
24 COURT WITH COPIES OF THE LEASE, PAST DUE RENT NOTICES, RECEIPTS AND ANY
25 OTHER DOCUMENTS RELEVANT TO THE SETTLEMENT CONFERENCE. IF THE LANDLORD
26 DOES NOT APPEAR AT THE SETTLEMENT CONFERENCE, THE CASE IS DISMISSED. IF
27 THE TENANT DOES NOT APPEAR AT THE SETTLEMENT CONFERENCE, THE COURT SHALL
28 ENTER A DEFAULT JUDGMENT AGAINST THE TENANT. THE ELECTED JUSTICES OF THE
29 PEACE SHALL PRESIDE OVER THEIR INDIVIDUAL SETTLEMENT CONFERENCES, EXCEPT
30 IF THE JUSTICE OF THE PEACE IS UNABLE TO PRESIDE, THE SETTLEMENT
31 CONFERENCE SHALL BE REFERRED TO ANOTHER ELECTED JUSTICE OF THE PEACE IN
32 THAT COUNTY OR IN AN ADJACENT COUNTY. THE COURT SHALL TRACK ALL DATA
33 RELATING TO MANDATORY EVICTION SETTLEMENT CONFERENCE RESULTS AND SHALL
34 REPORT THIS DATA TO THE ADMINISTRATIVE OFFICE OF THE COURTS.

35 D. After a judgment has been entered in a special detainer office
36 action in favor of the landlord, any reinstatement of the rental agreement
37 is solely in the discretion of the landlord.

38 ~~E.~~ E. The landlord may recover all reasonable damages resulting
39 from noncompliance by the tenant with the rental agreement or section
40 33-1341 or occupancy of the dwelling unit, court costs, reasonable
41 attorney fees and all quantifiable damage caused by the tenant to the
42 premises.

43 ~~F.~~ F. The landlord may discontinue utility services provided by
44 the landlord on the day following the day that a writ of restitution or
45 execution is executed pursuant to section 12-1181. Disconnections shall

1 be performed only by a person authorized by the utility whose service is
 2 being discontinued. This section does not supersede standard tariff and
 3 operational procedures that apply to any public service corporation,
 4 municipal corporation or special districts providing utility services in
 5 this state.

6 ~~E.~~ G. On the day following the day that a writ of restitution or
 7 execution is executed pursuant to section 12-1181, the landlord shall
 8 comply with section 33-1370, subsections D, E, F, G, H and I regarding the
 9 tenant's personal property.

10 ~~F.~~ H. For the purposes of this chapter, the tenant shall be held
 11 responsible for the actions of the tenant's guests that violate the lease
 12 agreement or rules or regulations of the landlord if the tenant could
 13 reasonably be expected to be aware that such actions might occur and did
 14 not attempt to prevent those actions to the best of the tenant's ability.

15 ~~G.~~ I. For the purposes of this section, "days" means calendar
 16 days.

17 Sec. 3. Section 33-1377, Arizona Revised Statutes, is amended to
 18 read:

19 33-1377. Special detainer actions: service: trial
 20 postponement

21 A. Special detainer actions shall be instituted for remedies
 22 prescribed in section 33-1368. Except as provided in this section, the
 23 procedure and appeal rights prescribed in title 12, chapter 8, article 4
 24 apply to special detainer actions.

25 B. EXCEPT FOR AN ACTION FOR MATERIAL BREACH OF THE LEASE AS
 26 PRESCRIBED BY SECTION 33-1368, SUBSECTION A ONLY OR FOR FAILURE TO PAY
 27 RENT AS PRESCRIBED BY SECTION 33-1368, SUBSECTION B, the summons shall be
 28 issued on the day the complaint is filed and shall command the person
 29 against whom the complaint is made to appear and answer the complaint at
 30 the time and place named, which shall be not more than six ~~not~~ OR less
 31 than three days ~~from~~ AFTER the date of the summons. The tenant is deemed
 32 to have received the summons three days after the summons is mailed if
 33 personal service is attempted and within one day of issuance of the
 34 summons IF a copy of the summons is conspicuously posted on the main
 35 entrance of the tenant's residence and on the same day the summons is sent
 36 by certified mail, return receipt requested, to the tenant's last known
 37 address. The summons in a special detainer action shall be served at
 38 least two days before the return day and the return day made on the day
 39 assigned for trial. Service of process in this manner shall be deemed the
 40 equivalent of having served the tenant in person for the purposes of
 41 awarding a money judgment for all rent, damages, costs and attorney fees
 42 due.

43 C. For good cause shown supported by an affidavit, the trial may be
 44 postponed for not more than three days in a justice court or five days in
 45 the superior court.

1 D. FOR AN ACTION FOR MATERIAL BREACH OF THE LEASE AS PRESCRIBED BY
 2 SECTION 33-1368, SUBSECTION A ONLY OR FOR FAILURE TO PAY RENT AS
 3 PRESCRIBED BY SECTION 33-1368, SUBSECTION B, THE COURT SHALL SCHEDULE A
 4 MANDATORY SETTLEMENT CONFERENCE FOR FIVE DAYS AFTER THE EVICTION NOTICE IS
 5 SERVED ON THE TENANT. THE LANDLORD AND TENANT SHALL APPEAR AT THE
 6 SETTLEMENT CONFERENCE AND SHALL PROVIDE THE COURT WITH COPIES OF THE
 7 LEASE, PAST DUE RENT NOTICES, RECEIPTS AND ANY OTHER DOCUMENTS RELEVANT TO
 8 THE SETTLEMENT CONFERENCE. IF THE LANDLORD DOES NOT APPEAR AT THE
 9 SETTLEMENT CONFERENCE, THE CASE IS DISMISSED. IF THE TENANT DOES NOT
 10 APPEAR AT THE SETTLEMENT CONFERENCE, THE COURT SHALL ENTER A DEFAULT
 11 JUDGMENT AGAINST THE TENANT. IF THE CASE IS NOT SETTLED AT THE SETTLEMENT
 12 CONFERENCE, THE CASE SHALL BE SET FOR AN EVICTION HEARING ON THE FIFTH
 13 BUSINESS DAY AFTER THE SETTLEMENT CONFERENCE. THE ELECTED JUSTICES OF THE
 14 PEACE SHALL PRESIDE OVER THEIR INDIVIDUAL SETTLEMENT CONFERENCES, EXCEPT
 15 IF THE JUSTICE OF THE PEACE IS UNABLE TO PRESIDE, THE SETTLEMENT
 16 CONFERENCE SHALL BE REFERRED TO ANOTHER ELECTED JUSTICE OF THE PEACE IN
 17 THAT COUNTY OR IN AN ADJACENT COUNTY. THE COURT SHALL TRACK ALL DATA
 18 RELATING TO MANDATORY EVICTION SETTLEMENT CONFERENCE RESULTS AND SHALL
 19 REPORT THIS DATA TO THE ADMINISTRATIVE OFFICE OF THE COURTS.

20 ~~D.~~ E. In AN EVICTION HEARING, IN addition to determining the right
 21 to actual possession, the court may assess damages, attorney fees and
 22 costs as prescribed by law.

23 ~~E.~~ F. If a complaint is filed alleging a material and irreparable
 24 breach pursuant to section 33-1368, subsection A, the summons shall be
 25 issued as provided in subsection B of this section, except that the trial
 26 date and return date shall be set ~~no~~ NOT later than the third day
 27 following the filing of the complaint. If after the hearing the court
 28 finds by A preponderance of the evidence that the material and irreparable
 29 breach did occur, the court shall order restitution in favor of the
 30 plaintiff not less than twelve ~~not~~ ORK more than twenty-four hours later.

31 ~~F.~~ G. If the defendant is found guilty, the court shall give
 32 judgment for the plaintiff for restitution of the premises, for late
 33 charges stated in the rental agreement, for costs and, at the plaintiff's
 34 option, for all rent found to be due and unpaid through the periodic
 35 rental period provided for in the rental agreement as described in section
 36 33-1314, subsection C and shall grant a writ of restitution.

37 ~~G.~~ H. If the defendant is found not guilty, judgment shall be
 38 given for the defendant against the plaintiff for costs, and if it appears
 39 that the plaintiff has acquired possession of the premises since
 40 commencement of the action, a writ of restitution shall issue in favor of
 41 the defendant.