

FOR SELF REPRESENTED TENANTS

PACKET FOR FILING RESPONSE TO COMPLAINT FOR UNLAWFUL DETAINER (EVICTION)

PACKET CONTENTS

1. **Fact Sheet.** Read this information carefully and thoroughly. Continue to refer back to it while filling out the forms in this packet.
2. **Answer, Counterclaim, and Objection to Writ of Possession Form.** This is the form that you will fill out and file at the circuit court clerk's office.
3. **Notes.** These are notes labeled A – M. Each one is linked to a different section of the forms. They contain examples and explanations for how to fill out each part of forms.

Fact Sheet

Where to start?

If you are reading this, you have probably been given a Notice to Quit, followed by a Complaint in Unlawful Detainer, Affidavit, Summons, and a Notice of Intent to Issue Writ of Possession. Through this packet, you will learn what each of these things are and how to respond. **YOUR RESPONSE IS VERY TIME SENSITIVE! DO NOT WAIT TO GET STARTED ON THIS!**

Who is the Plaintiff and the Defendant?

In an Unlawful Detainer case, the Landlord is the Plaintiff and the Tenant is the Defendant. The Plaintiff starts a lawsuit and a Defendant responds to it. In this case, you are responding, so you, the tenant, are the Defendant. The Defendant and Plaintiff together are sometimes referred to as “the parties”.

What does Unlawful Detainer mean?

An eviction is a legal process that allows a landlord to request a court's permission to have law enforcement remove a tenant from a residence. The most common type of eviction in Arkansas is called “unlawful detainer.” Unlawful detainer is a civil lawsuit in which the landlord asks the court to evict a tenant and potentially order them to pay money they owe the landlord.

Unauthorized Practice of Law

This packet is only meant to be used by “pro se” litigants, which means people representing themselves. A person is allowed to represent themselves, however, only attorneys can represent other people or entities such as limited liability companies (LLCs), corporations, and estates. For example, if the property is owned by an LLC, then a non-attorney cannot file a Complaint in Unlawful Detainer on behalf of the LLC. Similarly, a person cannot file a response to that Complaint on behalf of a tenant. The tenant would have to file their response, such as, Answer, Counterclaim, and Objection, on their own behalf.

Grounds for Eviction

Tenants can only be evicted through an “unlawful detainer” case for one of these reasons:

- Staying on the property after the lease has expired or “holding over”;
- Failing to pay rent and staying on the property after getting a notice to vacate within 3 days;
- Staying on rental property after getting the time allowed under an eviction notice or written demand from someone having the legal right to the property or their attorney;

- Failing to keep the property in safe, healthy, or habitable conditions;
- Letting the property become a nuisance or hub of criminal activity; OR
- Violating one of the express terms of the lease agreement.

Be aware that there are other statutory ways to evict someone, other than unlawful detainer. This fact sheet and form are not intended for use in any other type of eviction case except unlawful detainer.

Some Potential Valid Defenses to Unlawful Detainer

- The allegations against you are not true.
- The landlord is discriminating against you based on race, religion, disability, familial status, or another protected category.
- The landlord is evicting you for unreasonable rules or rules that are not in your lease.
- The landlord did not give you proper notice.
- The landlord waived the right to evict you for this.
- You were not served properly. The landlord did not deliver to you, a copy of the Complaint, Affidavit, Summons, and Notice of Intent to Issue Writ of Possession in accordance with the law.

CARES Act

Tenants must get at least 30 days' written notice to quit (notice to leave) before an eviction for nonpayment of rent if they live in a property funded by the federal government under the CARES Act. This includes income-based housing or housing with a mortgage through the federal government. This applies to approximately 28-46% of rental housing in the United States.

Tenants in most income-based housing funded by the federal government have more rights such as protection from “holdover” evictions after a lease expires and informal hearings that must happen before a landlord can file an eviction case in court. If you are unsure if the property is covered by the CARES Act, you can start by checking the Multifamily Housing Property Search Page at HUD.gov. You can also copy the following link into your browser:

https://www.hud.gov/program_offices/housing/mfh/hsgrent/mfhpropertysearch.

Self-Help Evictions

Landlords must go through the legal eviction process and get a “writ of possession” from a court to allow the local sheriff’s department to evict a tenant. Landlords cannot “self-help” evict tenants outside of the court system by actions such as changing the locks, removing the doors, or shutting off utilities. Doing so is illegal. If that has happened to you, you could include this as a counterclaim against the landlord.

Court Process

The case has three parts: pre-hearing, possession hearing, and trial.

Pre-hearing

1. The Landlord has given you a “Notice to Quit” asking that you leave the residence within at least **3** days. Sometimes **30** days’ notice is required (See the Cares Act section above for more information).

2. If the tenant has not left the home by the required amount of time, the landlord serves the tenant with a complaint, affidavit, summons, and notice of intent to issue writ of possession. This is probably the stage you are at in the case.

3. The Tenant (You) must file an Objection and an Answer with the Circuit Court Clerk. If the Tenant has any claims against the landlord, those need to be raised in a Counterclaim filed simultaneously with the Answer. This packet contains forms you may use to file your OBJECTION, ANSWER, and COUNTERCLAIM.

OBJECTION: The tenant only has **5 days** (excluding Sundays and legal holidays) to file an objection or written response with the court or the tenant will lose their home by default.

ANSWER: The tenant also needs to file an “answer” within **30 days** of being served.

COUNTERCLAIM: If the Tenant has any claims against the Landlord, those must be included with the ANSWER and should be listed in the blank space on the form below under the section labeled “COUNTERCLAIM”.

- What happens if I **don’t** file an objection?
 - The landlord will get a “writ of possession,” which is a court order signed by the judge that allows the local sheriff’s department to evict the tenant after **24 hours’** notice.
 - The landlord and sheriff’s department must move the tenant’s leftover property into storage until trial. In practice, many cases settle at this point and the landlord allows the tenant to pick up the property at a later date.
- What happens if I **do file** an objection?
 - The court will set the case for a hearing on possession, meaning, who gets to live in the home. However, the case can move forward. A tenant who loses the first hearing has **5** days to ask the Court to “set adequate security” or an amount of money the tenant has to pay to stay in the home until trial.

Possession Hearing

4. The court schedules a hearing to determine if the tenant (you) should be able to stay on the property. The landlord presents evidence that they have the right to evict the tenant. The tenant has the chance to raise defenses, or say why they should be able to stay.

- If the tenant wins, the tenant gets to remain in the home until trial.
- If the landlord wins, the landlord gets a “writ of possession.” The tenant will be removed from the home by the local sheriff’s department after 24 hours and the tenant’s leftover property must be placed into storage until trial. Once again, a tenant who loses the hearing on possession can ask the court to set “adequate security” or an amount of money that the tenant must pay to remain in the home until trial. This is usually the amount of unpaid rent the tenant owes.

Trial

5. At trial, all other issues are addressed, such as who owes who money. Almost all unlawful detainer cases settle before trial.

6. However, they can go to trial after the landlord and tenant get enough time to engage in discovery, which is where both parties have an opportunity to collect evidence. Check out Rule 26 of the Arkansas Rules of Civil Procedure for details on how to conduct discovery.

7. The tenant may file counterclaims, which means to sue the landlord for related issues within the same case. All of these issues would be addressed at trial.

- If the landlord wins at trial, the landlord can get a writ of possession and “judgment” or court order that the tenant must pay the landlord for damages such as unpaid rent, attorney’s fees, and court costs.
- Judgments against tenants can result in wage garnishments, denials of credit, seizure of the tenants’ personal property, and other issues.
- The court can give the landlord some of the tenant’s personal property from storage to pay off some or all of the judgment.

8. If the tenant was removed from the home while the case was pending but wins at trial, the tenant can recover damages or money from the landlord for the loss of housing while the case was pending.

- If the tenant still lives in the home and wins at trial, the tenant would have the right to remain in the home.
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About the Answer, Counterclaim, and Objection

In order to fill in the form Answer, Counterclaim and Objection below, you will need to have a copy of the Complaint for Unlawful Detainer with you.

The objection must be filed within 5 days of being served while the answer must be filed within 30. Counterclaims, meaning claims you have against the landlord for any wrongdoing, should be raised in the counterclaim portion of this form. This form has combined the answer, counterclaim, and objection into one document for convenience and efficiency.

The last page of the form answer contains a Certificate of Service. This is to certify that you have given the Plaintiff (landlord) proper notice that you are filing this answer, counterclaim, and objection. When you file your answer, counterclaim, and objection, you should also mail a copy of it to the landlord or their attorney, if they are represented by one. Do so with proof of delivery if possible.

IF YOU HAVE ANY OTHER QUESTIONS, PLEASE CONTACT AN ATTORNEY

An attorney will generally charge anywhere from \$500 to \$1500 to represent you in this type of case, depending on the circumstances.

Typically, they will ask for a retainer, which is a sum of money you give them up front. The attorney will then earn the money at an hourly rate, to be paid out of that retainer. The attorney should log the time spent working on your case and generally log what they spent that time doing. If they do not use the full amount of the retainer, they have to return the remaining balance to you. If

they use the full retainer, they may require you to pay an additional amount to continue working on the case.

Some attorneys may also agree to represent you for a flat fee. You can search for an attorney at <https://mx.arkbar.com/ARKANSASFINDALAWYER.aspx>

Where Can I Get Free or Low-Cost Help?

Many low-income tenants qualify for legal assistance through Legal Aid of Arkansas or the Center for Arkansas Legal Services. To apply for assistance, visit www.arlawhelp.org.

You can also apply for free legal advice through AR.freelegalanswers.org. Note that response times may vary on this site.

Unbundled legal services (sometimes called limited scope representation) is a way that an attorney can help you with part of your case. This allows them to charge less, because they are doing less work. For example, you may be able to handle the whole case yourself, except for a few areas, like drafting an answer. To find a list of attorneys who offer unbundling, visit this site:

<https://arkansasjustice.org/directory-of-attorneys-offering-unbundled-services/>

IN THE CIRCUIT COURT OF ¹ _____ COUNTY, ARKANSAS

² _____ PLAINTIFF

v. Case No. ³ _____

⁴ _____ DEFENDANT

ANSWER, COUNTERCLAIM & OBJECTION TO WRIT OF POSSESSION

COMES NOW the Defendant (Tenant), ⁵ _____

_____, *pro se*, and for his/her Answer, Counterclaim, and Objection to the

Notice of Intention to Issue Writ of Possession filed herein against him/her, states and alleges as

follows:

ANSWER

¹ This is the name of the court where the landlord filed the Complaint. This should be the circuit court located in the county where the rental property is located. You may copy this from the first page of the Complaint you received.

² The landlord's name should be here. They are called the Plaintiff because they started the lawsuit by filing the Complaint. You can copy this from the Complaint.

³ You will find the case number on the Complaint. If this section is blank on the Complaint. Look in the top right corner of the document where the court clerk stamped it.

⁴ Copy this from the Complaint. You are called the Defendant because you are responding to the lawsuit.

⁵ Your name goes here.

1. Tenant's responses to the Landlord's allegations are as follows: ⁶ _____

⁶ List the paragraphs contained in the Complaint for Unlawful detainer that you are denying.

EXAMPLE: Let's pretend that the Complaint states the following:

"4. The tenant has not paid rent for the month of January.

Well, let's say you did not pay rent for the month of January, so you would list under part **F** of the ANSWER, "I admit the allegations in paragraph 4."

"5. The tenant is currently living at the rental property and has 12 other people living in the home."

You are currently living at the rental property but you do NOT have 12 people living in the home, so you would list in part **F** of the ANSWER, "I admit that I am currently living at the property but I deny all other allegations listed in paragraph 5."

"6. The tenant has unauthorized pets in the house."

You do not have any unauthorized pets in the house, so you would write in part **F** of the ANSWER, "I deny the allegations contained in paragraph 6."

"7. Landlord is behind on their mortgage because the tenant did not pay rent."

You do not know whether the landlord can pay their mortgage or not, and if not, you don't know that it is because you didn't pay rent, so you would list paragraph 7 in part **G** of the ANSWER, or you could write in, "I do not have knowledge to be able to admit or deny the allegations contained in paragraph 7."

8. "The Landlord has 4 other properties."

This paragraph does not contain allegations. The landlord is not alleging that you did or did not do anything in this paragraph, they are just stating that they have other properties, so you would list paragraph 8. in part **G** of the ANSWER.

2. Tenant does not have sufficient knowledge to respond to any allegation contained in the following paragraph(s) or the following paragraph(s) do not contain allegations: ⁷ _____

3. Tenant specifically denies every allegation of the complaint not specifically admitted.

DEFENSES

4. Tenant states the following fact(s) about why the Defendant should not be evicted: _____

COUNTERCLAIM

5. Tenant states the following claims against the Landlord: ⁸ _____

⁷ See note “F” above. Here you will list the numbered paragraphs from the Complaint that you either don’t have enough information to admit or deny or that don’t contain allegations.

⁸ A counterclaim is a claim for relief filed against someone who has already filed a complaint. Here you will list any claims that you may have against the Landlord (Plaintiff). If you are able to, you should check with a licensed attorney to see if you have any viable claims. If you think you have a claim but you are not sure, go ahead and explain it in this section.

This Answer, Counterclaim and Objection applies to all Defendants (Tenants) named in this case.

Aldridge v. Watling Ladder Co., 275 Ark. 225, 228 (1982) (“the answer of one co-defendant inures to the benefit of the other co-defendants.”)

6. Tenant reserves the right to plead further and reserves objections on the basis of (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts upon which relief can be granted, and (7) failure to join a party under Rule 19, if any.

OBJECTION TO WRIT OF POSSESSION

7. Tenant objects to the issuance of a writ of possession for the Landlord.

8. Tenant requests a full hearing on the merits and to be able to continue living on the property, until he/she can be heard at the hearing.

WHEREFORE, Tenant asks that the Landlord’s request for a Writ of Possession be denied, that the Court set this matter for a hearing, and for all other relief that the Tenant may be entitled to.

BY: ⁹ _____
DEFENDANT (TENANT)
SIGNATURE

⁹ Sign your name here and fill in your address and phone number below.

ADDRESS: _____

PHONE: _____

CERTIFICATE OF SERVICE

I, ¹⁰ _____, do hereby certify that I have forwarded a copy of this pleading to ¹¹ _____ (Landlord or his/her attorney, if any), at ¹² _____ by placing this document in the U.S. Mail with proper postage attached on this day.

¹³

DEFENDANT (TENANT) SIGNATURE

DATE: _____

¹⁰ Print your name here.

¹¹ The name of the Plaintiff goes here.

¹² The Plaintiff's address goes here.

¹³ Sign your name here to certify that you have sent a copy of your answer, counterclaim, and objection to the Plaintiff. Make sure that you do actually send a copy to them, with proof of delivery, if possible.

Now take these documents to the circuit court clerk and ask for them to be filed. Keep a copy for your records.

In most counties, you can view everything that has been filed in your case by searching by case number or your name at:

https://caseinfo.arcourts.gov/cconnect/PROD/public/ck_public_qry_main.cp_main_idx

DO NOT FILE THIS PAGE

NOTES: Use these notes to fill out the Answer, Counterclaim and Objection. Each letter corresponds to a different “ _____ ” or section.