

FOR SELF REPRESENTED LANDLORDS

PACKET FOR FILING COMPLAINT IN UNLAWFUL DETAINER (EVICTION)

PACKET CONTENTS:

1. **Fact Sheet.** Read this information carefully and thoroughly. Continue to refer back to it while filling out the rest of the Unlawful Detainer Packet.
2. **Notice to Quit.** You will fill out this notice and give it to your tenant who you are evicting. This is your official notice to the tenant that you want them to leave the property.
3. **Complaint in Unlawful Detainer.** A Complaint is a document that states the what, who and why of what you are asking the court to do. In this case, it starts the eviction process. The Complaint is filed at the circuit court clerk's office, along with the Affidavit, Summons, and Notice of Intent to Issue Writ of Possession.
4. **Affidavit.** This document verifies your right to the property, establishing that you really have a claim to the property.
5. **Notes.** This contains notes labeled A – S. Each corresponds to a different blank or section of the Complaint and Affidavit. Refer to this as you fill out the Complaint and Affidavit.
6. **Summons.** When you file the summons, the clerk will stamp it, making it an official summons that puts the tenant(s) on notice that a lawsuit has been filed against them.
7. **Notice of Intent to Issue Writ of Possession.** This document puts the tenant(s) on notice that you are seeking to have law enforcement assist you in removing them from the rented property.

Service of Process. Once the Complaint, Affidavit, Summons, and Notice of Intent to Issue Writ of Possession have been filed, you will serve a copy of them on the Tenant(s). There are several ways to legally do this. See Rule 4 of the Arkansas Rules of Civil Procedure for more details and/or contact a licensed attorney if you are unsure.

Fact Sheet

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 condition;
- Letting the property become a nuisance or hub of criminal activity; OR
- Violating one of the express terms of the lease agreement.

You should consult with an attorney if you are unsure if you have grounds for an eviction.

CARES Act. Tenants must get at least 30 days’ written notice to quit (or to leave) before an eviction for not paying 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.

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. You should consult with an attorney if you are unsure as to whether or not the property is covered by the CARES Act.

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.

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 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.

- What happens if the tenant **does** 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 remove 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 the property up at a later date.
- What happens if the tenant **does not** 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 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, which means to 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 such as, 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.

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 spend 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 amount of the 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>

IN THE CIRCUIT COURT OF _____^A COUNTY,
ARKANSAS
CIVIL DIVISION

_____^B PLAINTIFF

vs. CASE NO. ^C _____

_____^D DEFENDANT

**COMPLAINT IN UNLAWFUL DETAINER
(RESIDENTIAL ONLY)**

COMES NOW the Plaintiff (Landlord), _____
_____^E, pro se, and for his/her Complaint against the Defendant (Tenant), _____
_____^F, for Unlawful Detainer,

states as follows:

JURISDICTION

1. The Landlord leased property located at: _____
_____, located in _____ County, Arkansas, to the
Tenant(s).

2. Jurisdiction and venue are proper in this Court.

RIGHT TO POSSESSION

3. The Landlord: [Choose one of the following.]^G

___ Is the owner of the leased property.

___ Is not the owner of the leased property but has contracted with the owner of the property to manage said property. (The contract is attached as exhibit "A").

RENTAL AGREEMENT

4. **H**The Landlord and Tenant entered into an ___ ORAL ___ WRITTEN Lease Agreement (hereinafter "Lease"), which was entered into on the following date, _____. **I**. (The Lease is attached as exhibit "B").

5. The current rent due and payable under the Lease each month is \$ _____ **J** due on the _____ **K** day of each month.

6. **L**The Lease: [Choose one of the following]

___ was not a lease for exchange of services.

___ was a lease for exchange of services was: (explain in detail)

NOTICE OF RIGHT OF POSSESSION

7. **M**The Landlord, on the ___ day of _____ [month], _____ [year], gave _____ days' written notice to the Tenant as required by law, demanding that the Tenant vacate the property. A copy of the notice is attached hereto as Exhibit "B" and is hereby incorporated by reference as if set forth fully in length herein. At this time, the Tenant has refused

to quit possession of the premises and is willfully withholding and unlawfully detaining the premises.

CARES ACT IMPLICATIONS

8. ^NThis property: [Choose one of the following.]

___ does have a federally-backed mortgage or an income-based housing subsidy such as Section 8, Public Housing, Rural Development, or Low-Income Housing Tax Credit.

___ does not have a federally-backed mortgage or an income-based housing subsidy such as Section 8, Public Housing, Rural Development, or Low-Income Housing Tax Credit.

GROUND FOR EVICTION

9. ^OLandlord seeks to have the Tenant evicted for the following reason(s):

___ After receiving the proper notice to vacate, the Tenant is still in possession of the premises and has failed to pay rent for the month(s) of _____ in the amount of \$ _____ per month payable on the _____ day of each month for a total due of \$ _____.

___ The Tenant has stayed on the property after getting the time allowed under an eviction notice or written demand from the Landlord.

___ The Tenant has stayed on the property past the expiration of the lease.

___ The Tenant has failed to maintain the premises in a safe, healthy, or habitable condition.

___ ^PThe Tenant has caused the premises to become a common nuisance subject to abatement under one of the following: [If you select this option, also select one of the following.]

___ Arkansas Code Annotated §14-54-1501;

___ The Arkansas Drug Abatement Act, Ark. Code Ann §16-105-401;

___ Ark. Code Ann §14-54-1701, as determined by a criminal nuisance abatement

board; or

___ The following Arkansas law: _____.

10. Pursuant to the above, the Tenant is currently in unlawful possession of the premises.

11. The Landlord is entitled to relief pursuant to Ark. Code Ann. §18-60-304.

12. The Landlord respectfully requests the Court enter a Writ of Possession for the Plaintiff, and a judgment against the Tenant for fair rental value of the property from the date that the eviction notice expired until the date that the tenant moves out.

13. That upon final disposition of the action, the court distribute any money paid by the Tenant under § 18-60-307(c) into the registry of the court first toward satisfaction of the Landlord's judgment, if any, and the remainder to the Tenant.

14. The Landlord reserves the right to amend this Complaint to add additional damages if applicable.

WHEREFORE, PREMISES CONSIDERED, Landlord requests the Court issue a Writ of Possession for immediate possession of the property by Landlord; for judgment for the sum of unpaid prior rent; and for any and all just and proper relief.

PLAINTIFF

ADDRESS:

PHONE:

IN THE CIRCUIT COURT OF _____ COUNTY,

ARKANSAS
CIVIL DIVISION

PLAINTIFF

VS.

CASE NO. _____

DEFENDANT

AFFIDAVIT

I, _____ ^Q, under oath and

penalty of perjury, being duly sworn, do hereby state:

1. I am over the age of eighteen (18) years.

2. I am entitled to possession of the lands located at _____

_____, which is unlawfully detained by ^R _____

_____ due to ^S _____

.

FURTHER AFFIANT SAYETH NAUGHT

T

(Signature)

^USUBSCRIBED AND SWORN to before me this ____ day of _____, _____
_____.

My commission expires:

Notary Public

DO NOT FILE THIS PAGE

Notes: Use these notes to fill out the Complaint and Affidavit. Each letter corresponds to a different “ _____ ” or section.

A Fill in the name of the county where the court with jurisdiction over your case is located. This should be the circuit court located in the county where the rental property is located. Consult the Arkansas Rules of Civil Procedure for more details.

B Fill in your name here. You are the person filing the lawsuit so you are referred to as the Plaintiff or “Landlord” for the purposes of this filing.

C Leave this blank. The court will assign a case number after you have filed your lawsuit.

D The name or names of the tenants go here. Identify them as accurately as possible.

E See note “B” above.

F See note “D” above.

G You must have authority to file this lawsuit. Check only ONE of the following. If neither of the following are applicable, see an attorney to determine if you have authority to file this lawsuit.

H Here you will indicate whether you leased the property using a written lease or an oral agreement. If you have a written lease, label it Exhibit B and file it with this Complaint.

I Fill in the date that the lease agreement was entered into or agreed to by both parties.

J Here you will fill in the amount of rent that was due each month, according to your oral or written lease.

K Indicate what day of the month that was designated as the monthly due date for the rent.

L If your lease was an agreement for the tenant to provide some type of services instead of rent, indicate that and the details of the arrangement here.

M The proper notice to the tenant to leave must be given. Sometimes only a 3 day notice is required. Sometimes 30 days is required. See the Complaint in Unlawful Detainer Fact Sheet to learn about the different notice requirements. If in doubt, give 30 days’ notice.

N Pick only ONE of the two options. See the Complaint in Unlawful Detainer Fact Sheet if you are unsure as to which option to choose.

O You may pick one or more of the following reasons for the eviction. These are the only reasons to evict someone under the unlawful detainer statute.

P This is one of the more uncommon reasons for eviction. If you are unsure if this applies, then it likely does not. Read the cited Arkansas code sections for more information and see a licensed attorney if you are still uncertain.

Q Your name goes here.

R Here you will print the name of the person you are evicting.

S Here you will list why the tenant's failure to leave the property is unlawful. These are your grounds for unlawful detainer (eviction).

T You sign here **ONLY** when you are in front of a notary public. Public libraries and banks often provide this service for free.

U This section is filled out by a notary public.