

PROPER HANDLING OF DOMESTIC VIOLENCE RELEASE DEMANDS IS CRUCIAL

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Since September 2007, the Arizona Residential Landlord and Tenant Act has permitted residents of residential rental property to terminate their leases in order to escape acts of domestic violence. While the concept of A.R.S. § 33-1318, the statute that authorizes the release, is straightforward, its application seems to be anything but easy to construe. The problems faced by landlords derive from vague language in the statute, confusing qualifying criteria, and the distant potential for fraudulent claims.

Aside from the skepticism some landlords still display toward claimants, and the derivative reaction to evict all residents in the apartment regardless of the details of the incident, the largest concern expressed is whether or not the resident's request to be released from lease for claims of domestic violence is a legitimate query. Legal answers are rarely cut-and-dried, and even what appears to be an issue of black-and-white is usually a question of how deep a shade of gray is involved. Even so, the mechanics for analyzing a domestic violence release request are generally free from the need to make judgment calls.

Under A.R.S. § 33-1318, the release is applicable only if certain specific requirements are met. Since each element is required, and they flow from the "earlier" requirements, the question can be analyzed as a series of points on a checklist:

- **The Parties:** the victim and the perpetrator must have a relationship where (1) they are married, were married, or cohabitated, (2) they have a child together, (3) one is pregnant by the other, (4) they are within two degrees of consanguinity, (5) the victim (or the perpetrator) is the child of the perpetrator's (or victim's) former partner, or (6) they are or were in a romantic or sexual relationship.
- **The Incident:** a domestic violence event, which includes but is not limited to endangerment, threats, stalking, and assault, that occurred no more than thirty days before the victim provides written notice of termination.
- **The Report:** a copy of an Order of Protection or a law enforcement agency report detailing the incident.
- **The Notice:** a written declaration by the victim, as a resident, that the victim intends to terminate the lease contract and depart the rental premises due to the incident.

These four points are the basis for the release, and the failure to satisfy all four points negates the ability of the resident to terminate the lease without penalty. Take note that "the parties" is a broad category and would tend to capture many relationships where there was either a voluntary association (some sort of external-to-employment relationship) or a genetic one (family members). Similarly, "the incident" merely needs to involve the specter of physical violence and does not actually require injury. Also, neither an arrest nor the service of the order is required to satisfy the "report" requirement. The only action required by the victim is the act of making the report or filing for the order, and nothing more.

Once these elements have been satisfied, the landlord must negotiate a day for the resident-victim to surrender possession and vacate. That day must, under the statute, be within thirty days of the notice of termination. While the release permits the resident to vacate and depart, there is no requirement that compels the landlord to permit a transfer of the resident to another dwelling also under the landlord's control (e.g., another apartment within the same building or another house managed by the same agent). This statute exists solely to allow flight from potential further dangerous events that might occur if the resident remained at an address known by the perpetrator.

In addition to departure from the premises, the operation of this statute acts as a release from future liability under the contract. All future rents, concession repayments, and termination fees are

immediately nullified against the victim. Past liability, such as unpaid rent, continues to remain the responsibility of the victim and the landlord has the right to insist that those obligations be paid before the victim departs the premises. An interesting side effect of this statute is that a clause permits the assessment of future rents and other charges to the perpetrator of the domestic violence incident. As a landlord, you may request the victim provide as much information about that individual as possible.

The most important thing to remember about A.R.S. § 33-1318 is that the resident who complains about domestic violence is permitted to terminate the lease without penalty. You, as the landlord, are entitled to demand certain documentary evidence about the incident, but you may not prevent the resident from leaving, nor may you hold that resident responsible for the breaking of the lease.

Be aware, too, that the definition of “domestic violence” is evolving. The Legislature has taken a bill under consideration that would add homicide, negligent homicide, and even cruelty toward the victim’s animals as qualifying events. If you have questions about the incident, consult with an attorney to make certain you are analyzing the issue with the proper definition of “domestic violence.”

And one final note: you’ll notice that I didn’t use the feminine pronoun to describe the victim. While women are the vast majority of those who suffer domestic violence, men are just as susceptible.