

# **Life After the Rules of Procedure for Eviction Actions**

## **The Impact upon Landlords and upon Landlord-Tenant Litigation**

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On January 1, 2009, the new Rules of Procedure for Eviction Actions (“Rules”) went into effect. Just as the world won’t end on December 21, 2012, despite the Mayan “Long Count” calendar running out of available dates, the passage of the Rules did not destroy the landlord-tenant relationship. Instead, the Rules formally adopted certain obligations that were already the norm for residential rental property management.

It is true that the Rules are the largest revisions to the landlord-tenant relationship since the 2007 domestic violence statute. It is not true, however, that these changes alter that relationship significantly. The Rules focus on courtroom procedures – many of which were derived from pre-trial obligations that were already in place. Gone are the days of filing for eviction by just claiming that the resident is in breach; now, landlords must detail that breach while complying with Rules-mandated disclosure requirements. However, it is important to note that the documents for this purpose are not new to property management.

When looking at what impact the Rules have had upon residential rental property management, the reader must examine the two sets of requirements imposed by the Rules: the parallel tasks of complying with pre-filing obligations and at-the-courthouse litigation responsibilities. For the lay observer, the procedures do not cause the eviction lawsuit to appear any different from its pre-Rules incarnation. A landlord making this assumption, however, will find that the Rules are an insurmountable wall. This need not be the case; compliance with the Rules is still a relatively straightforward task.

### **PART I: MANAGEMENT OF THE PREMISES**

The Rules do not change the grounds (e.g., non-payment, material breach, material and irreparable (“immediate”) breach) under which the landlord may issue a breach notice and for which the landlord may file for eviction. If the conduct was prohibited in 2008 under the lease contract and the *Arizona Residential Landlord and Tenant Act* (“Act”), A.R.S. §§ 33-1301 et seq., it remained prohibited in 2009. The hard part, and where the Rules have changed processes, is in preparing a case for filing. A landlord now has a greater burden to disclose information.

As before, the grounds for termination of the resident’s right of possession must be conveyed by a written instrument colloquially referenced as a “notice.” The notice details the breach the resident caused, the period during which it may be cured (if possible), and the consequences for failure to cure the breach. In the past, the courts adopted a generally passive attitude toward the method and manner by which the notice was prepared. Now, they actively inquire about all aspects of the notice.

First, the courts demand not only that the standard terms are included (breach, cure period, and consequences) in the notice but also that the notice detail the exact nature of the breach. For non-payment cases, the amounts due must be demanded with some detail, such as referencing the amount carried forward from previous months as well as the unpaid rent for the current month. Similarly, in material breach by conduct and immediate termination

cases, highlighting a term or rule violated is not sufficient. Instead, the landlord must declare how that term or rule was breached through descriptions of the conduct involved. “Breach of quiet enjoyment,” for example, must now state “breach of quiet enjoyment by playing loud music at 11:30 PM.”

Second, the courts require that service must have complied with the very narrow methods authorized by statute. A notice is effective if, and only if, it is served (A) personally to the resident or an appropriate individual within the leased premises or (B) by certified mail to the resident’s address. While this requirement is not new – the Act has required it for well over a decade – the courts are now regularly inquiring about effective service.

Defects in either the service or the preparation of the notice will negate the landlord’s ability to proceed upon that notice.

## **PART II: RESORTING TO JUDICIAL RELIEF**

After the resident breaches the contract, the landlord issues the appropriate notice in order to correct the impermissible behavior. If the resident cures the breach, then nothing further needs to be done. If, however, notice has been issued and the breach continues without abatement, the complaint may then be prepared and filed. To be prepared for filing, the landlord must have three sets of documents at hand: the lease, the ledger, and the notice. Each document is crucial.

**NOTICE.** As referenced earlier, specificity is the watchword for preparation of the notice. If the resident is not properly informed about his or her conduct that is in violation of the lease contract, then a landlord cannot proceed to court. In addition, a copy of the notice must also be served upon the resident – again – with the lawsuit papers.

**LEASE.** A full copy of the lease must be present at the time of the eviction lawsuit’s hearing. Before the Rules, eviction complaints could plead for a lump sum of money. This is no longer appropriate; litigants must now allege the damages in categories (e.g., rent, utilities, late fees, concession repayment) and specify how much is owed for each type of “damages.” The courts will also require verification of the specific clauses and the residents have the right to review the contract at the courthouse.

**LEDGER.** Inclusion of the ledger into court proceedings is perhaps the most significant of the Rules’ requirements. It must display at least six months’ history of charges and payments, and the resident is entitled to a copy of it at the courthouse. If the ledger is not present at court, the only recourse is dismissal of the lawsuit.

**RESIDENTIAL EVICTION INFORMATION SHEET.** In addition to the other alterations, the Rules impose one fundamental change to the commencement of litigation. Perhaps the single oddest aspect of the new procedures, the Rules require that landlords serve upon the residents a page of information that details the residents’ rights before, during, and after any litigation. The contents of the Sheet are set forth in the Rules and it must be reproduced verbatim for the residents’ use.

### **PART III: THE RATIONALE BEHIND THE RULES**

The pre-filing and time-of-filing duties explain what must be done, but they do not explain the rationale behind the Rules. Under the Rules, there are two types of information you are providing to the courts and to all interested parties: “numbers” and “words.” “Numbers” are usually dollar figures – how much rent was owed, when was it due, and the like. “Words” are details of a case – what type of action caused a breach, when it occurred, and such similar items. Both your “numbers” and your “words” must now be more specific.

For example, you cannot simply allege that a resident owes \$1,000.00. While the form of the non-payment notice remains unchanged, you need to supplement this declaration by providing interested parties with a breakdown of how the charges were incurred. If the only amount owed is the monthly rent, and your demand is for the exact same amount as your monthly rent, then further breakdown is unnecessary. When the figures differ, you need to provide detailed information to back up your claims.

On the other hand, the new Rules also require more in the way of “words.” Under the new Rules, we are required to allege, clearly and concisely, what violation of the lease occurred. Violation notices must indicate the five “W” topics – “who,” “what,” “where,” “when,” and “why.” “Who” and “why” were generally covered by the forms of the notices themselves, but many lacked information on the “what,” “where,” and “when” details. “What” can no longer be a simple declaration of a breach; it must state, literally, what occurred. The “where” is also just as important, and the “when” must provide an appropriate frame of reference. Omitting any detail can potentially negate the notice and deny a landlord from the remedies to which they would normally be entitled.

The importance of specificity in the notice is reflected in the complaint. Under the new Rules, litigants must allege the grounds for termination (and not just that a termination notice was sent) in the body of the complaint. The old procedures permitted the use of a simple sentence that “notice of material breach was issued.” Now, we must state what the grounds were for the breach.

### **PART IV: CONCLUSION**

As long as you are careful, you won’t see a change in your eviction cases. Preparation of the lawsuit has become more complex due to the Rules, as you’ll have to be more specific in drafting your non-rent breach notices and also provide the courts with additional documents. However, the basic duties have not changed: landlords must provide written notice in an appropriate manner and allow residents the opportunity to cure. If the breach is not cured, eviction still remains the remedy for the breach.