



Failure to Vacate Fact Sheet

Introduction

“Failure to vacate” (criminal eviction) is a criminal statute that authorizes the state of Arkansas to impose fines and other criminal penalties upon tenants who fail to pay rent to their landlords. Failure to vacate may only be used in cases of non-payment of rent. If a tenant is current on their rent, the tenant cannot be charged under the statute.

10-Day Written Notice

If the tenant is behind on their rent, the landlord must give the tenant a 10-day written notice to vacate. The tenant can only be charged with failure to vacate if they stay beyond the 10 days given in the written notice.

You have two options. First, you can vacate the property before the 10-day period is up. If you do this, you cannot be charged with the crime of failure to vacate. Your other option is to stay in the property and attempt to defend the charge. Shortly after the 10-day period runs, you will be served with a criminal citation or a criminal summons. This document will usually show a court date. On the court date, you will be asked to make a plea of “guilty” or “not guilty.” If you plead “guilty,” you will be sentenced under the law. If you plead “not guilty,” you will receive a trial date.

Be aware that if you choose to plead “not guilty,” you will be expected to deposit the entire amount that your landlord claims you owe into the registry of the district court. If you fail to do this and are later found guilty, you can face additional fines and up to 90 days in jail.

Conviction Penalties

The statute authorizes a fine of \$25 per day for each day the tenant fails to vacate the premises. The fine runs from the end of the 10-day notice period until the time of conviction. In addition, any money that you have paid into the registry will be turned over to your landlord. If you have not paid rent into the registry and are found guilty, you will be guilty of a higher offense and subject to additional fines and potential jail time. If you are found not guilty, the money you have paid into the registry will be returned to you.

Being Forced to Leave Your Home

The judge cannot force you to leave your home under this law. The failure-to-vacate law contains no language which allows a judge to force a tenant to vacate a property. However, many judges will agree to dismiss the charge if the tenant leaves prior to a conviction.

Defense

The only fail-safe defense to failure to vacate is payment. If you have paid your rent and can prove that through payment records or receipts, you may have a good defense.

Reliance on other defenses is risky. While the Arkansas Supreme Court did state in *Duhon v. State* that a defendant may use all civil defenses in response to a failure-to-vacate charge, these defenses are difficult to prove and may be ignored by the judge. The most common defense is a waiver (or course of dealing). A waiver occurs when a landlord repeatedly accepts late payments and then attempts to evict a tenant for making a late payment.

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The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.

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