

# Failure to Vacate

## What is Failure to Vacate?

Failure to vacate means a criminal eviction. Failure to Vacate is a law that gives the State of Arkansas the right to impose fines and other criminal penalties on tenants who do not pay rent to their landlords.

## When can a landlord use Failure to Vacate?

It can only be used in cases where rent has not been paid. If you are current on your rent, you CANNOT be charged under the statute.

If you are behind on your rent, the landlord must give you a 10-day written notice to vacate. You can only be charged with Failure to Vacate if you stay beyond the 10 days given in the written notice.

## What do I do if I get a 10-day notice?

You have two options:

- Leave the property before the 10-day period is up. If you do this, you cannot be charged with a crime.
- Stay in the property and try to defend the charge.

If you decide to stay, shortly after the 10-day period, you will be served with a criminal citation or a criminal summons. This document will usually have 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 get a trial date.

Please note: if you choose to plead not guilty, you will be expected to deposit the entire amount that the landlord claims that you owe. The money is deposited in the registry of the district court. If you do not do this and you are found guilty, you can face additional fines and up to 90 days in jail.

## What penalties can I face if I am convicted? Will I go to jail?

Each day that you do not leave the property, you can be fined \$25 per day. This fine runs from the end of the 10-day notice period until the time of conviction.

Any money that you paid into the registry of the district court will be given to the landlord. If you did not put the rent that you owed in the registry and you are found guilty, you will be guilty of a higher offense. This means you can face additional fines and jail time.

If you are found not guilty, the money that you paid into the registry will be given back to you.

## Can the judge force me to leave my home?

No. The Failure to Vacate law does not have any language that allows the judge to force you to leave the property. However, many judges will agree to dismiss the charge if you leave before there is a conviction.

## What if I have a defense?

The only safe defense to Failure to Vacate is to pay your rent. If you have paid your rent and have payment records or receipts, then you most likely have a good defense.

If you try other defenses, please keep in mind that this can be very risky.

The Supreme Court stated in *Duhon v. State* that a defendant can use all civil defenses to respond to a Failure to Vacate Charge, but these defenses are hard to prove, and the judge might ignore them.

The most common defense is waiver (or course of dealing). Waiver happens when a landlord repeatedly accepts late payments and then tries to evict a tenant for making a late payment.

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