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MEMORANDUM

TO: **LANDLORDS OF SPRINGDALE, ARKANSAS**

FROM: **ERNEST B. CATE, CITY ATTORNEY**

RE: **FILING CHARGES FOR FAILURE TO PAY RENT/REFUSAL TO VACATE AFTER 10 DAYS WRITTEN NOTICE**

The purpose of this letter is to set out to you the procedure that will be followed when you desire to prosecute tenants for failure to pay rent/refusal to vacate upon written notice. A copy of the law, which is Ark. Code Ann. §18-16-101, is attached. Also is an example notice to vacate showing what goes in each blank, and then a blank notice to vacate. The last enclosure is entitled "What You Should Know About Landlord/Tenant Rights," and was obtained from the web page of the Arkansas Attorney General's Office.

First of all, remember there are two ways to proceed against a tenant who has failed to pay rent. Through my office you are filing charges as a criminal action, and this will not cost you any money since it is a violation of Arkansas law to hold over after 10 days written notice. You can also file a civil action against the tenant and you will need to contact your private attorney to file this action. I am primarily setting out the criminal procedure in this letter, but you can proceed criminally, civilly or with both type actions. In order to actually evict a tenant, the civil process will have to be used as this office has no authority to evict a tenant.

What you are filing through my office is a violation of Arkansas law. For me to prosecute this violation, you will need to make sure that the tenant has failed to pay rent under the agreement that you had with them (either oral or written agreement) and that you have given them 10 days written notice to vacate the premises for failure to pay rent. After 10 days passes from the day notice is first served on the tenant, come by my office to file charges, bring a copy of the notice that was served, as well as a copy of any written lease agreement you may have. Also, a rental application containing information on the tenant is also helpful.

Previously, if a defendant was convicted of violating this law, they could only be fined $25 for each day that they failed to vacate the premises. However, the 2001 General Assembly of the Arkansas Legislature added a new provision that if the tenant pleads not guilty to the charge of refusal to vacate, but continues to reside on the premises, the tenant shall be required to deposit with the court an amount equal to the rent due on the premises. If the tenant is subsequently found guilty of failure to vacate, failure of the tenant to pay this amount to the court shall result in the charge being a Class B misdemeanor, which means the tenant can be punished by up to a $1,000 fine, and 90 days in jail. If the tenant has paid the amount and is found guilty, then this money goes to the landlord, and if found not guilty, the money is returned to the tenant.

This law provides that each day the tenant holds over, after the 10 days written notice is served upon them, is a separate offense. Our District Judge has ruled that the 10 day notice has to be on the written document that you serve on the person if we are to get a conviction on criminal charges. I have prepared a form to specifically comply with the criminal charge and you are welcome to have a copy of the form. You can have notice to vacate served on the tenant in one of three ways:

1. You can serve the paper yourself by delivering a copy to the tenant (if there is more than one tenant that you want to have served, you will need to provide a copy to each tenant you serve);

2. You can have a Sheriff's deputy or process server, serve the notice for you (they usually charge a fee for this service and I will be happy to tell you how you can make contact with them);

3. You can serve the tenant by certified mail, (restricted delivery to the party you are serving).

If you serve the tenant yourself, it is a good idea to get a witness to go with you so the tenant will not come to court and deny that they ever got the notice. A witness can be anyone, (preferably at least 18 years of age) friend or relative. However, I will not require you to have a witness before you file charges.

If you desire to file a civil action against the tenant also, please contact your own attorney and they can explain the procedure to you. I understand the problem you are dealing with, because even though the tenant stays at your property and does not pay rent, you still have to make mortgage payments on the property. I will help you to the fullest legal extent that I can, and will be glad to answer further questions that you may have. Hopefully, we can solve this problem as quick as possible without further inconvenience to you.

EBC:ch
enclosures: copy of Ark. Code Ann. §18-16-101 (Act 1733 of 2001)
sample notice
blank notice

Ark. Code Ann. 18-16-101. Failure to pay rent — Refusal to vacate upon notice — Penalty.

(a) Any person who shall rent any dwelling house or other building or any land situated in the State of Arkansas and who shall refuse or fail to pay the rent therefor when due according to contract shall at once forfeit all right to longer occupy the dwelling house or other building or land.

(b)(1) If, after ten (10) days' notice in writing shall have been given by the landlord or the landlord's agent or attorney to the tenant to vacate the dwelling house or other building or land, the tenant shall willfully refuse to vacate and surrender the possession of the premises to the landlord or the landlord's agent or attorney, the tenant shall be guilty of a misdemeanor.

(2) Upon conviction before any justice of the peace or other court of competent jurisdiction in the county where the premises are situated, the tenant shall be fined twenty-five dollars ($25.00) per day for each day that the tenant fails to vacate the premises.

(c)(1) Any tenant charged with refusal to vacate upon notice who enters a plea of not guilty to the charge of refusal to vacate upon notice and who continues to inhabit the premises after notice to vacate pursuant to subsection (b) of this section shall be required to deposit into the registry of the court a sum equal to the amount of rent due on the premises. The rental payments shall continue to be paid into the registry of the court during the pendency of the proceedings in accordance with the rental agreement between the landlord and the tenant, whether the agreement is written or oral.

(2)(A) If the tenant is found not guilty of refusal to vacate upon notice, the rental payments shall be returned to the tenant.

(B) If the tenant is found guilty of refusal to vacate upon notice, the rental payment paid into the registry of the court shall be paid over to the landlord by the court clerk.

(3) Any tenant who pleads guilty or nolo contendere to or is found guilty of refusal to vacate upon notice and has not paid the required rental payments into the registry of the court shall be guilty of a Class B misdemeanor.

History. Acts 1901, No. 122, § 1, p. 193; C. & M. Dig., § 6569; Acts 1937, No. 129, § 1; Pope's Dig., § 8599; Acts 2001, No. 1733, § 1.

A.S.A. 1947, § 50-523.

(SAMPLE)

NOTICE TO VACATE

TO: _____ (Name of Renter)

_____ (Rental property street address)

_____ (City, State, Zip Code)

YOU ARE HEREBY NOTIFIED TO surrender and deliver to _____(Landlord's Name)_____ _____ or their authorized agent, on or before ten (10) days from the date of service of this notice, the following property and premises now occupied by you and to the possession of which _____(Landlord's Name)_____ is entitled, in Washington County, Arkansas:

_____ (Rental property street address)

_____ (City, State, Zip Code)

"Any tenant who shall willfully refuse to vacate and surrender the possession of the premises to the landlord or his agent or attorney, after ten (10) days notice in writing given by the landlord, his agent, or attorney, to the tenant to vacate the dwelling house or other building or land, is guilty of violating Ark. Code. Ann. §18-16-101."

_____Landlord's signature_____

RETURN

On this _____ day of _____, 20_____, I have duly served the within notice by delivering the same to the within _____(Renter's Name(s)_____ _____ at ____(address of rental property)_____.

By _____
Landlord or his Agent

_____ _____
WITNESS (if applicable) DATE

NOTICE TO VACATE

TO: _____

_____

_____

YOU ARE HEREBY NOTIFIED TO surrender and deliver to _____

_____ or their authorized agent, on or before ten (10) days from the date of service of this notice, the following property and premises now occupied by you and to the possession of which _____ is entitled, in Washington County, Arkansas:

_____

_____

"Any tenant who shall willfully refuse to vacate and surrender the possession of the premises to the landlord or his agent or attorney, after ten (10) days notice in writing given by the landlord, his agent, or attorney, to the tenant to vacate the dwelling house or other building or land, is guilty of violating Ark. Code. Ann. §18-16-101."

_____

RETURN

On this _____ day of _____, 20_____, I have duly served the within notice by delivering the same to the within _____

_____ at _____.

By _____
Landlord or his Agent

_____ _____

WITNESS (if applicable) DATE