Injustice In No Time

The Experience of Tenants in Maricopa County Justice Courts

THE WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

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MARICOPA COUNTY JUSTICE COURT REPORT

William E. Morris Institute for Justice[1]

Preface

In recent years there has been a growing awareness throughout the country of the housing problem caused by evictions.[2] Despite this growing awareness, there have been remarkably few studies conducted of eviction courts.[3]

To address this lack of data on the eviction court process, the William E. Morris Institute for Justice conducted a study of the practices in the Maricopa County Justice Courts during the summer of 2004. Of primary interest to the researchers was how eviction cases were handled overall and, specifically, what happened to unrepresented tenants. In this study, hearings on court cases were observed, court files were reviewed and Justices and attorneys who practice in these courts were interviewed.

This report was prepared to provide information to the public, community groups, governmental agencies, and the courts as to how the Justice Courts performed during the summer of 2004. It is not intended as a critique of any particular Justice of the Peace ("Justice") or Judge Pro Tempore ("Judge") sitting on the court, but rather as a tool to assist those interested in improving the process.

From the study, we found:

- Approximately 82,000 evictions cases were filed in the Maricopa County Justice Courts in 2004;

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[1] The William E. Morris Institute for Justice is a non-profit program that litigates and advocates on behalf of poor Arizonans. This study primarily was conducted by Julie Brown, a public interest legal intern from Notre Dame Law School, and Christina Estes-Werther, a public interest legal intern from Gonzaga Law School, who interned with the Institute in Phoenix, Arizona during the summer of 2004. This study could not have been undertaken without their assistance. They were supervised by Ellen Sue Katz, the Litigation Director at the Institute.

[2] *See Evictions: The Hidden Housing Problem,* Chester Hartman and David Robinson, Housing Policy Debate, Volume 4, Issue 4 (2003).

[3] In 1991 the Southern Arizona People's Law Center conducted a study of eviction cases in Pima County. The report was titled "Justice Denied: A Study of the Rights of Indigent Tenants in Pima County Justice Courts."

- Approximately 87% of the landlords were represented;
- No tenants were represented;
- Less than 20% of tenants came to court;
- Many Justices do not require landlords to prove their entitlement to either possession of the rental unit or a monetary award;
- The Justices hold tenants to a higher standard of proof for defenses;
- Unrepresented tenants rarely had their eviction cases dismissed;
- The courts provide helpful information to landlords, but limited and occasionally incorrect information to tenants;
- Most eviction cases take less than a minute to hear and many cases are heard in less than 20 seconds; and
- Currently, the extremely fast and abbreviated proceedings mete out swift judgments, overwhelmingly in favor of the landlords.

Based on these findings, the Institute makes recommendations that are intended to make the Justice Court process fair to tenants and landlords. Those general recommendations include:

- The current eviction court procedures should be reviewed and revised to insure fairness and impartiality.
- More time must be devoted to these cases.
- The Justices should take time to review the court pleadings and documents and require landlords to prove their entitlement to possession of the rental unit and any monetary award.
- The Justices should inquire about tenant defenses.
- The ultimate goal of the eviction court process should be a fair and impartial resolution of the cases.

I. Introduction

To understand the significance of eviction cases in Maricopa County, the first statistic important to note is the sheer number of evictions filed and the number of persons affected by the process. There were approximately 80,000 evictions filed

in the 23 Maricopa County Justice Courts in 2003, and 81,847 evictions filed in 2004.[4] In Maricopa County, the average household size in 2000 was 2.67 persons.[5] Thus, conservatively, the evictions in Maricopa County in 2003 and 2004 affected approximately 215,000 persons each year. In other words, eviction proceedings could impact more than a quarter of a million people per year, a daunting statistic.[6]

Beyond sheer numbers, it is also the impact these cases can have on the lives of tenants and their families that makes these cases significant. For poor persons, their only means of shelter is threatened. Evictions are expedited proceedings and tenants usually are required to move with only a few days notice. The inability to find other housing can lead to the disruption of children's education, interruption of employment, dislocation from health care providers, loss of personal belongings, and homelessness.[7] In addition, as a result of the eviction proceeding, tenants may have large judgments awarded against them. The impact of these judgments reaches far beyond the monetary award. For example, the judgments can negatively affect tenants' credit scores, making it more difficult for them to rent in the future, and reducing their ability to purchase a home. Therefore, it is extremely important that these cases be handled in a fair manner, complying with the legal requirements, and providing the litigants due process.

In 2000, over 3 million persons lived in Maricopa County, with approximately 12% of the population at or below the federal poverty level.[8] Currently, there are only five attorneys who handle housing cases for Community Legal Services, the federally funded legal services program in Maricopa County. With so few attorneys available to represent low-income tenants in court, the vast majority of persons served with eviction papers have no legal representation.[9]

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[4] *See* Maricopa County Justice Court Statistics, <http://www.superiorcourt.maricopa.gov/justicecourts/info/statistics.asp

[5] Maricopa County Quickfacts from the U.S. Census Bureau: http://quickfacts.census.gov/gfd/states/04/04013.html

[6] To fully understand the magnitude of these numbers, there were less than 36,000 evictions filed in the City of Chicago's eviction courts in 2002. *No Time for Justice, A Study of Chicago's Eviction Court*, December 2003, Lawyer's Committee for Better Housing.

[7] *See Evictions: The Hidden Housing Problem*, pages 468-69.

[8] www.workforce.az.gov/admin/uploadedpublication/487_PovAllCoPlaoo.xls.

[9] Although this study did not look at the racial or gender of tenants being evicted, other studies have shown that those who are evicted are typically poor,

Eviction courts were created in response to the use by landlords of "self-help" measures to evict tenants. The eviction court system exists to provide an orderly procedure, overseen by an impartial judge to determine possession of the rental unit. The legitimacy of the legal system depends upon it requiring the landlord to prove up the elements of a case for possession and affording the tenants an opportunity to defend. When the legal system fails in this responsibility, it is a concern for all of us.

II. An Overview of the Eviction Process

Eviction cases in Arizona are called Special Detainer Actions.[10] Primarily a contract action, the landlord contends that the tenant has violated a lease provision, often the timely payment of rent, and sues to evict the tenant under the Arizona Residential Landlord and Tenant Act ("ARLTA").[11] Typically, the landlord is represented by an attorney and the tenant is unrepresented. *See* Section IV, General Statistics. Throughout this report, rather than use the legal terms "Special Detainer Action" or "Forcible Entry and Detainer," we will use the common term "eviction."

The following briefly summarizes the legal steps that must be taken before a tenant can be evicted.[12] Notice is the first step in the eviction process. The length of the notice depends on the alleged breach: (1) a five-day notice for unpaid rent; (2) a ten-day notice for any other type of lease violation; and (3) a 30-day notice to terminate a month-to-month tenancy and a seven-day notice to terminate a week-to-week tenancy. The written notice must be served in person or by certified mail.

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women and persons of color. *Evictions: The Hidden Housing Problem*, Hartman and Robinson, pages 467-68.

[10] Although some evictions may be brought under the general Forcible Entry and Detainer Statute, A.R.S. § 12-1171 *et seq.*, statutory references in this report generally are to ARLTA.

[11] Some evictions also are brought under the Mobile Home Parks Residential Landlord Tenant Act. A.R.S. §§ 33-1401-1491. The time periods under this statute differ from ARLTA.

[12] Different rules apply to the evictions of tenants in public housing, tenants who have Section 8 Certificates or who participate in the Housing Choice Voucher Program. The consequences of an eviction are more severe for these tenants because an eviction may end their eligibility for the subsidized housing. *See, e.g.*, 42 U.S.C. § 1437f(b)(2) and § 1437f(e)(2).

When unpaid rent is the basis of the action, the landlord can serve a five-day notice stating his or her intent to terminate the rental agreement if the rent is not paid. The ARLTA contains curative provisions that, if complied with, may permit the tenant to remain in the rental. Until a special detainer action is filed, a tenant has the right to reinstate the rental agreement by paying the rent, in full, and all reasonable late fees set out in the lease. After a complaint is filed, up until the judgment is signed, the tenant can reinstate the rental agreement by paying the rent and late fees owed plus the landlord's costs and attorney fees.[13] If the landlord accepts a partial payment of the total amount owed after a five-day notice is served, the landlord must obtain a waiver signed by the tenant that authorizes the landlord to proceed with the eviction if the balance of the rent is not paid, or the notice is no longer valid. Without the written form, the landlord gives up the right to terminate the tenancy for non-payment of rent during that month.[14]

For breach of another lease term, the tenant may have the right to cure the breach or dispute that the breach occurred.[15] However, if rent is accepted after the alleged breach, the landlord waives the right to terminate the tenancy for the breach.[16]

As this brief overview demonstrates, there are specific statutory requirements for a proper notice to terminate a tenancy. A landlord who fails to satisfy these requirements is not entitled to possession of the rental premises. Only after a valid notice has been properly served and the tenancy "terminated," may the landlord file an eviction action in court seeking possession of the unit.[17]

The next step in the eviction process is the complaint and summons, which must be served on the tenant a minimum of two days before the scheduled court hearing.[18] If a judgment is entered for the landlord, a writ of restitution may issue

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13 A.R.S. § 33-1368(B)

14 A.R.S. § 33-1371(A)

15 A.R.S. § 33-1368(A); five-day notice for health and safety; ten-day notice for other violations. In some limited situations where the landlord claims conduct such as "criminal gang activity," the unlawful sale or manufacture of controlled substances, or the illegal discharge of a weapon, an immediate termination notice may be given.

16 A.R.S. § 33-1371(B)

17 A.R.S. § 33-1368(B); A.R.S. § 33-1373

18 A.R.S. § 33-1377(B)

five days after the entry of judgment.[19] The writ allows the landlord to request that a constable evict the tenant from the premises. Thus, from start to finish on a non-payment of rent case or breach of a lease term, a tenant may be evicted within two to three weeks. For poor and working poor persons, this quick dislocation can cause upheaval and havoc in lives already under significant stress.

III. Methodology

This study was conducted during a ten-week period in the summer of 2004. The first step in this study was to review the Arizona Residential Landlord and Tenant Act. A general eviction court study form was developed based on a review of the statute. The Justice Court calendars were printed out for several weeks and based on the geographic area and the number of cases expected to be called, courts were randomly selected for observation. Most observations occurred only when there were at least ten or more eviction cases on the court call. In general, courtrooms in the Central Phoenix Metropolitan area were observed.

Approximately 626 cases were personally observed in 14 courtrooms, with five courtrooms observed on more than one occasion. For most observations, two staff were present. Individual Justices and Judges were not informed of the eviction study prior to an observation in his or her court.

For courtroom observations, the courtroom environment and the court procedures employed by the Justice or Judge were observed. Notations were made concerning the following information:

(1) whether the landlord was represented;
(2) whether the landlord was in court;
(3) whether the tenant was represented;
(4) whether the tenant was in court;
(5) what questions the justice or judge asked of the landlords;
(6) what questions the justice or judge asked of the tenants;
(7) what information was provided to tenants concerning their rights;
(8) whether either party requested a continuance and if the request was granted;
(9) what happened to tenants who raised defenses; and

[19] A.R.S. § 12-1178(C)

(10) the resolution of each case, including whether the case was dismissed, whether a stipulation was entered, or whether judgment was entered, and, if so, for which party.[20]

After the courtroom observations, detailed file reviews were conducted on 123 court files selected from the observed court calls, as well as five court files reviewed from one court call which was not observed. For each of the 128 court files reviewed, a detailed eviction study form was prepared which included the following information:

(1) names of parties;
(2) address of property;
(3) type of notice;
(4) type of service of notice;
(5) type of service of complaint;
(6) who signed complaint;
(7) information on amounts sought in the notice, complaint and judgment;
(8) whether an answer was filed by the defendant;
(9) whether a stipulation was signed by the defendant;
(10) whether the justice or judge modified the judgment requested by the plaintiff; and
(11) the resolution of the case.

A copy of the eviction study form is attached as Attachment 1. Sample documents from court files were copied and are identified in the body of the report as relevant. The basic statistical information from the court observations and court file reviews were compiled in spreadsheets.

Finally, staff spoke informally with several Justices, one landlord attorney and one tenant attorney. The attorneys were interviewed to determine if, based on their experiences, they thought the preliminary findings were indicative of the general practices in eviction court. Both unequivocally concurred with the preliminary findings. The only exception was that they thought the number of tenants who appeared in court in this study was higher than the appearance rate they experienced. One of the Justices we spoke to also stated that the court call we observed was unusual for the large number of tenants in court.

[20] In two courtrooms, because of the fast pace of the uncontested cases, less information was documented.

IV. General Statistics

The lion's share of the eviction caseload observed was handled by attorneys for landlords. Of the 626 cases observed for this study, 543 or approximately 87% of the cases, were brought on behalf of represented landlords.[21]

Tenant attendance in court was surprisingly low. Overall, tenants only appeared approximately 18% of the time.[22] By far the most common case observed involved a landlord represented by an attorney and a tenant who did not appear. When an attorney for the landlord was in court, tenants appeared in court 86 times or about 16% of the time.

Only one out of every eight eviction cases was brought by an unrepresented landlord. Tenants were twice as likely to appear in court in those cases than when the landlord was represented. In 25 of the 83 cases involving unrepresented landlords, or 30% of the time, at least one tenant was present.

In the 626 cases observed, not a single tenant was represented by an attorney. Because no tenant was represented, we could not compare the likelihood of success between represented and unrepresented tenants. In studies from other states, tenants were more likely to be represented in eviction cases, and not unexpectedly, the defenses raised by those represented were more successful and/ or they obtained better settlements than unrepresented tenants.[23]

V. Judicial Procedures

A. Information Provided by the Justice Courts to the Parties

The Justice Courts provide some general information online at www. superiorcourt.maricopa.gov/justicecourts/info/forcibledetainer.asp. Most of the

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[21] Eviction Study Worksheet. In Chicago, only 53% of the landlords were represented. *No Time for Justice*, page 9.

[22] Maricopa County has a significantly higher default rate for tenants than other jurisdictions. While Maricopa County's default rate in this study was over 80%, in other jurisdictions, the default rate ranged between 31-50%. *Evictions: The Hidden Housing Problem*, page 478, n. 16. Tenant appearance in this study was less than one-third the tenant appearance rate in Chicago eviction courts. *No Time for Justice*, page 13, n. 9. This may be due to the expeditious time periods for evictions. As an example, in Illinois a summons and complaint must be served 14 days prior to the eviction court date. *No Time for Justice*, page 8.

[23] *Evictions: The Hidden Housing Problem*, pages 477-78.

information assists the landlord, although one section concerns a tenant's response to service of eviction court papers. The website has sample forms for an eviction complaint and writ of restitution. No specific forms are provided for tenants, except for a generic answer and counterclaim forms provided in the "small claims" section. These forms have only a blank space for the defendant to write a response. In addition, the website provides incorrect information to tenants that they must file an answer and pay a filing fee. As explained in Section VIII(C)(1), neither is required.

In addition to information provided on line, some Justice Courts have a multi-page handout for eviction cases, entitled "Filing a Forcible Detainer Action in Justice Court." Although titled "Notice to All Litigants," the handout provides information only for landlords regarding how to file an eviction action and obtain a writ of restitution. This handout has sample termination of tenancy notices and explanations about when to use the notices, how to calculate the time periods for the notices, and other helpful general information. No corresponding packet of information for tenants was provided by any of the courts.

In Justice Court B,[24] the Justice provided a Notice to Landlords concerning what evidence to bring to court. In the Notice to Landlords, the Justice required proof of ownership of the property, copy of the lease, copy of all receipts, and an exact breakdown of all fees requested. The Justice also included a worksheet for setting out the rental owed. Here, as well, no corresponding practical notice of required information or documents was provided to the tenants.

B. General Observations: The Courtroom Environment

The most significant factor in the eviction process is the speed at which these important cases are decided. The typical Justice Court call for evictions can have at least 30 to 60 cases for disposition in 60 minutes or less. In some courts, the evictions are set one each minute. For some courtrooms, the courthouse doors open in the morning at the same time the court call is to begin, thereby delaying the start of the court call and compressing the court time even more. It was not unusual for a typical case, where no tenant appeared, to be over 20 seconds or less after being called. While we did not keep track of the time spent on every case, the time was noted in some courts. For example, in Justice Court H, staff noted four cases that took 15 to 22 seconds each. In Justice Court L, four cases took even less time, lasting between 11 and 14 seconds each.

In most courtrooms, the Justice came on the bench, introduced himself/herself, and began the call. In some courtrooms, the Justice or the Judge

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[24] Throughout the body of this report, when we refer to a specific Justice Court, we refer to the court by letter designation, not by the actual court name.

did not have a nameplate. Most Justices gave no explanation of eviction cases nor what was expected of the litigants. An exception was in Justice Court D, where the Justice gave a short introduction on eviction cases and advised the parties that not having the rent money was not a defense to the eviction.

In general, the Justice Courts lacked the decorum and the respectful conduct expected of attorneys and parties in superior or federal courts. Rather, it was not unusual, as the court call progressed, for attorneys and other persons in the courtroom to talk to each other, and for attorneys to enter the courtroom and call out the names of their cases to see if any tenants were present. In some courtrooms, the doors opened and shut very loudly. In several courtrooms it was difficult to hear the court cases even though staff sat in the front row. Moreover, most Justices did not appear to use the microphone system. In several courtrooms, the parties were not sworn in prior to giving testimony.[25]

In total, we observed thirteen Justices of the Peace and three Judge Pro Tempores. Although the Justices and Judges differed as to how each handled eviction cases, landlords generally were not required to establish a *prima facie* case entitling them to possession. Most Justices/Judges consistently failed to question landlords' attorneys about the notice, service of the complaint, or the lease terms. While the Justices did ask more questions of unrepresented landlords, in general, it did not appear that the process was intended to find out if there were inadequacies in a landlord's case or defenses available to the tenant. The general goal, and one the courts achieved, appeared to be the extremely speedy processing of these cases.

While the courts were very fast paced, we usually could hear the substance of the court's interaction with the parties if we listened closely. That was not the case with one Judge in Justice Court C. Although the Judge called out the name of each case, he proceeded to whisper to the attorneys and parties. It was difficult, if not impossible, for others in the courtroom to hear what was being said by the Judge, the attorneys and any parties.

A small group of attorneys represents landlords in eviction cases. This fact appears to affect the courtroom atmosphere. In many courtrooms, there was a friendliness between the Justices and the attorneys to such an extent that vacation plans and other personal matters were discussed in open court.

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[25] *See, e.g.*, Justice Court F, July 29, 2004, 8:00 a.m. call. We could not tell whether a tape-recording was made of any court proceedings.

1. When Landlord's Attorney Appeared and Tenant Did Not Appear

Seventy-three percent of the time, there was a represented landlord and no tenant in court. In these cases, not one case was dismissed by the court. The attorneys usually appeared with stacks of cases and provided the Justice a copy of the notice, an affidavit of service and **a *completed*** judgment form. The eviction cases were heard very quickly when a tenant failed to appear. Typically the Justice was handed the documents, "scanned" the documents, signed the judgment, and called the next case within seconds of each other. In these cases, most Justices asked no questions. Nor could staff ascertain what, if anything, the Justice was looking for when he or she "scanned" the documents.

Only the Justice in Justice Court M requested to review the full lease, even for represented landlords. This also was the only Justice observed who required the lease in order to award late charges and, in one case, refused late charges without a full copy of the lease.[26]

2. When an Unrepresented Landlord Appeared and Tenant Did Not Appear

Nine percent of the time there was an unrepresented landlord and no tenant in court. In these cases, only one case was dismissed by the court. Several Justices appeared to review the documents presented by unrepresented landlords. As examples, the Justices in Justice Courts M and N requested a copy of the notice, and the original service of the summons and complaint, and the lease. The Justice in Justice Court B checked for original summonses in all cases. Some Justices requested to review the lease or other documents but not on a consistent basis. If a Justice requested to review the lease, it appeared from the Justice's comments that he or she was determining the amount of rental concessions or late fees.

VI. The Courts Rarely Required the Landlord to Establish a Prima Facie Case for Possession and Monetary Judgment

As a result of the extremely quick pace of the eviction court calls, most Justices do not require landlords to establish their entitlement to possession of the rental unit or a monetary judgment. The lack of attention paid to a landlord proving up his or her case pervades the whole eviction process.

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[26] CV 04-024. .-FD. For this report, we deleted the last two digits of the case numbers.

A. A Proper Notice: Prerequisite to a Lawful Eviction

Most landlord–tenant relationships are based on a rental agreement or lease. The lease is the contract which sets forth the obligations and responsibilities of the parties, subject to the ARLTA. The first step in the eviction process under ARLTA is to provide the tenant with notice of termination of the tenancy. Whether the eviction is for non-payment of rent, breach of another lease term, or termination at the end of a rental period, the ARLTA requires the landlord to deliver a written notice to the tenant, either in person or by certified mail.[27] The notice serves the important functions of informing the tenant of the landlord's intent to terminate the rental agreement, specifying the breach, and providing notice of the period of time the tenant has to cure the breach. Notice is a prerequisite to filing a special detainer action and recovering possession of the property. If the tenancy is not properly terminated because the notice does not comply with the law, then an eviction is not warranted.

From the cases observed in this study, some general conclusions can be drawn. First, many notices did not indicate whether they were served. Second, the contents of the required notice were rarely checked by the Justices. Third, even when Justices were presented with an obviously deficient notice, judgment was still granted to the landlord.

B. Many Court Files Did Not Contain Evidence that the Tenants Were Properly Served With the Notice

Because tenants have a property interest in the leased rental unit, they are entitled to due process of law before being evicted. Initially, this means tenants have the legal right to a properly served notice. By law, tenants should receive the notice and have the opportunity to work with the property owners or managers before landlords turn to the courts. From our review of the court files, we could not determine whether many of the tenants had received the notice which was the basis of the eviction.

A few files where a judgment was entered did not contain any notice.[28] In approximately 40% of the court files examined for this study, the notice presented to the court failed to contain information of the date or method of service, or on whom the notice was served.[29] These inadequate notices were submitted not only

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[27] A.R.S. § 33-1313(B)

[28] *See, e.g.*, CV 04-048. .-FD; CV 04-033. .-FD

[29] *See, e.g.*, CV 04-048. .-FD

by unrepresented landlords but also by attorneys. While courtroom testimony could establish proper service of the notice, the Justices did not request such evidence. Moreover, because usually the landlord's attorney was in court without his or her client, no one would have been able to provide testimony on service had such an inquiry been made. Despite this lack of evidence of service of the notices in nearly half the cases, the Justices still entered judgments for the landlords. Thus, judgments were entered without any evidence the proper defendant had been served, when the "cure period" began, or if the notice had been served at all.

Some notices reviewed reflected on their face that service was improper. One notice stated it was "hand delivered" to the "door."[30] Another notice stated it had been "left on door."[31] Another notice stated it was put in the mailbox.[32] These "methods" of service are not effective.[33] Despite evidence of ineffective service, judgments were awarded to the landlords in all three cases.[34]

When tenants appeared in court, most Justices did not ask the tenants if they had received the notice. Even when Justices did ask tenants if they had received the notice, if a tenant said "no," the case was not dismissed.[35] For example, in one case, the tenant claimed she had not received the notice and she had paid the rent to a "Sally."[36] Although this case appeared to have been reset once and the Justice expected "Sally" to be in court, she was not. When we reviewed the file, the notice did not show the date of service or how the notice was served. Judgment was still entered for the landlord. We did not observe the dismissal of a single case where a tenant stated in court that he or she had not been served with the notice. This resolution was consistent with our observation that factual disputes generally were resolved in the landlord's favor.

During this study, we observed only one Justice require proper service of the

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30 CV 04-037. .-FD

31 CV 04-038. .-FD

32 CV 04-048. .-FD

33 A.R.S. § 33-1313(B)

34 In CV 04-037. .-FD, the tenant came to court and "stipulated" to the judgment.

35 *See, e.g.*, CV 04-024. .-FD

36 CV 04-050. .-FD

notice.[37] In that case, the notice stated it only had been "posted." The Justice told the landlord to serve the notice properly and then return to court the next week.

The ARLTA provides for personal service of the notice as well as service by certified mail. Providing adequate service information should be a simple task and each notice should clearly show who was served, when, and by what means.

C. A Proper Notice Was Not Required for an Eviction

Eviction hearings, as currently conducted, are extremely abbreviated proceedings. When a landlord is represented by an attorney the process is particularly short. In addition to overlooking the deficiencies in the service of notices, most Justices did not check the content of the notices provided by the landlords' attorneys. For example, when asked why he failed to review the notices, one Justice responded that he has a general trust of landlords' attorneys because he sees the same attorneys every day. The Justice noted that if an error was discovered, those same attorneys would be back and have to deal with him later. This "safeguard," however, has no teeth. No one reviews the files after the judgment is granted. Defendants rarely appeal and, other than for the purposes of this study, it is unlikely anyone else would have occasion to check the accuracy of the judgments. Thus, the likelihood of an error being discovered or the offending attorney having "to deal" with the Justice later is, at most, minimal.

In addition to failing to provide required information concerning service of the notice, some notices contained inappropriate or inadequate information, which might discourage tenants from pursuing their statutory rights. Most notices contained standard language and cited to the relevant Arizona statutes. However, in this study we found notices that went beyond informing the tenant of the property owner's right to terminate the tenancy. For example, some landlords advised their tenants in the notice that the tenants would likely lose in court if legal action was instituted.[38] While, as demonstrated in this study, that conclusion may be accurate, it is not appropriate content in a notice.

Other landlords told their tenants in the notice that if the tenant failed to move by the termination date in the notice, the tenant could be subject to additional

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[37] CV 04-016. .-FD

[38] *See, e.g.,* CV 04-018. .-FD; CV 04-054. .-FD; CV 04-024. .-FD; CV 04-037 . .-FD

damages, such as twice the monthly rental pursuant to A.R.S. § 33-1375.[39] This statutory provision, however, does not apply to a non-payment of rent case; it only applies where the tenant stays in possession of the rental unit after the landlord has terminated a week-to-week or month-to-month tenancy. This type of misinformation in notices may deter tenants from either coming to court, or challenging the termination, and it may encourage tenants to prematurely move from their housing.

In several notices, a $20-25 fee to serve the five-day notice was included in the notice.[40] This type of fee is not permitted by statute as a prerequisite for paying the rent owed.[41] Another notice informed the tenant that after legal action started a $122 "filing fee" would be added to the account; once a court date was set an extra $38 would be added; and to satisfy the judgment an additional "$30 fee would be added to the balance."[42] Such fees are not permitted by statute as a prerequisite to payment of rent owed. Yet, no Justice observed during this study took the time to read or question the text of the notice given by a represented landlord. Again, notices that include unlawful charges may deter tenants from paying the rental amount actually owed.

It did not appear the Justices had the same trust in unrepresented landlords as they had in landlords' attorneys. Unlike the extremely abbreviated default judgments for the represented landlord, a default judgment for an unrepresented landlord took considerably longer, ranging from thirty seconds to two minutes depending on the Justice. Often the unrepresented landlords were the subject of greater scrutiny, and in some courts observed, the Justices actually read their notices.

However, even when a Justice took the time to read the notice and discovered that it was deficient, the deficiency did not preclude the Justice from entering judgment for the landlord. In one case, an unrepresented landlord provided his tenants with a handwritten note stating: "I'm giving you a 5 day notice to vacate [address omitted]. This is the last 5 day notice I will give you." This was the total text

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[39] CV 04-018. .-FD. Another notice with similar provisions was used in CV 04-054. .-FD.

[40] *See*, *e.g.*, CV 04-028. .-FD; CV 04-038. .-FD. In one case, the fee to prepare and serve the five-day notice was $56. CV 04-018. .-FD.

[41] A tenant is only required to pay the rent owed within five days of written notice. A.R.S. § 33-1368(B). "Rent" is defined as payments made to the landlord in consideration for the rented premises. A.R.S. § 33-1310(11).

[42] CV 04-037. .-FD

of the notice. On the bottom of the notice, the landlord wrote "Mike Plaster The Postman on Fri Saw Me Put It In the Box."[43] No specific amount of rent owed was stated in the notice, the notice was not served properly and the tenant, who was in court, disputed that she owed the amount claimed by landlord. The Justice stated on the record that the notice was "unacceptable," and then proceeded to give the landlord a copy of an acceptable five-day notice for non-payment of rent. Yet, at the close of the hearing, the Justice still granted possession to the landlord. In addition, the Justice initially awarded the landlord a money judgment for $1,470, which was removed only after the landlord stated he did not want the money judgment.

In another case, an unrepresented landlord was attempting to evict a tenant with a month-to-month tenancy based on a 30-day notice to vacate.[44] The ARLTA requires that such a notice must be served 30 days prior to the end of the tenant's last month.[45] However, from the landlord's statements in court, it appeared he had served the notice two days late, making it impossible for him to evict the tenant by the end of the month. A discussion took place between the landlord and the Justice regarding the deficient notice, but the court granted judgment against the tenant. The Justice did advise the landlord that if the tenant challenged the ruling, it would have to be set aside. When the file was reviewed, it showed that the notice apparently had been faxed to the tenant on June 2nd but the date of May 30th had been handwritten on the notice.

In one case, the notice upon which the eviction was based was for "breach of the lease agreement and apartment abandonment." The notice was personally served on the tenant who still had property in the unit and appeared to be living in the unit.[46] The notice stated the landlord had changed the locks. The complaint was filed the next day and claimed non-payment of rent. Although this was not a proper situation to give an "abandonment" notice, A.R.S. § 33-1370(H), and the time period to cure had not expired for a five-day notice for non-payment of rent when the complaint was filed, judgment was entered for the landlord.

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43 CV 04-048. .-FD

44 CV 04-032. .-FD

45 A.R.S. § 33-1375(B)

46 CV 04-051. .-FD

In another case, the notice asked the tenant to "vacate" the premises or pay the rent owed, but gave no time period in which to pay the rent.[47] It also did not state when or where the notice was served. Although the Justice asked to see the notice, he did not note any deficiencies on the record.

In each of the above cases, evidence of a properly served and adequate notice should have been part of the landlord's case but was not required by the court. Despite the statutory requirements for a proper notice, Justices appeared loath to dismiss a case based upon a defective notice. Possession of the rental unit may only be awarded to the landlord if a tenant holds over after her tenancy is properly terminated. If there is no valid notice terminating the tenancy, then these cases should be dismissed.

D. Evictions Were Brought Prematurely

Notices serve the dual purposes to inform the tenant of the landlord's intent to terminate the rental agreement and prescribe the grace period until a suit may be filed. The ARLTA provides that when a notice for non-payment of rent is served personally, an eviction suit can be filed six days later.[48] However, when a tenant is served notice by posting the notice on his door and by certified mail, he is deemed to have received it on the day he picks up the certified letter or five days after mailing, whichever occurs earliest. Thus a five-day notice for non-payment of rent becomes a ten-day notice when service is by posting and certified mail. Likewise, a ten-day notice for breach of a lease term becomes a 15-day notice when it is posted and mailed.[49]

As noted in Section IV (B) above, in more than 40% of the files examined for this study, the date or method of service of the notice was not included on the notice. Thus, it was impossible in many of these files for the researchers or the court to determine if the case was prematurely filed.

However, even when the notice did specify how and when it was served, most Justices did not review the notice for this information. In one court where the

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[47] CV 04-037. .-FD. The landlord did not have proof of service of the complaint and summons in court. The Justice told the landlord to submit the proof of service later that day. When we checked the file, service had occurred later on the court day. The case was subsequently dismissed two weeks later for improper service, and no judgment was awarded on that basis.

[48] A.R.S. § 33-1313(B); A.R.S. § 33-1368(B)

[49] A.R.S. § 33-1313(B)

Justice was moving particularly quickly, two default judgments were granted to a landlord in less than 60 seconds. When we examined one of those files, we discovered that the landlord had served the breach of lease notice personally upon the tenant, and then filed the eviction action the next day.[50] Since most Justices do not ask many questions of landlords and do not read the notices, these premature filings appear to go largely unnoticed.[51]

Despite the failure of landlords to comply with the statutory requirements of ARLTA, there was not one denial of a judgment to a landlord based on a deficient notice in any Justice Court observed. Overall, the termination of tenancy notice, an initial and critical step in the eviction process, was given little, if any, attention by the Justices.

E. Most Eviction Complaints Were Not Personally Served

After the landlord provides the tenant with a properly served notice and the requisite cure period has passed, the landlord may file an eviction action.[52] ARLTA allows for personal and certified mail service of the summons and complaint.[53] Service by certified mail is considered effective three days after mailing.[54] In this study, more complaints were served by certified mail than were served personally. Of the 128 files examined in this study, only 55 affidavits of service stated that the summons and complaint were personally served.

Anything other than personal service of the complaint and summons can be problematic, given the short time frame between service of the pleadings and the court date. Although allowed by statute, service by certified mail creates a problem for the tenant who does not pick up his or her certified mail quickly or even regularly. If the complaint is served by certified mail it also must be posted "conspicuously" on the tenant's door.[55] Any document posted on a door is susceptible to being torn

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50 CV 04-051. .-FD

51 *See also*, CV 04-037. .-FD (notice "hand delivered to: Door" and the complaint was filed seven days later); CV 04-048. .-FD (notice put in mailbox, complaint filed five days later).

52 A.R.S. § 33-1377

53 A.R.S. § 33-1377(B)

54 A.R.S. § 33-1377(B)

55 A.R.S. § 33-1377(B)

down by neighbors or children or being blown away by the wind. Because of the short time period between certified mailing of the summons and complaint and the court hearing, there is a question whether many tenants even know about the eviction proceedings.

We examined the court files to determine if proper service of the summons and complaint was provided to the tenants.[56] While the majority of the files contained affidavits and certified mail receipts of the posting and mailed service, some files reflected that the personal service was inadequate. In two files, personal service was purported to have been made on a "resistive occupant" on the other side of the door.[57] One affidavit stated that service was made "by slipping a copy through a space in the front door. A resistive occupant, on the other side of the door, pulled the paper inside."[58] Certainly, because the identity of the person "receiving" service is unknown, the adequacy of service is questionable. In many cases, it could be a child, or an individual under the designated age for service. In both these cases, no other service was attempted.

F. Summons that Contained Incorrect Information

We found at least one form complaint and summons used by an attorney that contained incorrect information. The summons informed the defendant that "You must appear &/or defend the complaint by filing an answer & paying and (sic) answer fee to the court."[59] This form pleading contained incorrect information because there is no requirement to file an answer in eviction cases and any filing fees may be waived by the court. *See* Section VIII(C)(1). This type of misinformation in pleadings also may deter tenants from coming to court.

Another form summons informed defendants: "If you fail to appear, answer and defend, judgment may be entered against you ... ."[60] To the extent this form

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[56] During this study, we did not look to see if plaintiffs filed original summonses with the court. Nor did we look to see if service of the complaint occurred sufficiently in advance of the hearing.

[57] CV 04-018. .-FD; CV 04-51. .-FD

[58] CV 04-018. .-FD

[59] CV 04-031. .-FD

[60] *See, e.g.,* CV 04-047. .-FD; CV 04-055. .-FD

makes it appear that an "answer," not merely a defense, is required, it also is incorrect.

G. Inadequacy of Complaints

An eviction complaint by an "aggrieved" party must be in writing and under oath.[61] The statute provides that "the complaint shall contain a description of the premises of which possession is claimed … and shall state the facts which entitle the plaintiff to possession and authorize the action.[62] From the court files reviewed for this study, most complaints failed to satisfy these statutory requirements.

A verified complaint is required.[63] In cases where the landlord is represented by an attorney, the attorney, not the landlord, signed the complaints under oath. Some attorneys signed their form complaint, swearing that the complaint was true and correct to the best of his or her knowledge.[64] For other form complaints, the attorneys stated that "upon information and belief, I believe the matters stated in the complaint to be true."[65]

In marked contrast to the form complaints typically used in evictions cases, the form complaint on the Justice Court website, includes the statement "I attest to the accuracy of the facts stated above based upon personal knowledge." No such statement was in any attorney's form complaint we reviewed. Rule 11(b) of the Arizona Rules of Civil Procedure requires that if a verified pleading is required, it may be verified by a person "acquainted with the facts."

Eviction attorneys handle a large volume of cases. An attorney may have as many as 40 cases on one call, alone. When the attorney for a landlord appears in court, he or she rarely knows the underlying facts of the case. The notices and other information typically are prepared by property managers or owners and the

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61 A.R.S. § 12-1175(A)

62 A.R.S. § 12-1175(B)

63 A.R.S. § 12-1175(A)

64 CV 04-055. .-FD

65 CV 04-051. .-FD

paperwork is submitted to the attorney's office.[66] Thus, it is doubtful that the landlord's attorney who signs the complaint has the requisite knowledge of the facts.

As an example, typically the form complaints we reviewed stated the notice was served on a specified date. From our file reviews, we found this date usually was the date of the notice, not the date of service of the notice, because as discussed in Section IV (B), 40% of the notices did not show when and to whom they were served.

1. Inadequate Information About the Breach of Lease Term and Monetary Judgment Requested

The form complaints used by landlords provide very little information concerning the alleged breach of the lease term. Most law offices use two common versions of a form complaint. The first type has boxes, which the attorney can check, representing the particular type of breach the tenant has committed. These complaints list the four most common breaches: non-payment of rent, material non-compliance with the rental agreement, material non-compliance affecting health and safety, and material and irreparable breach. They also include another box for "other reason."[67] In addition, these form complaints also contain a blanket statement that the court has jurisdiction over the action, the address of the premises, amount of rent owed, and a statement that the defendant and all occupants have refused to deliver possession. From the face of the check-box complaints, it usually was impossible to tell what specific action the tenant had allegedly committed that the landlord claimed breached the lease.

In the second common type of form complaint used by attorneys, there is only the statement that the "defendant was served a notice pursuant to law, incorporated [in the complaint] by reference."[68] Although the notice is purportedly "incorporated by reference" into the complaint, in the files we reviewed, the notice was not attached to the complaint. In a situation where a tenant may have received more than one notice, the tenant may not even know which notice the landlord is proceeding under. We also found some form complaints that referenced a

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66 Information from interview of plaintiffs' attorney.

67 *See, e.g.*, categories taken from the form complaint used in CV 04-051. .-FD.

68 From the form complaint used in CV 04-047. .-FD

termination notice, but did not even purport to incorporate the notice in the complaint.[69]

Overall, these form complaints provide very little information. Besides not informing the tenant of the alleged breach, the complaints do not plead a specific sum of money sought. Often the form complaint will request that the plaintiff be awarded rent owed and other "applicable fees" with no amount specified.[70]

A typical complaint used by an attorney pled the following:

> 1. I am the attorney for the Plaintiff in this action.
> 2. This Court has jurisdiction over this action.
> 3. That Defendant wrongfully withholds possession of said premises from Plaintiffs.
> 4. Plaintiff is entitled to immediate possession of the following described premises:
> 8721 N. … AVE. , Apt. …, PEORIA, ARIZONA.
> 5. On 06/09/04 Defendant was served NOTICE pursuant to law, incorporated herein by reference.
> 6. Rental per month is $470.00; and rent is due and unpaid since 06/01/04; plus a balance of $590.00; plus after accruing rent, late fees, attorney's fees, damages, and costs.[71] (Emphasis in original).

A tenant reading this complaint has no way of knowing the specific amount of the judgment sought.

2. Lack of Evidence of Material and Irreparable Breaches

The most expedited type of proceeding occurs when the landlord alleges a material and irreparable breach of the lease and seeks an immediate eviction.[72] In such cases, the complaint may be filed immediately after service of the termination notice, the trial will be the third day after filing the complaint, and a writ can be

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69 *See, e.g.*, CV 04-055. .-FD; CV 04-037. .-FD

70 CV 04-029. .-FD

71 CV 04-050. .-FD

72 Immediate evictions are authorized by A.R.S. § 33-1368(A).

issued within 12 to 24 hours after the judgment is signed.[73] This expedited type of case raises due process concerns. First, when service of the complaint is by certified mail and posting, the tenant may not even be aware of the lawsuit before the court date. Second, from the face of the form complaints, it is often impossible to know what the tenant did that constituted a material and irreparable breach.

Because the immediate eviction is an extraordinary legal remedy and should be reserved for only the most serious cases, pleading the specific facts in the complaint should be required. Moreover, the ARLTA provides: "If after the **hearing** the court finds **by a preponderance of the evidence** that the material and irreparable breach did occur," relief will be provided. (Emphasis added).[74] Despite the statutory requirements, many Justices failed to require any evidence of material and irreparable breach.[75] While occasionally a landlord put on evidence of the material breach, this was the exception not the rule.[76] Since most Justices did not look at the complaint and the notice, they often ordered the tenant out of the premises without any idea of what the material and irreparable breach was, or whether the breach was fairly characterized as material and irreparable.

Additionally, the pace of the court process gives rise to numerous due process concerns, particularly with respect to the proof that should be offered at trial. In one court, a landlord alleged a material and irreparable breach and requested an immediate eviction of the tenant.[77] From the complaint, it was impossible to tell what breach had occurred. Likewise, one could not tell what the breach was by examining the notice, because the content was obscured by a certified mail receipt that had been photocopied over the part of the notice specifying the breach. The Justice granted judgment for the landlord allowing five days to move, without asking any questions.

In another case requesting immediate enforcement of the writ, the landlord, who was in court, had no personal knowledge of the actions allegedly taken by the

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73 A.R.S. § 33-1377(E)

74 A.R.S. § 33-1377)(E)

75 *See, e.g.*, CV 04-046. .-FD

76 CV 04-047. .-FD

77 CV 04-016. .-FD

tenant that formed the basis of the eviction action.[78] The eviction notice contained general claims of infliction of bodily harm, assault and threats. The landlord had a police report that the Justice acknowledged was "hearsay." The Justice stated that if the tenant had come to court and proceeded to trial, the police reports would not be admissible. Despite the landlord's lack of personal knowledge of the breach, the Justice granted judgment for the landlord and an immediate writ issued.

3. The Complaints Often Requested More Money than the Notices, and the Judgments Were for Even Higher Amounts

Although most evictions are based on a contract, only a few files actually contained the contract. This is of particular concern because most evictions are based on non-payment of rent. The issue of late payments, attorney's fees and any reimbursable rental concessions are all terms of the lease. In several courtrooms, the Justices simply asked the attorney to "avow" that the lease provided for the amounts requested. This request for an avowal occurred even when the attorney handling the eviction had another attorney standing in for him or her in court. Because landlords' attorneys often stand in for each other, we observed several situations where an attorney who knew nothing about the case was avowing to the contents of the leases underlying the evictions. To compound this problem, some Justices sped up the process even more by asking for a single "blanket avowal" that the amounts sought in the judgments were allowed by the leases, for several cases at a time. Only a few Justices, such as in Justice Court M, compared the amounts claimed in the notice to the amounts sought in the complaint or judgment.

In addition, generally, the amount of rent requested in the complaint was higher than the amount sought in the notice. In two out of every three files reviewed for this study, the amount requested in the notice was different from the amount of rent alleged in the complaint. In many cases the difference was greater than $500 and no explanation of the charges was provided. Also, many complaints sought "other charges," not specified by amount or type.

After the complaint was filed it was typical for the judgment (including late fees and attorney's fees) to be twice the amount specified in the notice. In many cases, even higher amounts were requested and awarded. As with the notice, most Justices failed to review the complaint, nor did they ask most landlords any questions about the complaint at the eviction hearings.

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[78] CV 04-047. .-FD

Some complaints that specified the rent owed contained a string cite of other claims such as "late charges, accruing rent, attorney's fees … costs, ... rental concessions,... damages… ." Then in the "Therefore" clause, the landlord prayed for "rent due ... late charges ... costs ... attorney's fees and damages ... .[79] There is no way for a tenant to know how much the landlord is seeking with such generic claims. As a result, judgments far in excess of the rent owed were awarded.

- For example, in one case, the notice requested $470.00 and late fees of $50.00.[80] The complaint requested rent of $470.00, a balance of $590.00, plus after accruing rent, late fees, attorney's fees, damages and costs. The judgment was for $1,500.00 in rent, plus costs, attorneys' fees and late fees, totaling $1,728.00.

- In another case, late fees and concessions of $820.00 were awarded against a tenant who owed one month's rent of $620.00.[81] The judgment totaled $1,616.30.

- In one case, the complaint requested $1,007.82 in rent but the judgment included $860.91 in late fees and concessions, for a total judgment of $2,045.73.[82]

- In one case, the rent owed was $676.97, but charges and costs brought the judgment to $1,839.22.[83]

- In one case, the complaint requested $833.61 in rent, yet judgment was for $2,107.92, because of a $1,089.87 concession.[84]

- In another case, the rent owed was $643.00 but judgment was for $1,883.00 because of late fees and rental concessions.[85]

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79 *See, e.g.*, CV 04-037. .-FD

80 CV 04-050. .-FD

81 CV 04-037. .-FD

82 CV 04-047. .-FD

83 CV 04-048. .-FD

84 CV 04-045. .-FD

85 CV 04-024. .-FD

- In one case, the rent owed was $474.25 but the total judgment was for $1,076.23.[86]

- In one file reviewed for this study, the notice asked for $1814.99 in rent, including late fees.[87] In the six days between the date of the notice and the filing of the complaint, the rent owed ballooned to $4324.99. The Judge granted a judgment for $4,590.99 without asking for any accounting of the extra $2,500.00.

In another case, the file reflected that a tenant was given a ten-day notice for a material breach related to health and safety and a five-day notice for non-payment of rent in the amount of $908.43. The form complaint issued by the landlord's attorney prayed for $0.00 in rent, but at some unknown point, the attorney wrote off to one side on the complaint "Plaintiff further requests an award of any rent owing."[88] The judgment granted to the landlord was for $1948.50.

The judgments awarded in eviction cases are substantial. In the 80 court files reviewed in this study where a monetary judgment was awarded to the landlord, the average judgment was approximately $1,500.00.

Although certainly not the norm, we observed a few Justices who questioned landlords about the amount of money sought. As an example, the Justice in Justice Court A reduced the late fees to $150.00 in several cases.[89]

4. When Accounting Discrepancies Were Noticed by Justices, Landlords' Attorneys Were Unable to Explain the Discrepancies

As noted previously, eviction attorneys handle numerous cases in a limited amount of time. Although the attorneys made blanket "avowals" to the Justices concerning the underlying lease terms, often they were unable to explain discrepancies in the accounting when pressed to do so by a Justice. If a dispute arose, the attorneys appeared unfamiliar with the underlying facts of each case, and

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86 CV 04-024. .-FD

87 CV 04-054. .-FD

88 CV 04-047. .-FD

89 *See, e.g.*, CV 04-029. .-FD

usually could not account for the total rent and fees alleged in the complaint, or sought in court.

In one case, an attorney was unable to give the reason for a $600 difference between the amounts sought in the notice and complaint and the proposed judgment. The Justice had taken the time to review each document, and openly stated her discomfort about the attorney's suggestion that the judgment amount be reduced with no explanation as to the reason.[90] When we checked the file, the judgment for the reduced amount had been entered. Similarly, in another courtroom, the Justice questioned the balance on the judgment form provided by the attorney.[91] The attorney could not explain the amounts sought and the case was continued. In a related situation, a tenant came to court and stated she had been locked out.[92] The landlord's attorney was unaware of this occurrence.

These examples are just a sample of some attorneys' readiness in court and knowledge of their cases. Although the attorneys asserted that the information provided in the complaints was correct, a reasonable basis exists to question how an attorney can be familiar with the details of each case when he or she is handling 10 to 20 cases on a court call and can be handling two to three court calls on a daily basis. Since the Justices rarely ask questions, many of the judgments are entered by Justices relying on the representations of attorneys who commonly have no more information than the scant pleading of facts in the complaint and notice.

5. The Contract (Lease) on Which the Eviction Was Based Was Rarely Reviewed by the Court

Although evictions are almost always based on a contract, the lease, the Justices did not uniformly review the lease. Such an omission, appears to violate the court's own rules. Even when a tenant is in default, the court rules provide that if the claim is liquidated (it is fixed by a written agreement or by operation of law) and proved by an instrument in writing or upon an open account duly verified by affidavit, the justice shall "give judgment in [plaintiff's] favor against defendant for the amount due upon such written instrument or sworn account."[93] Thus, either the written document, the lease, or a sworn account is required as evidence. Only a small

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90 CV 04-024. .-FD

91 *M. v. R.* We could not obtain a case number for this case.

92 *E. v. B.* We could not obtain a case number for this case.

93 A.R.S. § 22-218(1)

number of files contained the lease or an affidavit. While some Justices requested to review the lease, leases were not retained as part of the court file.

Finally, the court rules provide that if the claim is not liquidated, then the justice "shall hear the testimony and give judgment against defendant . . . as the testimony shows plaintiff entitled to."[94] Again, based on our observations, it was a rare case where a Justice required testimony if the tenant was in default.

VII. The Courts Held Tenants to a High Standard of Proof for Their Defenses

In approximately 18% of the cases, tenants came to court. Over 40% of the tenants who came to court entered into "stipulations," while the rest appeared before the Justices. For the overwhelming majority of tenants, the result was the same: a judgment was entered against them. Only three tenants who appeared before the court were successful and had their evictions dismissed. Significantly, not one tenant had a judgment awarded in their favor.

A. Stipulations

Most of the landlords' attorneys we observed, tried to meet with the tenants before the cases were called. In one courtroom we witnessed a landlord's attorney telling tenants that the Justice "required" that he speak with the tenants. Subsequently, the court call was stopped by the Justice, in order for the attorney to meet with tenants who were in court. The purpose of these meetings appeared to be to obtain the tenant's signature on a pre-typed form of judgment. If the tenant signed the judgment form, he or she usually left the court before the case was called, and the attorney presented the form judgment to the court as a "stipulation." Because the tenants who had "stipulated" to a judgment did not appear before the court, the Justices did not and could not inquire whether the tenants understood the stipulations and their consequences.

It was rare to find a situation where the tenant received any consideration, such as a reduced judgment or more time to remain in the rental unit, for signing the judgment. Rather, the prepared judgment forms usually were signed by the tenant, with no extension of the writ or reduction in monetary judgment. Not only did tenants usually receive no consideration for signing the "stipulations," but many of these "stipulations" included a provision that the defendant waived his or her right to file an appeal or request reconsideration of the judgment. The judgment forms

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94 A.R.S. § 22-218(2)

some attorneys used had a line that could be checked, indicating that "Defendant stipulates to the entry of this judgment. Defendant hereby waives any rights to reconsideration or appeal."[95] Thus, many tenants who entered stipulations, actually were worse off than if they had waited to appear before the Justice, or not come to court at all. It is hard to imagine that the landlords' attorneys adequately explained the effect of the waiver provision in the "stipulations" in their negotiations with the unrepresented tenants.

Of the 20 "stipulations" we reviewed in our file reviews, the average monetary judgment was approximately $1,230.00.

B. Tenants Who Appeared Before the Justices

In approximately ten percent of the cases, tenants appeared before the Justices. It was obvious that most tenants did not know their rights and relied on the Justices to determine their fate. Although the tenants appeared not to know which defenses applied to eviction cases, they rarely received any assistance from the Justice or any prompting in how to participate. This was in stark contrast to the treatment unrepresented landlords received.

There are several defenses to an eviction. These include:

(a) The plaintiff is not a proper party to sue;
(b) The tenant was not properly served with a termination notice;
(c) The termination notice did not provide the required information such as the number of days in which the violation could be cured;
(d) The eviction was filed before the statutorily-required notice period ended;
(e) The tenant owed no rent;
(f) There was a partial payment after the notice was given and no waiver was obtained;
(g) The landlord failed to maintain the premises; and
(h) The tenant did not violate the lease.

Most Justices failed to ask the tenants questions likely to illicit information about a defect in the landlord's case or a defense for the tenant. This lack of inquiry is exemplified by one court. The Justice in Justice Court F asked only one question of each tenant, "Are you behind in rent?" If a tenant replied "yes," the Justice stated that, because the tenant admitted to owing rent, the Justice had no option but to

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[95] *See, e.g.,* CV 04-046. .-FD

enter a judgment for the landlord.[96] If this is the only role the Justice performs, he or she has abdicated judicial oversight of these proceedings. Certainly, at a minimum, if a tenant is in court, the Justice should require the landlord to prove up his or her case and ask the tenant questions to determine if there is a defense.

In Justice Court B, the Justice asked some tenants three questions: (1) "Did you get the notice?"; (2) "Is the amount correct?"; and (3) "Why haven't you paid?" Even these minimal questions were the rare exception, not the rule. Most Justices failed to ask ***why*** the tenant had not paid the rent, or if the tenant had a defense to the eviction. Additional questions were rarely asked and with the limited amount of time the Justices devoted to each case, judgment was swiftly handed to the landlord.

The lack of questioning by the Justices leads to their failure to discover defenses. As noted in Section II above, a partial payment without a waiver is a defense to an eviction predicated on a five-day notice. Yet we only heard three Justices ask a party about whether a partial payment had been accepted. One case emphasizes the importance of this question. In that case, ***after*** the judgment had been signed, the landlord volunteered that he had accepted a partial payment.[97] The Justice then asked the landlord if he had obtained a signed waiver, which the landlord had not done. Although the judgment was vacated, had this landlord not informed the court of the partial payment, the defense would not have been discovered. Significantly, this was the only case we observed that was dismissed by a Justice where the tenant did not appear.

Often, the potential waiver issue can easily be discerned from the court documents. Many complaints set out the rent owed and the monthly rent. If the amount of rent owed in the complaint is less than the amount set forth in the notice or is not an exact multiple of a month's rent, then there may have been a partial payment. In such cases, it would be very easy for a Justice to inquire about a partial payment.

Also, on a ten-day notice for breach of a lease term, acceptance of rent after the notice is given waives the landlord's right to proceed on the notice.[98] Yet we only heard one Justice ask whether rent had been accepted after issuance of the ten-day notice.

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96 Court observation on July 28, 2004, 8:00 a.m. court call.

97 CV 04-028. .-FD

98 A.R.S. § 33-1371(B)

The above examples illustrate that the current court process is markedly different from the process the court describes to plaintiffs in the court's handout "Filing a Special Detainer Action in the Justice Court." The handout includes the following description:

> THE COURT DATE. If you did not file your notice with the court at the time of filing the complaint, you must bring it with you on your scheduled court date. **The Judge will ask you to briefly assert the allegations of the complaint. The Judge will review the allegations of the complaint and determine if proper notice was given**. The tenant will be asked to enter a plea.
>
> **GUILTY/NO CONTEST.** If the plea is guilty or no contest, the **Judge will proceed to determine how much, if any, rent is due and owing through the end of the rental period**. . . .
>
> **NOT GUILTY.** If the tenant pleads not guilty, the Judge may order a pre-trial hearing. You will be asked to meet with the defendant to discuss settlement, define the issues for trial and disclose exhibits and witnesses you intent to present at trial. If the tenant has filed a counterclaim, it will also be considered at the time of trial.
>
> *** * ***
>
> The plaintiff will proceed first and may call witnesses and/or introduce exhibits. You may cross-examine any witnesses or object to the admission of any exhibit. After the plaintiff rests, the defendant will then present their case. They may call witnesses and/or introduce exhibits that may prove or defend their position. (Emphasis added).

Based on the 626 court cases observed, it was apparent that courts rarely heard testimony from witnesses or oral argument. The actual court process also

differs from the language included in some judgments submitted to the court. We found some judgments that included the following language:

> This matter, having come on regularly for trial and the parties having presented evidence, witnesses and arguments, or having waived the opportunity to do so; the Court having considered same, and finding: Defendant(s) were properly served and evidence was introduced to support Plaintiff's allegations. Therefore, it is ORDERED that Plaintiff is awarded Judgment against ...[99]

Another similar version was used.[100] These judgments make it appear that evidence is introduced to support the landlords' claims, the court reviews the evidence and the evidence is sufficient. From our observations, that type of hearing rarely occurred.

C. What Happened When a Tenant Raised a Defense

Typically, at each court call, at least one tenant raised a defense despite the court's lack of inquiry. As demonstrated in Sections VI and VII above, the Justices rarely required landlords to prove their cases. However, in marked contrast, the Justices held tenants to a high standard of proof for their defenses.

1. The Justices Required Tenants to File an Answer and Pay a Filing Fee

In the cases observed, only one tenant filed an answer prior to his or her case being called in court. This is understandable, because of the short time frame between the filing of the complaint and the court date. More importantly, the Justice Court's procedures provide that the defendant may respond verbally and an answer is only required in specific situations, not applicable to the defenses observed in

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99 CV 04-051. .-FD

100 *See* CV 04-055. .-FD

eviction court.[101] In addition, the ARLTA and the general Forcible Entry and Detainer Statute, have no provisions for an answer.[102]

Despite the absence of such a requirement in the statutes or court rules, in several courtrooms, the Justices required a tenant who challenged the eviction to file an answer before the Justice would hear the tenant.[103] In addition, in some courts, the tenant was told he or she would have to pay the filing fee for an answer and was not told about the fee waiver.[104] In Justice Court I, every tenant who appeared before the Justice and disputed the eviction was told to file an answer, pay the filing fee, and the case was continued for trial. In Justice Court L, the Justice asked some tenants if he or she was "responsible." If the person said "no," the person was told to file an answer and the matter was reset for trial.

Sometimes the request for an answer was made by a landlord's attorney.[105] Other times, the request came from the Justice. In either case, the tenant was not offered the chance to explain the defense because the Justice immediately reset the case in order for the tenant to file an answer. To file an answer, the court charges a $21 filing fee. While a waiver of fees and costs may be requested,[106] Justices and court staff did not always inform the tenant of the waiver option or provide the waiver forms.

In Justice Court K, the Judge told one tenant that an answer was needed for a hearing. The tenant came to court and stated that the conditions in the dwelling were "not livable" and that he had an agreement with the landlord to fix up the unit in lieu of paying rent.[107] The tenant claimed he had made $2900 in repairs to the unit. The Judge told the tenant he had to file an answer. The tenant stated he had no money for the filing fee. The Judge then entered judgment for the landlord,

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101 A.R.S. §§ 22-215, 22-216 (providing that pleadings may be made orally, unless certain allegations, not relevant to evictions cases, are made).

102 A.R.S. § 33-1377; § 12-1175; § 12-1176

103 Justice Courts F, H, I, J, K and L

104 *See, e.g.*, CV 04-055. .-FD

105 *See* CV 04-051. .-FD

106 A.R.S. § 12-306

107 CV 04-055. .-FD

without providing any information that a waiver could be obtained by filing a request with the clerk.

This misinformation concerning the requirement of filing an answer also is contained on the Justice Court's website. It states:

> If the defendant enters a plea of "not guilty", the defendant **must** file an answer before proceeding to trial. To file an answer, the tenant **must** pay a fee set by law. (Emphasis added).

Significantly, no information on the eviction section of the website explains the availability and process for requesting a waiver of the filing fees, and the waiver forms are not posted.

2. Defenses Raised

In marked contrast to the wide latitude given landlords and their attorneys, the Justices held tenants to a very high standard of proof. We observed only three cases where a tenant came to court and the case was dismissed by the Justice. In those three cases, only one landlord was represented.[108] Because of the lack of inquiry by the Justices or the narrowness of the Justices' questions, it is not surprising that few tenants were successful in getting their evictions dismissed.

(a) The Landlord's Failure to Maintain the Premises (The Warranty of Habitability Defense)

Some tenants raised defenses based upon the habitability of the rental property. In response to a five-day notice for non-payment of rent, the tenants claimed that there were material problems with the conditions of the rental property.[109] A tenant alleging habitability issues can provide written notice to the landlord of the defects and, if the landlord refuses to make the repairs, the tenant has the right to hire a contractor to perform the work and deduct the expense from

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[108] CV 04-047. .-FD. The unrepresented landlords had their cases dismissed in CV 04-50. .-FD because the plaintiff did not own the property when he gave the tenant the termination notice, and in CV 04-029. .-FD, because of the warranty of habitability defense.

[109] A.R.S. § 33-1324

the rent.[110] While ARLTA has limitations on this remedy, this is a legal defense to an eviction. Even when the habitability defense was raised by the tenant, however, it was difficult for the tenant to be awarded judgment. The following cases illustrate the problem:

In one case, the tenant came to court and stated there were "health" issues in the apartment, no refrigerator and roaches.[111] The tenant stated she had given notice to the landlord of the defects but did not have a copy of the notice in court. Judgment was entered for the landlord and the tenant was told that she had no right to withhold rent.

In another case, the tenant claimed there were habitability issues including extensive water damage to her property and fumes from the kitchen stove. The tenant provided the court with pictures of the damage and stated she had made $1,000 of repairs to the unit.[112] She brought her lease to court and claimed the monthly rent sought in the complaint was incorrect, because her rent was $484 not $509. The Judge set the case aside for the attorney to resolve the accounting matter. When the attorney was unable to resolve the matter, the case was reset for trial. The Judge stated that if the tenant brought all the money owed to court, including late fees, he would order the landlord to accept it. He also informed the tenant there was no justification for withholding rent. Although the tenant filed an answer listing all the problems with the unit, judgment was entered for the landlord.

In another courtroom, the Justice decided that a trial was necessary to address the tenant's charges of habitability issues. The tenant claimed the landlord had refused to make needed repairs, including repairs to the washer and dryer.[113] This tenant had brought the repair receipts to support her claims and also had paid some rent money three days prior to the hearing. The landlord's attorney looked at his watch and asked when the hearing would be held because he needed to be somewhere else. When the Justice decided to reset the case to another day, the tenant protested stating that she had taken time off from work and was ready to proceed. The Justice apologized but acknowledged that deference was given to attorneys. At the hearing two days later, the landlord was awarded judgment.

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110 A.R.S. § 33-1363(A)

111 CV 04-055. .-FD

112 CV 04-054. .-FD

113 CV 04-045. .-FD

In one case, a tenant filed an answer claiming that: (1) the landlord had agreed to give her two weeks' free rent for leaving her apartment for one day for insurance reasons; (2) the refrigerator had not worked for one month causing all her food to spoil; and (3) the landlord had committed an "unlawful entry."[114] Judgment also was entered for the landlord in this case.

Only one warranty of habitability case we observed was dismissed by the court. In that case, a tenant appeared against a landlord and stated that there had been no air conditioning in the unit.[115] The tenant had provided written notice to the landlord who had refused to repair the air conditioner. Subsequently, the tenant hired a contractor to make the repairs and was prepared to show receipts when the Justice decided that this was a trial issue and reset the case for another day. The Justice required the tenant to deposit the rental amount with the court and the tenant complied. When the file was reviewed, it appeared that the hearing was continued two more times. At the fourth hearing, the landlord failed to appear and the action was dismissed against the tenant. Although the tenant presented a legal defense to the claim of non-payment of rent at the first hearing, the Justice continued the hearing on three occasions before dismissing the eviction in the tenant's favor.

These cases demonstrate the higher burden of proof required by the Justices for a tenant to prevail. They also raise concerns about the Justices' willingness to consider defenses available to tenants.

Finally, these cases also illustrate the deference given to landlords who are not prepared to proceed to trial. In several cases, the unrepresented tenant had receipts for the repairs and was ready to proceed to trial. In each case the matter was continued for two to three days. Sometimes, the request for a continuance was made by the landlord. In other cases, the Justice continued the hearing on his or her own motion. These requests for a continuance occurred when it appeared the landlord was not prepared to proceed. In the cases observed, some tenants wanted to have their cases heard and not continued because they had taken time off from work. If the landlord requested a continuance or was unable to proceed, then the case was continued.

(b) Counterclaims

In two cases, tenants filed an answer and counterclaim. In the first case, the tenants raised many issues concerning the septic tank backing up, utilities that were

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114 CV 04-017. .-FD

115 CV 04-029. .-FD

not fully operational, faucets that leaked, and a door frame that did not fit.[116] They submitted a letter they had written to the owner concerning the problems, and claimed nothing was remedied. Their counterclaim was dismissed by the Justice and judgment was awarded to the landlord. In the other case, the counterclaim for lack of air conditioning for 12 days and other defects also was dismissed.[117]

(c) Diminution of Rental Value

In an eviction action, the tenant may claim that the landlord was paid all the rent owed due to the diminished value of the premises because of the lack of utility or other "essential services."[118] The ARLTA specifically allows the tenant to claim several forms of relief, including recovering damages based on the diminution in the fair rental value of the unit. In one case, a tenant claimed she was entitled to such relief because she had paid all but 12 days of her rent.[119] She had no air conditioning for 12 days and testified that she had made great efforts to contact the vacationing landlord and followed the lease's procedures to contact the warranty office to get the air conditioning repaired. The tenant specifically stated that she only withheld the amount of the rent for the 12 days when there was no air conditioning. The Justice dismissed the tenant's counterclaim for diminution of rental value. Following the trial, judgment was awarded to the landlord despite the counterclaim, and despite the landlord's acknowledgment that the air conditioner did not work.

(d) Withholding of Rent

A tenant may withhold rent if authorized by the ARLTA.[120] Several provisions of ARLTA imply the right to withhold rent.[121] In addition, one section specifically provides for a tenant to counterclaim for rent. This section provides that the court

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116 CV 04-037. .-FD

117 CV 04-017. .-FD

118 A.R.S. § 33-1364(A)(2)

119 CV 04-017. .-FD

120 A.R.S.§ 33-1368(B) ("A tenant may not withhold rent for any reason not authorized by this chapter.")

121 *See, e.g.,* A.R.S. § 33-1361(B), § 33-1363 and § 33-1364

"may" require the tenant to pay into court the undisputed rent "accrued."[122] This provision contemplates a situation where the tenant has withheld rent, because if the rent had been paid to the landlord, then there would be no need to pay it into the court.

Moreover, there is no provision in ARLTA that specifically precludes a tenant from withholding rent and there is no Arizona case law holding a tenant may not withhold rent. Despite these statutory provisions, a Judge[123] and a Justice[124] told tenants that there was no authority or justification for the tenant to withhold rent. These Justices appear to have interpreted ARLTA to reduce tenants' rights, thereby favoring landlords.

(e) Partial Payment of Rent

Although the partial or full payment of rent is a defense for a tenant to an eviction based on a five-day notice, the Justices failed to ask whether a payment was offered or received. Even when the Justices heard evidence of a partial payment, judgment was still awarded to the landlord. For example, a tenant appeared in court and told the Judge she had paid $100.00 to the apartment manager.[125] The owner in court denied the payment. The Judge failed to review the file and relied on the landlord's accounting of the rent owed despite the tenant's assertion that $100.00 had been paid to the owner's representative. When we reviewed the file, besides the five-day notice for rent, the file contained the landlord's 'Acceptance of Partial Payment' form, unsigned by the tenant which showed the $100.00 payment. Despite the oral assertion by the tenant and the documentation in the file, the Judge failed to resolve the discrepancy and entered judgment for the landlord.

Even when the parties agreed in court that a partial payment was made, a judgment still was granted to the landlord. In one such case, the tenant told the Justice and the landlord acknowledged that the tenant had paid all but 12 days of

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122 A.R.S. § 33-1365(A)

123 *See, e.g.*, CV 04-054. .-FD

124 CV 04-017. .-FD (Justice stated withholding rent was not an option for the tenant)

125 CV 04-018. .-FD

her July rent.[126] Yet when the file was reviewed, the judgment was for the full monthly rental payment without a credit for the partial payment.

In another case, the amount sought in the five-day notice was $919.00, although the landlord was only seeking a judgment of $368.00. The Justice inquired about a partial payment and the attorney stated he would check with his client. When we reviewed the file, judgment had been awarded to the landlord.[127]

In another case, the complaint stated the monthly rent was owed, minus $145.79.[128] The Justice noticed the balance owed had been reduced and inquired about a partial payment. Because the attorney indicated he did not know, the Justice asked the attorney to check with his client. When we reviewed the file, we found the landlord had obtained a judgment even though a partial payment appeared to have been made.

As shown by these examples, the speed of the court's procedures raises concerns over the accuracy of the judgments awarded.

(f) Full Rental Amount Offered to the Landlord

We observed several cases where tenants appeared in court and informed the Justice of a prior attempt to pay the rent, but the landlord had refused to accept the rent. Other tenants came to court with the rental owed. The procedure in the fourteen courts observed was inconsistent. At Justice Court K, a Judge required an unrepresented landlord to accept the tenant's rent as well as costs and fees, dismissing the case against the tenant.[129] Even this Judge appeared to apply the statute inconsistently. Several cases later, a tenant appeared and stated that she had the money to pay the rent and fees. The landlord's attorney stated that he preferred to get the judgment now and the tenant could work it out with the landlord later.[130] The Judge entered judgment for the landlord and told the tenant if the matter was worked out, to file a motion to set aside the judgment.

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126 CV 04-017. .-FD

127 CV 04-024. .-FD

128 CV 04-048. .-FD

129 CV 04-054. .-FD

130 CV 04-055. .-FD

In one case, the landlord had refused to accept the tenant's monthly rent without first receiving the pool fee.[131] The tenant claimed that the pool was a health and safety hazard and she had not paid the pool fee because the pool needed repair. The tenant also stated she had attempted and was willing to pay the rent. The tenant filed an answer and the case was continued for trial. Not only was judgment entered for the landlord, but the monetary award included the pool fee.

In another courtroom, one tenant came to court with the rental money.[132] Although judgment was entered for the landlord, the Justice told the tenant to work it out with the manager.

(g) Tenant Claimed No Breach of the Lease

Complaints that allege breaches of health and safety rules or violations of the crime-free lease addendum are often actions where the landlord requests immediate possession. Even when there was no evidence to prove the tenant's purported lease-violating conduct, the Justice did not dismiss the case. Two cases illustrate this issue.

In a few cases, the tenant raised a defense to a ten-day notice. In one courtroom, a tenant appeared against an unrepresented landlord and contested the landlord's allegation that he had been armed with a gun and intimidated residents.[133] The tenant stated in open court that he did not own a gun or have a gun on the premises. He also had a witness in court who was ready to testify that she and the tenant had not been on the property when the alleged incident occurred. Because the landlord did not have a witness in court with first hand knowledge of the breach, the Justice continued the hearing for two hours to allow the landlord time to locate his witness. The tenant protested the continuance because he was ready for the hearing and had taken time off from work.

When the hearing reconvened the landlord had been unable to contact his witness and the Justice acknowledged in court that the landlord lacked evidence to proceed against the tenant. While the case either should have been dismissed or continued for the landlord to bring in the witness, the Justice failed to do either. Instead, the Justice discussed with both parties the option of a stipulation whereby the tenant would agree to move by the end of the month, 17 days later. Both

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131 CV 04-037. .-FD

132 CV 04-017. .-FD

133 CV 04-052. .-FD

parties resisted. The landlord was adamant about an immediate eviction while the tenant wanted to remain for the three months left on his lease.

The Justice persuaded the tenant to agree to move by the end of the month. Despite the tenant's preparedness for trial, the lack of evidence of a breach and the parties' resistance to a stipulation, the action was not dismissed against the tenant and he was required not only to move three months prior to the end of his lease, but also to pay the landlord's court costs.

In another case, a victim of domestic violence was being evicted because she had called the police and obtained an order of protection.[134] The ten-day notice had given the tenant ten days to cure the breach. The tenant stated in court she had called the police and was a victim of domestic violence. The landlord's attorney knew nothing about the case and requested that the court order the tenant to file an answer. The court ordered the tenant to file an answer, advised the tenant to request a waiver of the filing fee and continued the case for two days. The tenant filed an answer stating that she called the police because she feared her boyfriend might kill her and that this was the only time she had called the police. At trial, judgment was entered for the landlord and the tenant was ordered to pay for the attorney's two appearances in court.

3. "Well maybe you can work it out."

It was typical that after awarding a judgment for the landlord, the Justice told the tenant something like "Maybe you can work it out." Some Justices told tenants that they had five days to move unless they could make arrangements,[135] or make a new agreement with the landlord.[136] After entering judgment, one Judge stated that "hopefully you can work it out."[137] After these judicial comments, it was unclear whether the tenants understood that they had lost the eviction case, that they had to move quickly, what steps were required to vacate the judgment, or the consequences such a judgment would have on their credit history and ability to rent another apartment.

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134 CV 04-051. .-FD

135 *See, e.g.*, CV 04-017. .-FD

136 CV 04-024. .-FD

137 CV 04-018. .-FD

In a few courtrooms, after entering judgment for the landlords, the Justices told some tenants that if they could "work" it out and the landlord agreed to let them stay, to get the agreement in writing.[138]

There also were judicial comments about trying to work things out after the "stipulated" judgments were entered. Again, it was very unclear whether the tenants understood what had happened and whether they understood that the landlord could proceed with the eviction regardless of the Justice's suggestion and the tenant's efforts to "work it out."

D. Appeal Rights

Despite the right to appeal inherent in every decision, the Justices told only a few tenants they had the right to file an appeal of the court's decision.[139] Only one tenant had filed an appeal when we reviewed the files.[140]

E. When Do the Justices Grant Continuances?

The ARLTA provides that a continuance can be granted for up to three days, for good cause supported by an affidavit.[141] Attorneys who handle eviction cases, however, stated that it was difficult for tenants to obtain a continuance. In our observations, we heard only one tenant request a continuance, and in that case it was granted.[142] Rather, as noted in Section VIII (C)(2)(a), the unrepresented tenants we observed wanted the hearing on their case to proceed that day. Instead, it was the Justices and the landlords' attorneys who wanted the continuances.

In every case in which a landlord requested a continuance, the request was granted. In one courtroom, the Justice stated that the reason for the continuance was to allow the landlord time to locate his witness, although the tenant was present and prepared.[143] In another courtroom, the Justice explained the continuance as a

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138 *See, e.g.,* Justice Courts H and K

139 *See, e.g.*, CV 04-024. .-FD

140 CV 04-017. .-FD

141 A.R.S. § 33-1377(c)

142 CV 04-046. .-FD

143 CV 04-052. .-FD

means for both parties to prepare and instructed the tenant to tell the landlord's attorney her defense so that the attorney could conduct discovery.[144]

In another case, a tenant came to court and was prepared to present evidence on her habitability defense.[145] The Judge told the tenant to file an answer and continued the case for two days. The tenant stated that the continued date was not a good time for her and requested that the case be continued for three days. The Judge refused her request.

Landlords' attorneys routinely requested a continuance or the Justice reset the case on his or her own motion if it appeared that a tenant had asserted a legal defense. *See* Section VIII(C)(2)(a). In marked contrast, when unprepared, tenants consistently were not offered a continuance.

Moreover, in most courtrooms when the landlord or his or her attorney did not have all the requisite documents, the Justices granted the judgments and allowed the attorney or party to bring or fax the documents to court later that day. As an example, in one courtroom, the Justice acknowledged that the affidavits of service were not in three files. She conditionally awarded judgments to the landlord while the court waited for the documents to be submitted by the end of the day.[146] The Justices in three courts required proof of ownership if the person representing the landlord was not listed on the complaint and was not an attorney. In one case, the Justice entered judgment for the landlord but requested that the corporate documents be faxed to the court showing that the person in court was an officer of the corporation.[147] In another court, the Justice awarded judgment for the owner contingent on the representative submitting proper proof of ownership later that day.[148]

F. Judgments Awarded

The result of the current eviction process is that judgment is awarded to landlords in an overwhelming number of cases. As noted in Sections VII (B) and

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144 *E. v. B.* We could not obtain a case number for this case.

145 CV 04-054. .-FD

146 CV 04-016. .-FD; CV 04-016. .-FD; CV 04-017. .-FD

147 CV 04-047. .-FD

148 CV 04-016. .-FD

(C)(2), during this study, only four cases were dismissed by the courts, and two of those cases were heard by the same Justice on a single court call in Justice Court A.

VIII. Translators

We observed several cases in which one of the parties spoke only Spanish. The Justice Courts did not have interpreters available for eviction cases and clerks or "volunteers" from the audience were enlisted to translate. In one Justice Court, the Justice acted as the interpreter. In another courtroom, a translator who was present for the criminal call was used. In another Justice Court, a friend of one of the parties was used to interpret. There is no way for the Justices to ascertain the language skills of these "volunteers" or friends of the parties. We also observed cases where the landlord's attorney translated stipulations for Spanish speaking defendants.

IX. Jurisdiction and Venue

A complaint in an eviction case must be filed in the judicial precinct where the property is located.[149] If a party believes he or she cannot get a fair and impartial hearing, the party can move for a change of venue or a change of judge.[150] During our study, we found six cases that were filed in the wrong precincts.[151] None of the files contained a motion for change of venue or motion for change of judge. It did not appear that the courts noticed the lack of venue or absence of the required motion. Whether these filings were deliberate to avoid a certain Justice or for the convenience of the attorney, or were simply inadvertent, filing in the wrong precinct makes it more difficult for indigent tenants without their own transportation to appear in court.

This problem is compounded by the arbitrary drawing of precinct lines that requires some tenants to travel 17 miles to court when there is a Justice Court within a few miles of the property. The Scottsdale Justice Court is located at 8230 East Butherus Drive, Scottsdale. During our court observation in Scottsdale, an eviction

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149 A.R.S. § 22-202(A)

150 A.R.S. § 22-204(A), A.R.S. § 12-409

151 CV 04-016. .-FD; CV 04-031. .-FD; CV 04-031. .-FD; CV 04-031. .-FD; CV 04-031. .-FD; CV 04-031. .-FD

from an apartment complex, The Peaks at Papago Park, was called. The complex is located at 52nd Street and Van Buren, more than 17 miles from the court. While the case was technically filed in the correct precinct, the precinct lines were drawn so as to require a tenant in East Phoenix or Tempe to travel to North Scottsdale. For tenants without their own transportation, attending court is a particularly arduous task. For an 8:00 a.m. eviction hearing, a person taking the bus would have to travel almost two hours, leaving home before 6:00 a.m.[152] This could be one of the reasons why, in the 135 cases observed in the Scottsdale Justice Court, only ten percent of the tenants (14) appeared in court. In other courts, the tenants appeared in approximately 20% of the cases. Thus, tenants were half as likely to attend a Scottsdale Justice Court hearing than in other courts.

X. Customer Service, Information and Access to Files

A. Introduction

Information about eviction cases may be obtained in several ways. A person may appear in person at the Justice Court, telephone the specific Justice Court, visit the Justice Court's website or request information by mail. Throughout the eviction study we utilized all forms of access.

1. Information Online

Justice Court information can be located at www.superiorcourt. maricopa.gov which provides basic information including hours and location. From this site we could view the court calendars for each day, read the biographies of the Justices and view information regarding the process of an eviction case. Also available online are a Forcible Detainer Form and Writ of Restitution form that can be completed by the landlord and submitted to the court. While this information is publicized and helpful to the landlord, no corresponding information, such as a specific eviction answer form, is provided to the tenant. This, despite the fact that some Justices require a tenant to submit an answer before being heard. As explained previously, the website also contains incorrect information about filing an answer and the payment of a filing fee for defendants.

2. Misinformation Concerning the Location of the Northwest Phoenix Justice Court

Compounding the problem with arbitrary precinct lines and the filing of cases in the wrong precinct, incorrect information appeared on the Justice Court's website

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152 See Valley Metro Trip Planner (http://tripplan.phoenix.gov/)

regarding the location of one of the courts. During the study, the Justice Court address for the Northwest Valley was the Northwest Phoenix Justice Court. The court website listed the address as 8230 E. Butherus Drive in Scottsdale. However, the special detainers for the Northwest Justice Court were actually held, at the time of the study, at the Peoria Justice Court, 22 miles away. The "Peoria" court is actually in Phoenix. This incorrect information also was posted at the clerks' offices in the various Justice Courts.

This misinformation undoubtedly caused confusion for some parties. One caller to the William E. Morris Institute for Justice last summer described this precise problem. He noted that his paperwork stated he was to appear in one court but when he arrived there he was told that he should have appeared in another court. Later he discovered that because he was at the wrong location, a default judgment had been entered against him.

3. In-Person Contacts

At several courts, we witnessed clerks provide incorrect information. One clerk informed a tenant that a $21.00 fee was required for filing an answer. Only after the tenant repeated three times that she did not have the money to pay the fee, did the clerk explain that the tenant could complete a waiver form.

In another court, when we asked about an answer, the clerk stated that tenants were required to file an answer. In a third court, the clerk told us that parties were not allowed to review their own files and that if we wanted to review a file, we would have to get a CD-Rom from the downtown court.

4. Court File Reviews

After observing court we prepared a list of files we wanted to review. Since these files were all from the same court call, they were very close numerically. When we requested court files to review, the reaction by the Justice Court clerks varied. After we provided the clerk a list of files we wanted to review, the standard procedure appeared to be for the clerk to speak to a supervisor and then return with or without the files.

In several courts, the clerks were courteous and granted the file review requests with relative ease. The clerks who returned with the files generally made simple requests: that we review the files at the counter, not disturb the contents of the files, and pay the standard copying fee of $0.50 per page. Three court clerks requested that we return at a later date to review the files and had the files ready for review at the designated time. The remaining court clerks had questions about the

reason we wanted to review the files, misquoted and misapplied the clerk fee policy, and denied access to the files without payment of the fee.

The Maricopa County Justice Courts, Accounting Policies and Procedures Manual, Section Uniform Fine/Bond and Fee Schedule, page 3, revised March 15, 2004, provides: "A $17.00 minimum clerk fee shall be charged any commercial entity for engaging a clerk in retrieving multiple files from the court's file room for review... No minimum clerk fee shall be charged to an individual not engaged as a commercial user."

When the court clerks initially informed us that there would be a fee, we requested a copy of the policy they relied upon. Many clerks were unable to provide us with a written copy of the policy. We obtained a copy of the policy and subsequently presented a copy of the policy to each of the court clerks if they requested payment of the $17.00 fee. While most clerks after review of the policy agreed that we were not utilizing the information for commercial purposes, one Justice Court clerk refused to follow the policy. In that court, it took several weeks, many phone calls, letters to the Justice and the threat of an administrative appeal pursuant to Arizona Supreme Court Rule 123 before we were allowed to review the court files. Initially, the clerk stated all files were available only on CD-Rom; then that the $17.00 fee was for pulling multiple files; and then that the documents we requested were in another building next door and the charge applied to any file that was off-site. Even after identifying ourselves, providing documentation of our purpose and providing a copy of the policy we were still denied access to the files. It was only after the Justice concluded that we worked for a non-profit organization pursuant to Section 501 of the federal Internal Revenue Code, that she directed the clerks to grant us access to the files.

XI. Recommendations

The Maricopa County Justice Court system must takes steps to insure justice for tenants in court and not simply a speedy resolution of cases. Currently, the process produces a speedy result, overwhelmingly in favor of the landlords. This study documented the general failure of the Justice Courts observed to (1) require landlords to prove their right to possession and rent, or (2) dismiss actions against a tenant when the landlord has failed to meet his or her statutory obligations under ARLTA or when a legal defense had been presented. One Justice candidly stated he viewed tenant defenses as "stalling tactics." In only three cases observed where tenants appeared in court and did not stipulate to a judgment, did the Justice dismiss the actions. In other cases, defenses may have been raised or discovered had the Justices taken the time to question each party more thoroughly, or to review the documents in the file.

Eviction cases are important for the housing lost, the speed of the displacement and the significant monetary judgments awarded. No one may be deprived of property without due process of law. The due process requirements in eviction cases are the bare minimum required to obtain a judgment.

The Justices should do more than rubber-stamp a landlord's pleadings. They should be more engaged in the judicial oversight needed to insure that landlords and tenants are treated fairly and consistent with the law. When Justices barely look at the court pleadings, they are not going to discover irregularities. The Justices' general trust of the landlords' attorneys practicing before them should not be an excuse for failing to perform their judicial functions.

Based on this study, we recommend the following changes to Justice Court practice:

Procedures

1. The Justice Court procedures for handling eviction cases must be completely reviewed and, where appropriate, revised. We hope that any review includes legal services attorneys who are the few attorneys available to represent poor and working poor tenants in Maricopa County.

2. Eviction court calls should have a lower number of cases on each call, and more time must be spent on each case.

3. Complaints should be verified by the party and the party should plead the requisite elements for possession and monetary award.

4. The courts should require that a copy of the lease and notice be attached to the complaint.

5. The clerks should review the pleadings and not allow complaints to be filed where proper documents are not attached.

6. For the matter of plaintiffs filing in the wrong precinct, we recommend that the court clerks conduct a review of each defendant's address to discover any incorrectly filed cases and note incorrect filings on the court file jacket so that the Justice can handle the matter in court.

7. All court files should be reviewed by the Justices prior to the start of the daily calendar to ensure that proper service of process has

occurred, including a check to ensure that the statutory minimum number of days has expired for “nail and mail service.”

8. The Justices should provide an oral overview of what is expected of litigants before the eviction court call begins.

9. Even though many of the eviction cases are “default” hearings, there should be some quantum of evidence required to support the relief awarded. If landlords are held to a higher standard of proof, they will meet it. Currently, most attorneys know that many Justices do not examine the evidence to determine whether there are proper notices or defects in the landlords’ cases, and they present their cases accordingly. At a minimum, evidence of service of the notice, a proper notice of termination and proof of the monetary award sought, should be required.

10. All parties and witnesses should be sworn in before testifying in each case.

11. The Justices should specifically require sworn testimony of material and irreparable breaches.

12. The Justices should require tenants who stipulate to judgments to appear before the court to ensure the tenants understand the consequences of the stipulation, including the imposition of fees and other costs and any waiver of their rights.

13. Justices should inquire about partial payments and other issues that would make entry of the judgment void or voidable.

14. The courts should stop the practice of requiring tenants to file a written answer and pay a filing fee before the tenants are allowed to defend themselves.

15. The courts should consistently inform tenants of the fee waiver provision, and the necessary forms should be available online and in the courts.

16. The Justices should advise tenants of their right to appeal and a handout should be developed for the website and court sites.

17. Information on the website should be reviewed on a monthly basis to insure it is up to date.

18. The Justices should review landlords' pleadings to determine if they contain incorrect information of court procedures, tenant obligations or landlord rights.

19. Continuances should be granted to tenants on the same basis as landlords.

20. Spanish translators should be available for court hearings.

21. Monitoring of the Justice Courts should be considered.

Justices of the Peace

We recommend more training and education for the Justices and court staff. Training topics could include a review of the Fair Housing Act, public housing/Section 8 eviction standards, the Arizona Mobile Home Act, as well as court rules.[153] Any training should include attorneys who represent tenants so that the Justices can be more informed as to their concerns. Justices also should be well informed about court rules and procedures and domestic violence.

A procedural and substantive checklist could easily be created that would require the same, specific questions to be asked in each court. The checklist would be utilized for ***each case***, whether the parties were unrepresented or represented.

Finally, fairness and impartiality, and not speedy resolutions, should be the goal of the Justice Court system.

Tenants

More information must be provided to tenants. As one Justice admitted, it is rare for a tenant to actually know his or her rights. This same Justice commented that tenants used to be provided with a booklet containing excerpts from the ARLTA. We were told, because of budget cuts, these packets are no longer available. The Justice Court's website includes general information on a special detainer action, but a defendant's answer is not available online while plaintiff's forms are available.

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[153] We observed one case where the tenant stated he lived in a subsidized unit. It did not appear that the Justice looked to see if the specific eviction requirements for a subsidized housing unit were met in that case. CV 04-051. .-FD. In another case, a notice to terminate the tenancy had been sent to "Section 8." CV 04-032. .-FD. Here, also, the Justice did not inquire to see if the requirements for termination of the subsidized tenancy had been met.

From our observations, it is clear that most tenants are unaware of their rights. The courts should provide information on tenant defenses and forms for tenants to file answers, counterclaims and motions should be available online and at the court sites. Such education and information for tenants would begin to remedy the inequality that exists between the parties.

Clerks

While this study was unique in our request to review files, the clerks should have a general knowledge of the rights of the general public to review files. It would be helpful to have a uniform policy manual on-site for all clerks.

Accountability

While the eviction case record is available for the court clerks to print electronically, the records are not available to the general public online. Publishing the outcome of Justice Court cases online would increase the accountability for the Justices' decisions and the court's general competency.

XII. Conclusion

The Justice Courts provide an important judicial function. It is hoped that this report will encourage the Justice Courts to re-examine their practices, policies and the effect the current eviction process has on tenants' rights.

The William E. Morris Institute for Justice

Phoenix, Arizona

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