

# State eviction law drawing challenge

Critics slam pre-hearing deposit rule by [Ginny Monk](#) | March 1, 2021 at 7:39 a.m.



Rep. Jimmy Gazaway, R-Paragould, is shown in this file photo.

Though federal rules have protected some renters who fall behind on payments during the covid-19 pandemic, others in Arkansas have lost their homes because of a law that has come under scrutiny by several attorneys and housing law experts.

The 2007 state law requires renters who face certain civil evictions to deposit the amount their landlords say they owe to a state court registry before a hearing in their unlawful detainer eviction cases.

If renters can't come up with the deposit, they must move out of the property while the matter goes through court, the law says.

Once the case is decided, the court first pays the landlord any money the judge rules is owed. The remainder goes to the tenant.

This upfront deposit without a judge's ruling is a violation of renters' due process right and most hurts those with the lowest incomes, housing law experts said in interviews.

"This is extremely problematic when you have a situation where someone does not have the money to pay into the registry, but does have a legal defense," said Kendall Lewellen, managing attorney at the Center for Arkansas Legal Services.

House Bill 1563 filed Wednesday by Rep. Jimmy Gazaway, R-Paragould, would establish a new eviction process that guarantees tenants get hearings before they make deposits to the court registry and establishes minimum rental housing standards.

Gazaway said in a Friday news conference that the bill would restore rights for renters stripped away when the state Legislature passed a series of housing laws in 2007.

The laws were based on model legislation passed by several states, but the Arkansas Legislature removed the portions that were favorable to tenants, Gazaway said.

"It is, in my opinion, a moral issue," he said Friday. "This isn't a Democrat or a Republican issue. This is a basic human-rights issue."

### 'PINS AND NEEDLES'

Through much of the covid-19 pandemic, federal acts and rules have banned many types of evictions for nonpayment of rent. Arkansas landlords are still filing evictions in state courts.

As of Friday afternoon, 4,402 cases had been filed under Arkansas' unlawful detainer statute since the start of the pandemic in March last year. Nearly 850 of those have been filed since Jan. 1, according to an Arkansas Democrat-Gazette analysis of court records.

That's compared with 5,387 filed the previous year, from March 11, 2019 to Feb. 26, 2020. This data is incomplete because it doesn't include all types of evictions and not all Arkansas courts post filings online.

The federal Centers for Disease Control in January extended an order banning most evictions for nonpayment of rent through the end of March. The moratorium aims to prevent the spread of covid-19 by keeping people in their homes rather than in homeless shelters or with friends and family.

The unlawful detainer statute, one of three ways to file evictions in Arkansas, is the most commonly used and includes the payment requirement.

That requirement is sometimes characterized as an "emergency clause," said Lynn Foster, a retired William H. Bowen School of Law professor who specializes in housing issues.

"But landlords use it in every single case," she said. "So it's not being used in just emergency cases."

For Tracy Costa, a Pulaski County renter, housing first became an issue in the first quarter of 2020. He lost his job early in the pandemic and got another one in retail nine months later.

But he'd fallen behind on rent. His landlord wouldn't take partial payments, he said, and the amount Costa owed disqualified him from most rental assistance programs. His landlord filed an unlawful detainer lawsuit in Pulaski County Circuit Court on Sept. 2.

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"It's scary," Costa said of being unsure about his housing. "It's pins and needles." Counting unpaid rent and utility payments, which Costa said he hadn't received bills for, he owed more than \$10,000 into the registry of the court, his attorney, LaTonya Laird Austin, said.

"If you're unable to pay your rent, I mean the odds of you being able to come up with the amount and dispute are slim to none," Austin said. "It's simply ridiculous."

Judge Tim Fox, of the 6th Judicial Circuit, issued the order to evict Nov. 17 because Costa wasn't able to pay the deposit to the court registry in time.

Austin helped him negotiate to stay at the property until mid-December so he had time to find a new place.

Costa said finding a new home was still difficult with an eviction on his record.

"You're forced either to find a homeowner who is either willing to turn a blind eye or family or friends," Costa said. "You're trying to find affordable housing in a safe, secure area. Fortunately, I was able to do that."

Austin said she's been taking as many eviction cases as she can since the pandemic started, often pro-bono.

"We just don't know what is expected, and it's frightening," she said. "Yes, I'm frightened. Even for people that I know personally, I'm frightened."

#### 'MORE AND MORE'

Foster wrote monthly reports examining evictions in Arkansas during the past year of the pandemic. The most recent was in December.

Her November report detailed a Pulaski County case in which the tenant, who said in her response that she has two children and no family nearby to help, never received a hearing because she couldn't make the deposit of back rent to the court.

"I don't have anywhere for me and my children to go. Can you please give me a chance to try and get caught up? I'm sorry for the inconveniences," the report says, quoting the response filed in September. It's unclear whether she was ever served with the judge's order to evict.

Another Pulaski County renter, who said in a court response that he was raising a great-grandson who has autism, said he needed more time because the two had no family or anywhere to go. He also said he needed adjustments for his living place because he has only one leg and needs a wheelchair.

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The renter "never intended for this to happen," he wrote in his response to a Sept. 29 unlawful detainer filing. The filing alleges he owes nearly \$4,000. Fox issued the order to evict Oct. 23 because even though the renter filed an answer, "no money was placed into the registry of the court," according to court filings.

Foster said in an interview that she, along with other housing law experts, believe the requirement is a violation of renters' rights to due process.

Jason Auer, housing work-group leader at the fair housing project for Legal Aid of Arkansas, said part of the problem is the landlord or property manager who files the lawsuit sets the amount owed without a judge's ruling. Sometimes tenants will dispute the amount owed.

"It's something that is actually coming up more and more," Auer said of tenants who are forced to make the deposit to stay in their homes before a hearing.

Sue Madison, a former Democratic state senator and Washington County Quorum Court member, sponsored the 2007 law. Asked about the law and its reported impacts on renters, Madison pointed to a warranty of habitability ordinance she'd worked on last year in the Quorum Court and said there was a need for more federal rental relief funding.

"I want to point out that landlords have a lot of responsibilities too," she said. "They have to make repairs, they have mortgages to pay. It's not as if there are greedy landlords taking advantage of people during these times."

Judges differ in whether they enforce the portion of the law that requires renter deposit, Auer and Foster said. Some grant hearings without the payment.

"Tenants are getting very different experiences based on where the case is filed, which isn't something that's supposed to happen," Auer said.

Fox, a Pulaski County judge who in many cases over the past year has enforced the court registry deposit requirement, declined to comment.

Eric Dunn, director of litigation at the National Housing Law Project, said Arkansas' law is unique although some states have statutes "in the ballpark."

He said the court should decide on a case-by-case basis whether "in the interest of justice" the tenant should pay a deposit to the court while the case is pending.

But to be required to make those payments without a judge's ruling, "that's absurd," he said.

"I don't think your right to have a hearing on the merits of a lawsuit should depend on your ability to pay anything," he said.