

## Arkansas Eviction Report December 2020 Report – Dec. 7, 2020

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### Background

This report is the last for 2020 and will sum up the year. Going forward, although I hope to continue to report on the numbers for the foreseeable future, reports will be much briefer due to other commitments on my part.

This report summarizes what happened to Arkansas tenants as a result of the COVID epidemic and our law. It also explains the need for fairer laws and summarizes proposed legislation.

In March, COVID hit. At the end of the month Congress enacted the CARES Act, which did the following:

- Gave most Americans stimulus checks.
- Boosted the amount of unemployment insurance available
- Extended the time period covered by unemployment insurance
- Created a new unemployment benefit program for many of those who were not covered by unemployment insurance
- Funneled large amounts of money to businesses.
- Made some money available for rent assistance through numerous agencies around the state, but in Arkansas few received this assistance because eligibility levels were set so only the poorest could apply, and the amounts of assistance available typically did not cover even one month's rent.
- Provided funding for Fresh Start, the second wave of rent assistance, which is still being disbursed.

People lost their jobs or had their hours cut back, and this trend accelerated during the following months. Congress declared an eviction filing moratorium for nonpayment of rent evictions beginning March that ended in July, but it only applied to housing that had a connection to the federal government. Most governors declared eviction moratoriums statewide, but Governor Hutchinson chose not to, stating that he expected landlords "to work in a humanitarian fashion" and that he was relying "on that trust relationship." That statement was the reason I began this reporting, to see whether his expectations proved true. Eviction filings dropped off shortly in March, but slowly began to rise in each subsequent month.

On August 25, the CARES Act allowed physical dispossessions to take place, and most of the CARES Act moratorium ended. **Still in place, however, is a requirement that landlords of CARES Act property give a 30-day notice to vacate for nonpayment of rent to tenants.** Some Arkansas landlords comply with this; some do not. (The unlawful detainer act requires only a 3-day notice to vacate.) There is currently no sunset date for this requirement.

On September 4, the Centers for Disease Control declared a broader moratorium but only for tenants affected economically by COVID. **We are still under this moratorium, as it has been extended through January 31.** Presumably, as COVID's toll continues to rise sharply, hospitals overflow, and the

vaccination rollout proceeds much more slowly than predicted, the federal government will extend this moratorium on into the spring.

In October, the Arkansas legislature approved Fresh Start, \$10 million for rent assistance. In the two most populated areas of the state with the most evictions, central and northwest Arkansas, by early December this money was already committed and no new applications were being accepted. However, a second wave of Fresh Start monies should be available by mid to late January.

In December, Congress enacted new stimulus legislation, which provided, in relevant part:

- \$25B in [emergency rental relief](#)
- An extension of the CDC moratorium through January 31
- \$600 stimulus checks
- \$300/week additional unemployment through March 14

For the period of March through December, eviction filings fell off sharply in March and then began to climb. By September they reached or exceeded the number of eviction filings during the corresponding months of 2019. September and December filings exceeded those of 2019. I believe that the September number was so high because landlords of CARES Act properties filed evictions at the end of the CARES Act moratorium, and despite the CDC moratorium starting in September, many tenants were unaware of it at first—in fact, some still seem to be unaware of it. I believe the December filing number is so high because many landlords filed evictions anticipating that the CDC moratorium would be ending Dec. 31, as was originally announced.

An eviction moratorium is half a loaf. It's temporary relief for those tenants who are covered, although rent owed does not go away, and late fees for many properties are significant and accrue on a daily basis. Tenants who have fallen behind through absolutely no fault of their own may find themselves able to pay back rent but not late fees. Anecdotally I've heard of some landlords suspending late fees. But from the eviction filings, it's clear that all landlords list them in pleadings, and many if not most are collecting them. A moratorium hurts small "mom and pop" landlords for whom the rent is necessary income. **The best solution is rent assistance, not a moratorium, for tenants who have lost income through no fault of their own.**

Reasons for lost income because of COVID are many. Tenants have been fired because their jobs disappeared. They have been laid off for periods of time. Their hours have been cut back. They've had to quit because their children could not go to school and they could not find child care. They've been fired or lost hours because of being quarantined. Some tenants have had to quarantine multiple times. All of these circumstances place tenants and their families at risk of losing their homes. For now, the CDC moratorium gives such tenants a legal defense.

Arkansas circuit court judges continue to handle eviction cases in a variety of different ways because of the lack of any type of order from the Arkansas Supreme Court. At least one court (and definitely some landlords) appear to be violating the CDC order and federal law. However, a tenant who files a CDC declaration before or during the early stage of an eviction will usually be able to halt the process. Even a tenant filing late may have a chance, although typically not unless she is represented by an attorney.

This month's report leads with a word about late fees, followed by tenant stories from December, a brief discussion of Arkansas eviction law, a detailed breakdown on how the CDC moratorium is faring in Arkansas courts, and finally a look ahead.

It's important to note what this report does not cover. It doesn't count all evictions filed in Arkansas, because the state does not collect all such data in electronic form. It doesn't count illegal self-help evictions, of which we know there are many. It doesn't count landlords who have been working with their tenants since the start of the pandemic by giving tenants more time to pay and not charging punitive late fees. It doesn't count landlords who accepted a CDC declaration from a tenant and have not sued to evict the tenant.

### **Late Fees**

In order for late fees to be charged, they must be part of the agreement between landlord and tenant. One tenant being sued under an oral lease agreement correctly argued in his response that his landlord had never mentioned late fees and so could not now charge him for them. I examined all late fee provisions in leases during a two-week period in December. Late fees vary widely but there are several patterns. Only a handful of leases did not contain a late fee provision. One common type of late fee is the flat per month fee, which typically accrues after the third, fourth, or fifth day of the month. Some leases call for a second flat fee to apply a week or so later, if rent has still not been paid. Flat monthly fees ranged from \$25 to \$150 per month. Sometimes such a late fee is stated as a percentage of the rent. At least one lease charged a late fee of 10% of one month's rent. One of the largest late fees seen was a lease that charged \$25 on the 4<sup>th</sup> of the month and \$15/day afterward, so a full month's late fees would be \$425. Late fees under one lease like this amounted to almost a third of the total claimed by the landlord. Such fees are arguably unconscionable and usurious.

Late fees may not be the only charge. It's common for landlords to charge one month's rent as a "reletting fee." An eviction filed by Pleasant Ridge Arkansas Associates LLC is representative of the high end of additional charges. Past due rent for one month was \$1089. But in addition, Pleasant Ridge claimed an entire "early move out reletting charge" of an additional \$1089, plus a "rental concessions" charge of \$720, whatever that means, and a late fee of \$75 after the 5<sup>th</sup> of the month. As one Washington County tenant put it, "I have full intent on paying what is owed, when I can. If I couldn't afford the \$465, they have made it almost impossible to pay back, as my balance owed is \$1400 and they add \$10 every day."

Landlords should be forbidden from charging late fees when tenants cannot pay through no fault of their own.

### **Who Files an Eviction Lawsuit on Christmas Eve?**

Two landlords did so, a Texas limited partnership, Little Rock Enclave Apartments, LP, and Campus Crest at Fayetteville, LLC. Both landlords used the same attorney to file their unlawful detainer complaints.

### **How Long Are Landlords Waiting Before They File Eviction Lawsuits?**

In December the [Daily Record published an article](#) online in which Sylvester Smith, an attorney who files many unlawful detainer actions for landlords, stated "'I want to make this very clear: Landlords are not just throwing people out on the street because they're a few days late,'" he said. "I'm seeing people that

are three, four and five months behind.” I examined every unlawful detainer filing between December 16 and 31. Not all complaints specifically state the number of months during which the tenant has not paid rent, but most do. The following table shows how many months landlords waited before they filed civil eviction actions.

Months Tenants Had Missed Rent When Eviction Filed, and Number of Evictions Filed												
Months Missed	One	Two	Three	Four	Five	Six	Seven	Eight	Nine	Ten	Eleven	Twelve
No. of Evictions Filed	84	47	29	11	10	4	9	5	9	1	0	1

Mr. Smith’s assertion is incorrect. A significant number of landlords are waiting more than one month before they file to evict. **But in the last half of December forty percent of landlords “threw people out on the street because they’re a few days late,” to use his words.** More landlords filed eviction lawsuits after the tenant had missed only one month of rent versus any other number of months missed.

### CDC Moratorium on Arkansas Evictions

The [CDC’s order](#) prohibits landlords or others with equivalent property rights from evicting “covered persons” from residential properties. A “covered person” is one who has met [certain conditions](#). A tenant certifies by signing the declaration that she gives to her landlord that she is telling the truth. A landlord who evicts a tenant after that tenant has given him a declaration is committing a federal crime punishable by fines and/or prison. This order clearly applies to landlords seeking civil evictions, failure to vacate charges, and illegal self-help evictions.

At the end of December, the CDC published a [new declaration](#) extending the moratorium through January 31 and adding wording that “the Order does not prevent your landlord from seeking a hearing. . . to challenge the truthfulness of your declaration.”

Lawsuits [opposing the CDC moratorium](#) that have been filed in other states are ongoing with no significant outcomes yet. A moratorium is not a substitute for rent assistance, which is far more equitable to landlords. But it’s better than nothing. Right now the edge of a cliff is approaching for many Arkansas tenants, with the CDC moratorium in place until February, federal money gone, and state money running out.

On December 8, Cleburne County Circuit Court [Judge Holly Meyer declared the CDC moratorium unconstitutional](#). Her judgment is [at this link](#). At this point, no further docket entries are in the record. No other Arkansas judge has declared the moratorium unconstitutional as of January 1.

A significant number of tenants still seem to be unaware of the CDC moratorium or the requirement that tenants file a declaration with their landlord. In September, 42 tenants delivered a CDC form to their landlords. Another 22 tenants alleged facts in their responses that would seem to squarely place them under the protection of the CDC moratorium, but apparently did not deliver the form. In October, the number of tenants in these two categories was 43 and 36 respectively. In November, these two numbers were 46 and 16. The percentage of tenants presumably unaware of the CDC moratorium grew from September to October, but dropped off in November. These numbers have carried on into

December, when 28 tenants either filed CDC declarations with the court or alleged they had given them to their landlords previously, and 23 tenants alleged COVID-related facts as reasons for failure to pay rent, but did not mention or file the declaration. **Outreach to tenants about the moratorium needs to increase.**

### **Tenants' Stories – December**

In October, a landlord in Crittenden County filed an unlawful detainer action to evict a tenant. The tenant, assisted by Legal Services, timely responded with a CDC declaration. A day later, the court, seemingly unaware that the defendant had responded, ordered a writ of possession to be issued by the clerk, who complied. The sheriff's deputy served the writ on Oct. 30, giving the tenant until Nov. 2 to vacate. The record does not indicate that the tenant was evicted; neither does it indicate the writ was set aside. Instead, the judge set a hearing for January 5. On the 5<sup>th</sup>, the landlord was quarantining and was unable to attend. The case has been continued, with the tenant presumably still on the premises. *This example illustrates the value of both the CDC declaration and the assistance of an attorney.*

In October, a Pulaski County landlord filed an unlawful detainer action to evict a family. The complaint alleged the tenants had not paid rent or late fees (\$10/day). The tenant family filed a handwritten response. "I have been having problems since I lived here nothing has not been fixed I have asked several times and put in maintenance request to fix my door to my daughter room. The door has been sitting in the living room for 4 months. . . . (the tenant then listed other defects including mold, a leak, exposed wire, and rats, and the ceiling falling on her daughter)." (This was the second of two tenants this month mentioning ceilings falling on their children. Arkansas, unlike all other states, does not require landlords to provide habitable premises.) This tenant delivered a CDC declaration and filed it with the court, and the judge wrote a letter to the landlord explaining that the CDC moratorium prevented her lawsuit. *This is a different and better approach than many courts have taken, given 1) a pandemic and 2) the moratorium.*

In December, a Washington County landlord sued to evict a family for nonpayment of rent. The tenant responded to the court that an agency that assists victims of domestic violence find housing had helped her find the apartment. She admitted she was late with rent but stated she could pay when her check, which was late, arrived. She went on to detail bad housing conditions—her son has severe asthma and uses an epi pen. After her air conditioning broke in early summer she alleged it took the landlord 3 months to fix it, and the repair was one small unit in one room, and the temperature would get to 90 in the daytime. She also alleged a water leak causing mold in the dishwasher and a water bill of \$700 because of another leak never fixed. She also complained of abuse of access, and listed witnesses' names. *This case is illustrative of how evictions are often connected with landlords' failure to repair. Most leases contain a promise by the landlord to repair, but it is a promise breached according to numerous tenant responses.*

In December, a landlord in Washington County sued a tenant for nonpayment of rent. In her reply, she alleged she had given the landlord a CDC declaration in November. She stated she had "full intent on paying what is owed, when I can" but noted that a late charge of \$10/day every day would make that "almost impossible."

In December, a Pulaski County landlord sued a tenant for nonpayment of rent of \$2100. The landlord certified he had not received a CDC declaration. The tenant responded that she had lost employment

because of COVID, had given a CDC declaration to the landlord in October, had made partial payments, and was on a waiting list with CADC for rent assistance. She listed serious property defects in her response—infestations of mice and roaches, severely backed up plumbing, and no repairs despite several calls to Code Enforcement. She noted late fees made it impossible to get caught up. On January 7, the judge ordered a writ of possession to be issued because “no money was placed into the registry of the court as required by statute.” *This egregious case is the epitome of what’s wrong with our laws. The tenant had no meaningful remedy against the landlord for failure to repair because she didn’t pay money to the court to get a hearing, something that almost no other Arkansas circuit judge requires at present but yet that our statutes require. She couldn’t get rent assistance, like many other tenants, because there just isn’t enough to go around. Late fees piled up because, through no fault of her own, she couldn’t pay rent.*

### **How the Courts are Handling the Moratorium**

Two variables are most important here—1) the particular judge’s approach to unlawful detainers during the pandemic, and 2) whether the tenant filed a CDC declaration with the court.

The spectrum of judges’ responses to CDC declarations filed with the court includes:

- Allowing every tenant sued in unlawful detainer, even if the tenant did not file a response (a handful of judges). Therefore, if you’re a tenant in the courts of these two judges, you will be afforded a hearing before a sheriff’s deputy removes you from your home. (In some counties, the clerks follow the wording of the statute and will issue writs under their own authority prior to a hearing, but in most counties now, including Pulaski, clerks are unwilling to issue writs without the order of a judge, adding an additional step to the process that the statute does not require.) A landlord in one of these cases petitioned the Arkansas Supreme Court to require either the Pulaski County judge to order a writ of possession or the clerk to issue a writ, and in December the Supreme Court obliged.
- One central Arkansas judge requires landlords to aver in their pleadings that they have not been given a CDC declaration by their tenants.
- Numerous judges around the state will schedule a hearing if the tenant files a response without making a deposit into the registry of the court. This is irrespective of whether the tenant filed a CDC declaration, and usually irrespective of whether the tenant’s response is timely.
- At the other end of the spectrum is one judge who strictly follows our unfair statute, ordering a writ of possession even if the tenant responds timely but doesn’t deposit the requisite amount of rent into the registry of the court. This judge generally has not honored CDC declarations without a deposit. Although so far the judge has ordered the clerk to issue writs, most have not been issued. But presumably the judge’s order is sent to the tenant. Are tenants so well versed in the law that they would realize the writ has not been issued? I would argue that ordering a writ violates the spirit of the CDC’s order, as does, clearly, requiring a deposit into the registry.

What is the effect of a CDC declaration timely filed by the tenant? In theory, it should stop the proceedings. Of 119 cases between September and November where CDC declarations were filed at some point or the tenant said they had been delivered, in 70 cases (59%), typically where the declaration was filed early in the proceeding, the eviction proceedings halted and have not resumed. Five cases were dismissed. In six cases, hearings that have not yet occurred have been scheduled before

Dec. 31, and in five cases, hearings were set for dates in 2021. In six cases where CDC declarations were filed and hearings was then held, a settlement was reached. In five cases the court decided the tenant was not covered by the moratorium, because they had violated the lease in additional ways or the term of the lease had ended. In a few cases, tenants filing CDC declarations after writs had already issued were successful in setting them aside, but not always. In one case, a CDC declaration filed late with a court failed to reverse a dispossession that had already occurred, even though the tenant alleged the landlord had received it previously. These trends continued in December.

**The earlier a CDC declaration is filed with the court the more successful it will be. On the other hand, in a few cases tenants alleged that delivering the CDC declaration to their landlord *caused* the landlord to file an eviction against them.**

The power of an early filing of a CDC declaration can also be seen when compared to cases where tenants alleged similar facts but did not file a declaration at all or allege they had delivered one. In those 70 cases from September through November, tenants were evicted in 24%. Only in 29% of the cases did the tenant's response halt further proceedings.

## **The Many Ways to Evict Tenants in Arkansas**

### **Overview**

Three types of legal eviction proceedings are in use in Arkansas:

1. Unlawful detainers, the most common form of eviction, which are all reported on [Court Connect](#). This statute is fundamentally unfair to tenants and arguably unconstitutional. Because of a Kafkaesque "Catch-22 provision" added by the legislature in 2007, a tenant who seeks a hearing must not only respond to the landlord's complaint within five days, but must also deposit the amount of rent alleged due with the court. Obviously, this is impossible for most tenants. In November, fewer than a quarter of tenants filed responses. Tenants who don't meet these unfair requirements don't get a hearing, a chance to tell their side of the story. And oftentimes they do have a legitimate reason for not paying rent, or they actually have paid the rent. The alternative outcome under our statute is the immediate issuance of a writ of possession to the sheriff, who will evict the tenant. One November writ of possession was served seven days after the tenants received notice of the lawsuit. Needless to say, they received no hearing.
2. Civil evictions pursuant to Ark. Code Ann. § 18-17-901, most of which are *not* tracked on Court Connect, because most district courts are not in the Court Connect data base. These types of evictions are listed below as "2007 Act evictions." This procedure is more fair because tenants automatically receive a hearing, but many if not most counties don't hear these cases, and district courts actually have no jurisdiction under the Arkansas Constitution to hear them.
3. Failure to vacate criminal offenses, heard by district courts, most of which are *not* tracked on Court Connect, because most district courts are not on Court Connect. Not all district courts allow this type of charge to be brought. ProPublica has endeavored to determine which do, and hopefully this information will be available in the next report. *Arkansas is the only state that makes what is essentially nonpayment of rent to be a crime.* In October, ProPublica published an [excellent report](#) on failure to vacate in Arkansas and the effect it has on tenants. Supporters of the failure to vacate statute often dispute the statement that tenants can be jailed in connection

with failure to vacate. Of over 100 failure to vacate cases examined that occurred between March and December, judges ordered tenants charged with failure to vacate to be arrested (rather than issued summonses or citations) in 6% of cases. Tenants will be jailed in these cases unless they are released on bond or recognizance. In 28% of cases, tenants failed to appear at either arraignment or trial or subsequent hearing. The typical judicial response in this case is to issue a failure to appear warrant for arrest, with a bond of either \$600 or \$1000, depending on the court. Failing to appear for a civil proceeding is not a crime. Failing to appear at a criminal procedure penalizing failure to pay rent, however, is, and can significantly increase the difficulties a tenant will incur.

### **The Catch-22 Unlawful Detainer Statute**

Most tenants don't respond when an unlawful detainer is filed against them, meaning that the statute deprives them of a hearing. In December, 462 unlawful detainer cases were filed, but tenants responded to only 76 (16%). This compares with September (17% of tenants responding) but is lower than October (27%) and November (20%).

Ark. Code Ann. § 18-60-307 requires the eviction notice served on the tenant to have certain wording. It's hard to understand. Tenants receive a summons that says they have 30 days in which to respond. But landlords also ask for a writ of possession, which requires tenants to respond (and pay) within 5 days, not 30, to receive a hearing. In the time of COVID, when tenants can't pay the rent, the statute has the effect of making it almost impossible to get a hearing.

Experts in landlord-tenant law believe the deposit requirement is unconstitutional (see the September report for the analysis). Some judges grant hearings even if a tenant doesn't pay the rent into the registry. But a tenant who carefully reads and understands the notice won't know that! And in a few cases, even if the judge sets a hearing date, the landlord's attorney has argued that the objection is not "responsive," and seeks an immediate writ of possession. Sometimes the judge will grant the writ and cancel the hearing.

To sum up, our unlawful detainer law is designed to deny tenants the right to a hearing. And only a few tenants are able to obtain legal representation, either because they don't realize they need it or don't know about Legal Services or don't qualify for assistance.

### **Illegal Self Help Evictions**

The fourth type of eviction, self help, occurs when landlords change locks, turn off utilities, remove doors, or resort to other actions to remove tenants without a court order. Many such calls involve utilities that are in the landlord's name. Some utility companies appear to be cooperating with these illegal acts by landlords by not allowing tenants to switch utilities into their own names to get them back on. In order to fix that, the tenant usually has to get a lawyer to obtain an emergency temporary restraining order, which is time intensive.

In October and November, a Jefferson County attorney sued a landlord for forcible entry and detainer in the case of three tenants. The landlord attempted to deny them of electricity by both ordering the utility to turn it off, and when that was unsuccessful, removing the electrical connections with the meters. Needless to say, this is illegal and punitive damages should be awarded because the landlord has done



this repeatedly and willfully. Typically, it's difficult for tenants to get relief in such cases because their living conditions are so awful that they leave rather than wait for court action.

#### April through December Evictions Filed

The following table shows the Court Connect data base number of evictions and failure to vacate charges filed against residential tenants for nonpayment of rent by county during the months of April through December. The master spreadsheet containing this data is at

[https://docs.google.com/spreadsheets/d/1\\_KAoef-EUk9Fubz4rlhyjx7mZuGefln5eUOM6Jp7lFA/edit?usp=sharing](https://docs.google.com/spreadsheets/d/1_KAoef-EUk9Fubz4rlhyjx7mZuGefln5eUOM6Jp7lFA/edit?usp=sharing). All evictions listed are unlawful detainers unless otherwise specified.

County	April	May	June	Jul	Aug	Sept	Oct	Nov	Dec
Arkansas				1					1
Ashley					1	3		1	2
Baxter		1	3		1		4	3	1
Benton	7	16	20	14	46	38	28	28	37
Boone	1	1		2	2	1			
Bradley						2		1	
Carroll		1	2	3	2	3	3	2	3
Chicot									1
Clark		2							1
Clark FTV									1
Clay*		2	1		2	1	1		
Cleburne			1	1		2	3	1	
Columbia				1		4	3		1
Conway								1	
Craighead	6	6	13	30	34	22	22	27	26
Craighead 2007 Act	2	1	11	12	26	12	18	17	14
Crawford 2007 Act	1	10	17	17	8	26	14	6	5
Crittenden*		5	6	13	17	32	28	26	21
Cross*			1		2				
Desha						1			
Drew	2	1		1	1	2	1	2	
Faulkner	7	8	20	12	21	23	23	23	39
Franklin							1		
Garland	2	3		7	3	5	1	2	5
Garland FTV	10	11	18	9	13	9	14	20	19
Greene	1		1	1	1	1	1	3	3
Hempstead			1	1		1	2	2	1
Hot Spring				1			1	1	3
Hot Spring FTV	4	1	1	1	7	2	2	2	1
Independence				1	2	1	1		2
Izard					1				
Jackson				1		1		1	1

Jefferson	1			1		1	2		1
Lawrence									1
Logan						1			
Lonoke		3	2	1	2	1	2	1	4
Lonoke FTV		5				1		1	
Madison								2	
Marion	1		1	3	1	1			
Miller			1		17	19	10	10	
Mississippi	2		1	3	4	1	2	3	3
Monroe		1		1	1		1	1	
Montgomery FTV			2			1			1
Perry		1							
Perry 2007 Act	1								
Phillips*		1			1				
Poinsett*		2							3
Poinsett 2007 Act			2					1	
Polk					1				
Polk FTV	1	2	3	2	3		1		2
Pope	2	2	3	3	9	9	4	3	10
Pulaski	35	46	86	92	101	223	186	205	215
St. Francis				1					
Saline	3	2	9	14	17	19	14	9	18
Scott					3		1		
Scott FTV		1			2			1	
Scott 2007 Act									1
Sebastian*	1	1	1	1	2	1	9	1	
Sebastian 2007 Act		1							
Sharp					1		1		
Union	1	1	2	2	3	6		3	
Van Buren	1					1	1		
Washington	27	16	25	25	39	67	61	46	59
White			3	4	3	2	3	4	3
Woodruff				1				1	
Yell			1		1	1			
TOTAL	119	154	258	283	401	547	469	461	506

\*These counties do not have electronic filing so the full text of pleadings are not available on Court Connect. However, since the vast majority of evictions are filed for nonpayment of rent, they are listed here. Beginning in July, Crittenden County's filings came online.

In December, of the 506 evictions filed for nonpayment of rent and tracked on Court Connect, 462 were unlawful detainer cases, 20 were 2007 Act cases, and 24 were failure to vacate criminal cases.

Comparing apples to almost-apples, the *total number* of unlawful detainer cases filed in December 2019 was 415, as compared to the total number of unlawful detainers *solely for nonpayment of rent* filed in December 2020 of 462, a clear, significant increase of more than 11%.

Evictions disproportionately affect female tenants and thus also children. The following table shows the percentage of evictions and failure to vacate charges filed against female tenants, as opposed to male tenants and heterosexual couples.

Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
50%	43%	52%	60%	53%	56%	48%	50%	55%

Why so many evictions of women, when we would expect the number to be around a third? It may be because presumably more female tenants than male tenants have children living with them. Matthew Desmond, head of the Princeton Eviction Lab, reports that [tenants with children are three times more likely to be evicted than those without](#).

**The state should track all evictions. We can't make informed policy choices without knowing how many tenants are losing their homes.**

### **Navigating the Justice System Alone**

As some have phrased it, [a right to counsel in an eviction proceeding is a right to a fighting chance](#). Landlords are represented by attorneys in almost all unlawful detainer cases filed. In September, only 17 tenants were either represented or assisted by attorneys, in October, again 17, in November, 20, and December, 20. Unfortunately, lack of counsel means that tenants do not spot weaknesses or deficiencies in the landlord's case. From procedures deficiencies to outright violations of tenants' due process rights, mistakes or omissions that could at worst give the tenant more time and at best enable them to win in court go unnoticed and unremarked.

In early January, Legal Services presented a [CLE on Arkansas eviction law](#). Attorneys willing to represent tenants pro bono are encouraged to contact Legal Services.

### **The Crisis Continues**

The pandemic is creating an eviction crisis. There are millions of tenants who, through no fault of their own, cannot pay their rent.

The U.S. Census Pulse Survey has been an invaluable source of data. [Data for 2021](#) will begin to be released the week of January 27. [The last data for 2020, for the week ending December 21](#), shows that of 403,000+ Arkansans rent-paying households, 19% are not caught up with rent, as compared with 20% in October. Of those, roughly 1/3 or 34% had little or zero confidence that they could pay the next month's rent (January 2021 rent). Of the tenant households not current on rent payments, almost half believed themselves to be strongly or somewhat likely to be evicted in the next two months.

The number of COVID cases and deaths in Arkansas [continues to accelerate](#), with a much more contagious version anticipated to send U.S. numbers skyrocketing soon. The vaccine rollout has been slow so far, although [Arkansas is in the top half of states in percentage of population vaccinated](#). Ending

a moratorium in January, before the cases even peak, without rent assistance will be a disaster of catastrophic proportions.

### **Future Aid for Tenants**

Going forward, what is needed? It's clear that economic recovery will take a long time. Fortunately it should be easier for a one-party Congress to enact more stimulus in 2021 than it was for a divided Congress in the fall of 2020.

- The moratorium should continue in the short term, but tenants must receive rent assistance so that back rent is caught up, and once that has happened, the moratorium should end.
- [Fresh Start](#) is set to begin distributing the second half of the \$10M this month. It will likely be gone in a matter of weeks in most parts of the state, like the first distribution was.
- Part of the \$25B approved by Congress in December will come to Arkansas, and it should be distributed through Fresh Start, which is much easier for tenants to access than Arkansas's original distribution mechanism.
- Any future rent assistance from the federal government should be routed through Fresh Start.
- The Fresh Start process should be speeded up if possible.