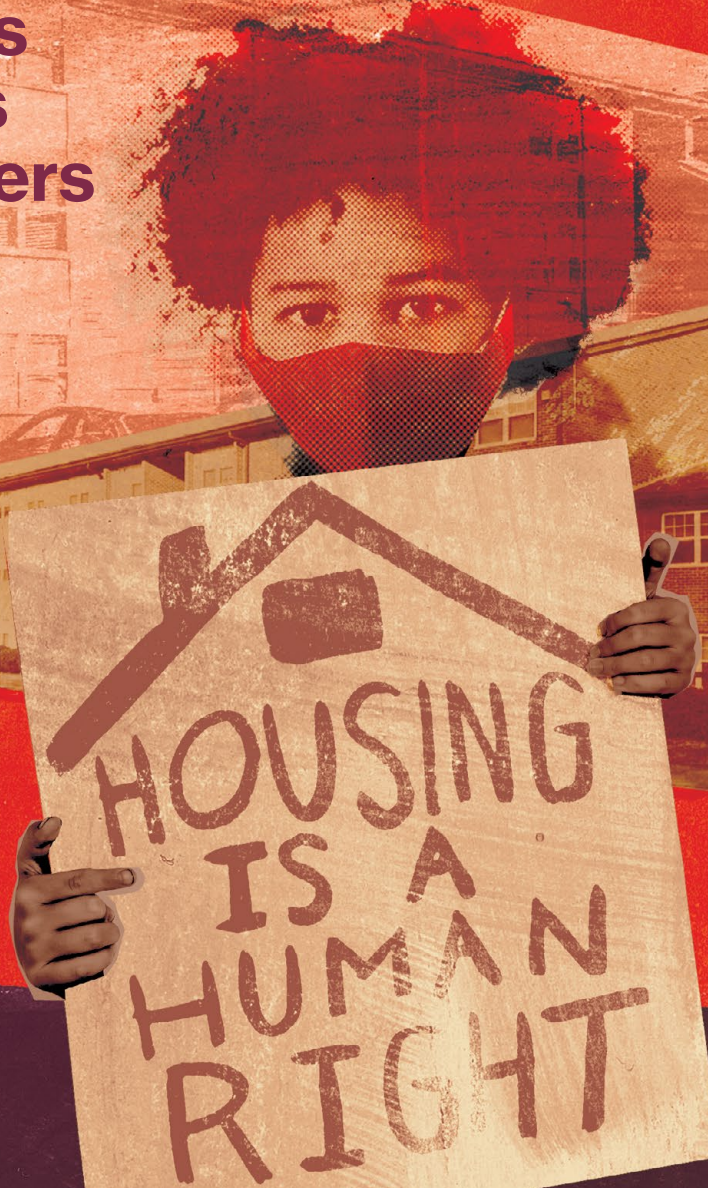


No Shelter in Place

How Arkansas
Eviction Laws
Harmed Renters
During the
COVID 19
Pandemic



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Arkansas Community Institute

The Arkansas Community Institute (ACI) is releasing this report as part of our project to reduce debt disparities in Arkansas. ACI is a partner of the Southern Partnership to Reduce Debt.

Launched in 2017 by the Annie E. Casey Foundation, the Southern Partnership to Reduce Debt (SPRD) is a multi-year, multi-state effort to close the racial-ethnic wealth gap and bring financial security to households of color. The effort involves several national organizations including – the Aspen Institute, National Consumer Law Center, National League of Cities, Prosperity Now, and the Urban Institute – and more than 20 nonprofit

organizations working in seven southern states.

These partners are primarily focusing on four kinds of debt: high-cost loans (pay-day loans, auto loans); fines and fees; medical bills; and student loans. ACI believes that eviction policies in Arkansas and other states add to household debt and make it difficult for families to find safe and affordable housing.

Arkansas Community Organizations and Arkansas Renters United collaborated with ACI to reach out to communities in Arkansas and gather data and stories for the report.

Acknowledgements

This report was principally authored by Amy Pritchard with support from Arkansas Community Institute staff members Neil Sealy, Joyce Akidi, Al Allen, and Billy Cook.

Executive Summary

Introduction

Arkansas has some of the nation's harshest eviction laws. Tenants who are even a day late on rent can be evicted. In some counties, tenants can be criminally prosecuted if they do not move out within ten days of missing their rent payment.

The COVID-19 pandemic caused immediate and long-lasting economic hardships for tenants, leading many Arkansans to fall behind on rent and face eviction. While leaders across the nation enacted policies to delay evictions, Arkansas leaders declined to take similar action. Although federal dollars were allocated to Arkansas to provide tenants with rental assistance, these funds were slow to arrive and difficult to access. In April 2022, Arkansas governor Asa Hutchinson was one of two state governors to reject additional financial assistance for his state's renters.

This report examines the impact of the COVID-19 pandemic on Arkansas renters. It is informed by Arkansas Community Institute's work with tenants throughout the pandemic and includes an analysis of judicial evictions during the first two years of the pandemic.

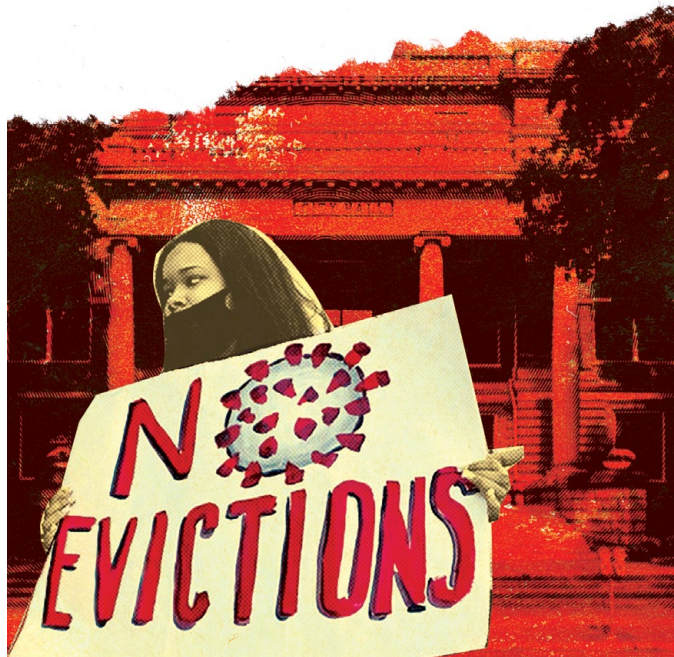
Findings

Many Arkansas renters were already rent-burdened (paying more than 30 percent of their income on rent) before the pandemic. The COVID-19 pandemic made it even harder for many tenants to pay their rent. Renters fell behind early in the pandemic, and many found it hard to catch up as the pandemic continued. Excessive late fees and other fees charged by landlords kept some tenants from catching up.

Across the state, eviction filings increased throughout the pandemic. While courts delayed eviction cases during the first few months of the pandemic, eviction orders continued to be issued in increasing numbers afterwards. Most tenants were evicted without a hearing. Very few tenants had legal representation. Many tenants were unaware of federal laws protecting them from eviction and struggled to raise these protections in court proceedings.

The state's most vulnerable citizens – including low-income and unemployed tenants, households with children, and people of color – were particularly impacted by the financial fallout and resulting evictions. While data about tenants' race and gender was limited, available data indicated that eviction cases and criminal prosecutions disproportionately impacted women and people of color.

Across the State, eviction filings increased throughout the pandemic.



Pandemic evictions had long lasting negative effects on tenants. Once evicted, many tenants found themselves burdened by excessive debt for past rent, moving costs, and court assessed fees. These debts, along with adverse reports by landlords to credit reporting agencies, prevented tenants from finding safe and affordable housing.

Recommendations

Based on the findings of this report, the Arkansas Community Institute offers the following recommendations to improve Arkansas's eviction processes and reduce the impact of evictions, especially on the state's most vulnerable residents:

1. Amend eviction laws

Arkansas's eviction laws should be amended to provide procedural protections for tenants and decrease the prevalence of evictions.

Arkansas lawmakers should implement the following changes:

- Arkansas's archaic failure to vacate law, which allows delinquent tenants to be criminally prosecuted, should be abolished.
- Tenants should be given the "right to cure" a past due rent payment before their landlord begins an eviction case in court.
- After an eviction is filed, tenants should be given 30 days' notice of the eviction action and the right to counsel during the eviction proceedings.

2. Increase data collection

All Arkansas courts should collect and report eviction-related data including demographic data on tenants facing eviction actions (race, ethnicity, and gender), as well as case outcomes including evictions and amounts awarded to landlords. Data should be made available online.

3. Improve court proceedings

Courts can improve eviction procedures and decrease the number and impact of evictions by making the following changes:

- Courts should offer alternative dispute resolution options to allow landlords and tenants to work toward mutually agreeable resolutions.
- Court issued eviction notices should state, in plain language, the deadlines for responding, the process for responding, and the consequences for not responding.
- Eviction notices should include resources to help tenants who are facing evictions, including legal service providers and community resources.

4. Continue rental assistance programs

Arkansas should continue to build a system that provides rental assistance to tenants who have fallen behind on their rent or may fall behind soon due to circumstances outside their control. These funds ensure tenants avoid homelessness and landlords have access to funds to pay expenses related to the unit.

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- Rental assistance programs should adopt practices to make funds accessible to meet urgent needs in a timely manner, such as providing simple, plain language applications and allowing tenant self-attestations in cases where documentation is unavailable.

5. Ban excessive rental fees

Arkansas lawmakers should enact policies to ensure that fees charged to tenants are reasonable and transparent throughout the rental process.

- Housing providers should be required to clearly disclose fees to applicants and tenants, including application fees, rental fees, and move-out fees. Leases should be required to clearly state the total amount that tenants will be required to pay at each stage.
- Allowable fees should be restricted to reasonable amounts reflecting the actual costs and expenses incurred by housing providers. Excessive and compounding fees should be banned.



Introduction

The COVID 19 pandemic brought to the surface the social fault lines in the United States. Racial, gender and class disparities were laid bare on many levels. The treatment of renters in Arkansas and other states is but one example. This report explores the experiences of many renter households from 2020 through 2022.

One in three Arkansans is a renter. The state's laws overwhelmingly favor landlords over renters. This bias in favor of landlords has gained Arkansas national notoriety. In 2014, *VICE media* dubbed Arkansas "The Worst Place to Rent in America."¹ In 2022, *Consumer Affairs* ranked Arkansas's laws as the worst in a ranking of laws favoring renters.²

Even before the COVID-19 pandemic, many Arkansans struggled to pay rent and afford other necessities. When the pandemic hit, these financial challenges grew. Many Arkansans saw their incomes decrease and expenses increase. As tenants fell behind on rent, they began to fear evictions.

To prevent an uptick in evictions, policymakers nationwide implemented eviction moratoria and financial assistance programs for renters. These eviction prevention strategies supported an overarching goal of preventing the spread of COVID-19. Evictions often lead displaced tenants to seek shelter in other homes or shelters, frustrating social distancing and quarantining efforts.

In contrast, Arkansas leaders took no steps to prevent evictions. Arkansas governor Asa Hutchinson dismissed calls to halt evictions, and he rejected federal funds earmarked to help Arkansas renters remain in their homes. At the height of the global public health crisis, Arkansas tenants continued to be evicted, became homeless, and even spent time in jail for falling behind on their rent.

Evictions can harm tenants in a variety of ways which were compounded by the COVID-19 pandemic. The psychosocial harms of eviction include increases in stress, anxiety, and depression, as well as marked disruptions to a tenant's job, schooling, and medical care. Once evicted, tenants experience financial challenges including court judgments for past due rent, late fees, court costs, and other costs. Evicted tenants face challenges in finding new housing when their rent debt and eviction record appears on landlords' tenant screening checks.

This report examines the ways that Arkansas's one-sided eviction laws harmed tenants throughout the COVID-19 pandemic. We begin by outlining Arkansas's three eviction laws, which are some of nation's fastest and least forgiving. Then, we look at how the pandemic led many tenants to fall behind on their rent. As landlords added late fees onto tenants' accounts, they struggled to catch up with the debt. Arkansas failed to implement policy safeguards to prevent evictions and was slow to implement financial assistance programs.



Introduction

When evictions were filed, most tenants were unable to challenge the case in court. Most tenants lacked legal representation and were unable to take the steps required by federal law to halt their evictions. As a result, evictions rose throughout the pandemic, resulting in homelessness and high rent debts. These evictions had long-lasting effects on tenants, particularly those who were already financially vulnerable, women, and BIPOC individuals. The report concludes with policy recommendations to improve housing stability and financial equity for all Arkansans.

Arkansas's Eviction Laws are Fast and Unforgiving

Background

In 2007, the Arkansas Legislature enacted a comprehensive package of landlord-tenant laws called the Arkansas Residential Landlord and Tenant Act ("ARLTA"). The act was based on model legislation that defined both landlords' and tenants' rights and responsibilities. This model law outlined a system, based on best practices, where landlords and tenants work together to ensure safe and habitable dwellings.³

Before approving the Act, lawmakers removed almost all the tenants' rights and landlord responsibilities from the model legislation. This left Arkansas with a one-sided set of laws that protects only landlords' rights and recognizes only tenants' responsibilities.⁴ This one-sided nature can be seen clearly in the state's eviction laws. Arkansas offers landlords three legal avenues for landlords to evict a tenant and to collect amounts owed. All three processes are quick, unforgiving and lack any meaningful protections for tenants.

“ I’m willing to pay. I was going through hardship due to COVID-19. My hours here have been reduced. Also, I am willing to pay or move. I’ll need more than 5 days to leave the property. My kids and myself don’t have family here. I’ll need 15 days to 30 days to find a place to live.”

-Pulaski County Tenant facing eviction in 2020⁵

Statewide: Unlawful Detainer Evictions

Unlawful detainer⁶ is the most frequently used eviction process in the state. Unlawful detainers are civil cases filed in a county's circuit court. The cost to file an unlawful detainer case includes at least \$165 in court filing fees plus service fees and attorneys' fees.

If a tenant does not pay their rent on time, their landlord can serve a three-day written "notice to vacate" the property. Arkansas's three-day period to vacate is the shortest period nationwide.⁷ If the tenant has not moved after three days, the landlord can file a complaint against the tenant for unlawful detainer of the unit. After the complaint is filed with the court, the tenant is served with a five day "notice of intent to issue a writ of possession," along with a summons and a copy of the complaint.⁸

Arkansas is one of nineteen states where a tenant must respond in writing to an unlawful detainer complaint. The tenant has five days to file their objection with the court. If the tenant does not file a written objection within this time, the tenant can be evicted

Arkansas's Eviction Laws are Fast and Unforgiving

without a hearing. In most cases when the tenant does not object, the court clerk issues a writ of possession (eviction order). The sheriff then serves the tenant with the writ and orders the tenant to move. If a tenant does object or file an answer to the lawsuit, a court hearing is usually scheduled for the judge to decide if the tenant can stay in the property until a trial date.⁹

Some Counties: District Court Evictions¹⁰

In some counties, landlords also file evictions in district court, which is a lower-level court that has limited jurisdictional power. District court evictions can be less costly for landlords, with filing fees ranging from \$50-80. These evictions are often referred to as “ARLTA evictions,” “district court evictions,” and “small claims evictions.”

This law was approved by the Arkansas legislature in 2007 (and amended in 2009). However, only the Arkansas Supreme Court can give a district court the power to hear certain types of cases. The Arkansas Supreme Court has not expressly given district courts the authority to accept new eviction filings. Because the Supreme Court has not granted jurisdiction, only some district courts accept eviction filings under this law.¹¹

Some Counties: “Criminal Evictions”¹²

Arkansas is the only state where tenants can face criminal charges for a late rent payment. Under Arkansas's “failure to vacate” law, a tenant who is one day late on rent loses his right to stay in the property. The landlord can then serve the tenant a ten-day notice to vacate the property. If the tenant has not moved after ten days, the landlord can ask for a criminal citation to be issued against the tenant. Under the criminal law, each day the tenant stays in the unit is a separate offense. For each offense, a tenant can face criminal fines between \$1 and \$25. This process is only available in certain counties.

Arkansas's failure to vacate law was initially enacted in 1901 in Jim Crow era Arkansas. When it was proposed, several senators spoke in opposition to the bill as it created criminal penalties for civil contracts and would cause poor Arkansans to face jail time if unable to pay criminal fines. Senator Lawrence argued the bill was simple class legislation in favor of the landlord. He stated that tenants who are unable to pay their fines would be sent to jail to “work it out,” referencing Arkansas's practice of convict leasing (abolished in 1909) where private parties could “lease” convicts and use them to work in agricultural and industrial industries. Senator Dowdy spoke in opposition to the bill, calling it “entirely one-sided” and expressed concerns that tenants who had complied with their contracts may still face eviction. The bill was referred out of the Senate Judiciary Committee with a “Do Not Pass” recommendation but was ultimately enacted by the Legislature.¹³

Over the past century, the senators' warnings that failure to vacate convictions will lead to jail time has repeatedly come true. The act was amended in 2001 to expressly allow for jail sentences in certain cases. After court challenges to the law, in 2017 the Arkansas legislature amended the bill back to the pre-2001 version. Tenants continue to face jail time for charges related to the failure to vacate law, most often failure to appear or failure to pay fines. Low-income Arkansans, especially women and people of color, are disproportionately charged and harmed by this law.¹⁴

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Some landlords take evictions into their own hands

While most landlords use the court to evict tenants, some use threats, coercion, and force. Unscrupulous landlords may change locks, turn off utilities, or take a tenant's possessions. Some landlords even threaten tenants with violence and using weapons. These actions, known as "self-help eviction," are illegal in Arkansas.¹⁵ Despite self-help eviction being illegal, it still occurs throughout the state.

One day late is all it takes!

Arkansas law does not give a tenant the "right to cure" or pay a past due rent payment to avoid eviction. Even if it is only a day late, a landlord can refuse to accept a tenant's past due rent payment. The tenant then loses their right to stay in the rental property. This can force a tenant to move out during the short notice periods even if they had the ability to cure the late payment.

The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

Arkansas renters struggled to pay rent before and during the pandemic

Before the pandemic began, many Arkansans were already facing challenges in meeting their monthly rent payments.

In 2020:

- 43.5% of Arkansas renter households (153,639) were considered "rent burdened," meaning renters were paying more than 30% of their income on rent.
- 20.3% of Arkansas renter households (71,633) were considered "extremely rent burdened," meaning they were paying more than 50% of their household income on rent.¹⁷
- 27% of Arkansas renter households were "extremely low income," with 63% of these households having a severe cost burden in accessing rental housing.¹⁸

"I am a single mom of 4 children. I have not been working since March 1, 2020, because of the Corona pandemic. Currently waiting on unemployment to come, they said it should be in the mail next week... I plan on moving as soon as I have the funds to do so. I have been without a vehicle since March and with kids out of school and keeping food in the fridge as well as gas, electric, and water and internet for kids school it has taken all funds. Paying to move at this time, first, last and deposit and pay past due rent at this time there is no way. I understand my landlords needs for me to vacate as soon as possible. I am doing the best I can with the means I have to do so."

- Washington County tenant¹⁶

The pandemic brought massive financial challenges for renters. Arkansas Community Organizations received calls from tenants who had lost jobs or had their hours reduced. Tenants reported they had to quit jobs to care for their children when childcare facilities and schools closed. Other tenants quit work due to their own or a family members' health condition. Even in early weeks, tenants expressed concerns about being evicted for being unable to make rent payments.

The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

Arkansas's joblessness rate doubled during the first three months of the pandemic. The state's joblessness rate reached a peak of 10.2 percent near the end of May before slowly decreasing over the next two years.¹⁹

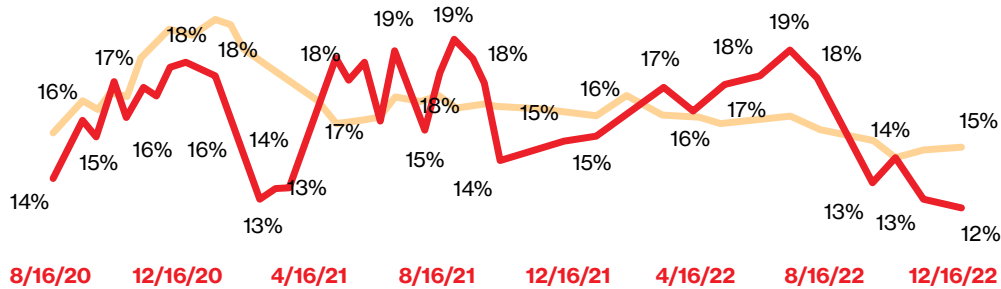
Six months into the pandemic, Arkansas Renters United followed up with early callers. Many tenants reported they were still struggling to cover basic needs. Some callers were being evicted. Others worried they would be evicted soon.

Renters fell behind, and many stayed behind, on rent

Throughout the pandemic, the U.S. Census Bureau conducted bi-weekly and monthly surveys to obtain a snapshot of how the pandemic affected those living throughout the U.S. The survey included questions to determine the status of tenants' past and future rent payments and their likelihood of facing eviction.

In September 2020, an estimated 15 percent of tenants were behind on their rent. Over the first two years of the pandemic, an estimated 15 to 19 percent of tenants were behind on their rent payments. In the chart below, Arkansas renter households behind on rent are displayed in red and national averages are displayed in yellow.²⁰

Renter Households Behind on Rent

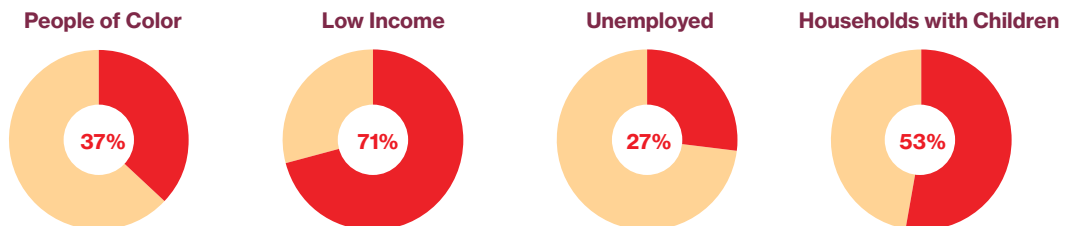


Rent debt remains at crisis levels, placing million of renters at risk of eviction. nationalequityatlas.org/rent-debt

Those behind on their rent are financially vulnerable

Almost three out of four tenants who are behind on their rent are low income. Half of the households that are behind on rent include children. One in four of those behind on their rent are unemployed.²¹

Characteristics of Renters Behind on Rent, Arkansas



Those behind on rent are overwhelmingly low-income households who experienced job and income losses during the pandemic. nationalequityatlas.org/rent-debt

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The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

Black renters were disproportionately rent burdened and housing insecure before the pandemic. In 2019, 51 percent of Black renters were rent burdened and economically insecure, compared with 38 percent of white renters.²²

The federal government offered financial help for some tenants

In March 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act aimed to assist individuals and businesses harmed by the pandemic. Most Americans received stimulus checks. The CARES Act increased the availability and duration of unemployment insurance assistance.²³

In December 2020, Congress passed the Consolidated Appropriations Act of 2021, a second federal relief package that included more stimulus checks and additional unemployment benefits.²⁴

Rental assistance was delayed and difficult to access

Both federal relief packages also included rental assistance funds. Nationally, federal rental assistance funds helped to prevent evictions, with approximately a million tenants helped nationwide in 2021 through these funds and other government programs.²⁵

Through the CARES Act, Arkansas received \$10 million in federal rental assistance funds. In October 2020, the Arkansas legislature created the Fresh Start program. The Fresh Start program distributed rental assistance funds through statewide community action agencies. The program launched in November 2020 and offered help for up to two and a half months of past due rent.

The need was great for rental assistance, and on its first day the Fresh Start program website received 25,000 hits. By early December, many agencies had committed all their available funding. Statewide, agencies distributed \$4 million before the end of 2020.²⁶

While community agencies received \$12 million in additional funds to distribute to needy tenants, tenants were only eligible if their income was below 125 percent of the poverty level, meaning many Arkansans did not qualify for the available assistance. Arkansas was one of only a few states that did not increase the financial eligibility threshold to 200 percent, as allowed by the CARES Act.²⁷

In January 2021, Arkansas set aside over \$173 million in federal dollars for the Emergency Renter's Assistance Program (ERAP). The goal of ERAP was to help renters affected by COVID-19 to pay up to fifteen months in past due or prospective rent, late fees, and utilities.

While the federal dollars offered relief when they could be accessed, many tenants experienced barriers to accessing available funds in time to meet rent obligations. Arkansas Community Organizations heard from many tenants whose pandemic unemployment assistance applications had been delayed or denied. Both tenants and landlords reporting challenges with accessing funds through the rental assistance programs, including onerous documentation requirements. Some tenants also reported that their landlords would not participate in the program. Without a landlord's participation, the tenant could not access rental assistance. Six months into the ERAP

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The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

program, only 10 percent of funds had been spent. As the federal eviction moratorium ended, many tenants had been unable to access rental assistance funds because of program delays, bureaucratic hurdles, unmetable documentation requirements, and uncooperative landlords. While funds existed to help prevent increased evictions, they rarely made it to landlords to address rent debts.

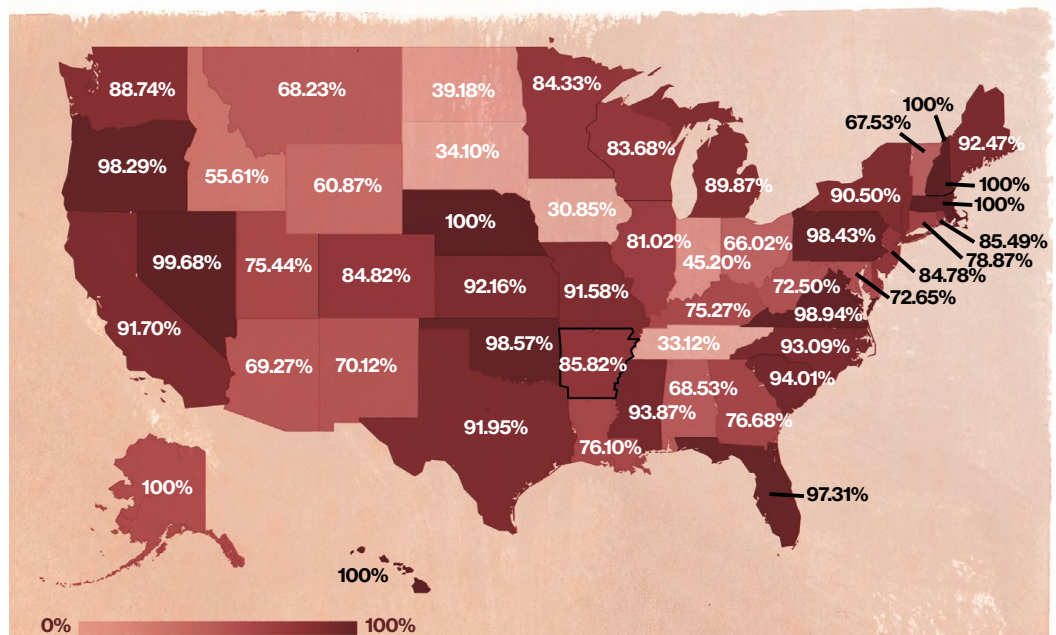
One affected tenant was Erica McPherson, a mother of three who fell behind on her rent and utilities in 2021 due to health problems. On June 1, 2021, Ms. McPherson applied for rental assistance, but her application had not been processed as the eviction moratorium neared its end. As with many rental units, Ms. McPherson's rental unit needed significant repairs as the electricity had stopped working in parts of her house. "I don't ask for a lot, [but] it's summertime, and I owe \$1,500 for two months' rent," McPherson said. "Electricity has run out in certain areas of my house. I don't want to remind [the landlord] I haven't paid rent by asking him to do repairs that cost money."²⁸

As of October 2021, only 22 percent of the program funds had been awarded. In April 2022, the state stopped accepting applications for rental assistance. As of June 2022, only 19 percent of tenants with past due rent had applied for rental assistance, with 2 percent reporting they had received rental assistance, 4 percent reporting they were waiting for a decision, and 11 percent reporting they had been denied.²⁹ The limited program participation rates and high reported denial rates indicate that many who could have benefited from rental assistance lacked the knowledge or ability to access it. Arkansas's slow rollout of rental assistance funds reflected a national trend, but Arkansas was notably one of seven states nationally that had spent less than 1 percent of its allocated funds by June 2021. Diane Yentel, president and chief executive officer of the National Low Income Housing Coalition, expressed frustration at that there were "many states and cities who are spending money abysmally and unacceptably slowly." She cited overly bureaucratic processes, understaffed program administrators, issues with technology and landlords' unwillingness to participate in the process as being causes of the delays.³⁰

As of the end of 2022, Arkansas had spent 85.82 percent of the Emergency Rental Assistance received for financial assistance, housing stability services, and administrative costs. Compared nationally, Arkansas was in the bottom 20 percent of states in percentages distributed.³¹

“many states and cities are spending money abysmally and unacceptably slowly.”

Diane Yentel, president and chief executive officer, National Low Income Housing Coalition



% of Total ERA Funds (ERA1 + ERA2) Expended by State Programs
National Low Income Housing Coalition (NLIHC)

The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

Arkansas's governor rejected federal dollars that could have helped alleviate rent debts

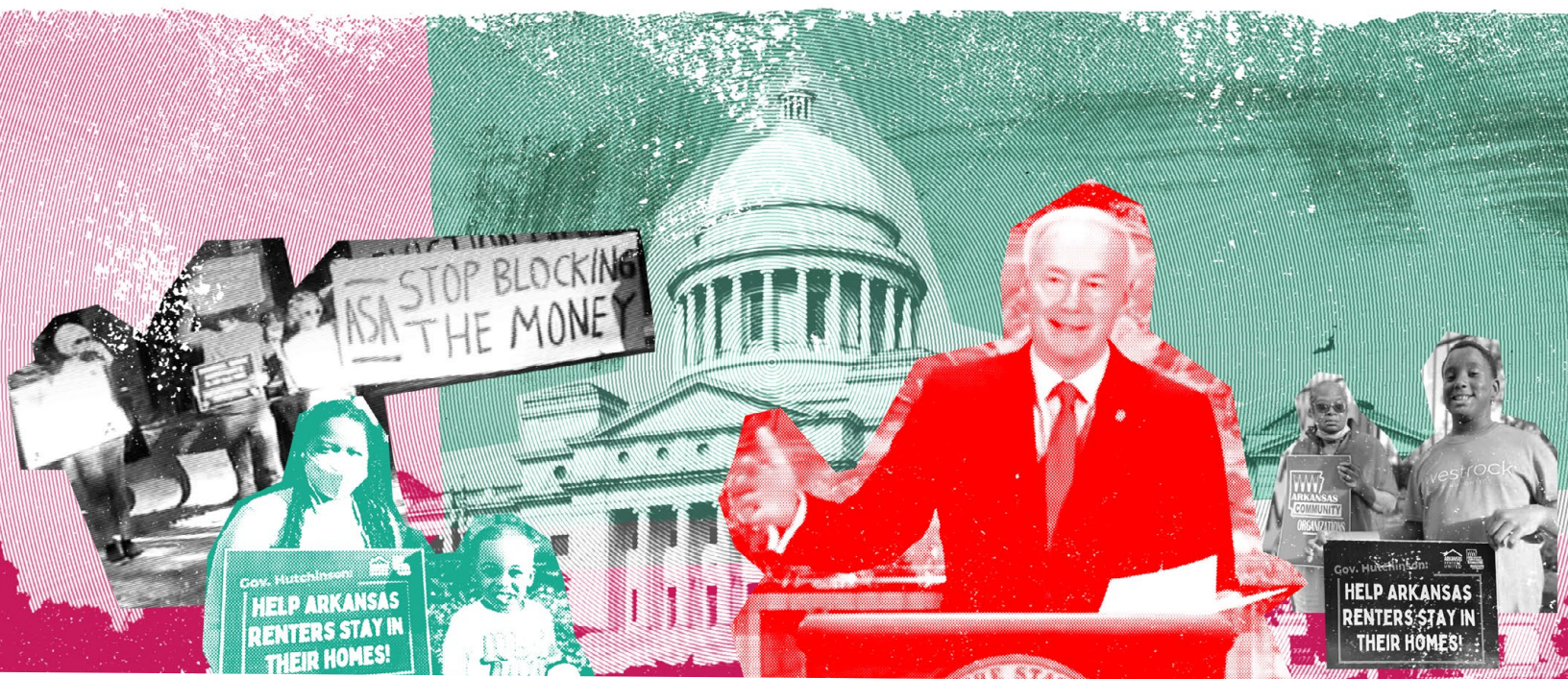
In May 2021, the federal government made an additional \$21.6 billion in rental assistance available to states. In April 2022, Arkansas closed its rental assistance program, and Governor Hutchinson rejected these funds. Arkansas was one of only two states to decline this assistance. The governor said Arkansas's economy had recovered and existing programs would meet tenants' needs.

While the governor claimed economic hardships were over, many tenants were still struggling. In April 2022, an estimated 15 percent of Arkansas renters owed past due rent. 12 percent of renters had no confidence they would be able to make upcoming rent payments. Of those behind on rent, 80 percent worried they were likely to face eviction in the coming two months. 40 percent of renters were two months behind on rent, with 15 percent being eight or more months behind on rent.³³

The additional federal dollars could have helped tenants rise out of rent debt. These funds would have compensated landlords who were owed rents. Instead, Governor Hutchinson allowed rent debts to continue to grow, harming Arkansas families and the Arkansas economy.

“ Our economy has returned. There are jobs aplenty out there, and we have existing programs in place for rental assistance that were pre-pandemic. We are back working to the same extent pre-pandemic, and we have the same opportunity moving up the economic ladder, so we need to move back to the same rental assistance we had before.”

- Arkansas Governor Asa Hutchinson³²



The Pandemic Made it Harder for Lots of Arkansans to Pay their Rent

In October 2022, Arkansas ranked 7th in an online ranking of “states with the most renters behind on rent payments.” One in five renters (20 percent) reported being behind on rent in 2022. This was up from 16 percent in 2021 and 14 percent in 2020.³⁴

As of February 23, 2022:

- Arkansas renters had an overall estimated rent debt of \$33,500,000.
- This amount belonged to approximately 31,000 households.
- 54,000 children lived in households behind on rent.
- The average rent debt per household was \$1,080.³⁵

Late fees and other costs kept tenants from catching up on their rent

When a tenant falls behind on rent, their landlord often charges late fees. While these fees can be a one-time fee, some landlords charge daily late fees of \$10-15 a day. These amounts mean a tenant who misses a rent payment may end up paying as much in late fees as they do in rent!³⁸

Landlords often assess a series of fees upon an evicted tenant, including lease termination fees, reletting fees, attorney’s fees, court costs, and “liquidated damages” (an amount listed in the tenant’s lease that will be charged if the lease term is not completed, often thousands of dollars). If the landlord sues the tenant in court, the court can issue a judgment and order the tenant’s wages be garnished to pay the judgment. Even if an eviction never went to court, many landlords send these eviction fees to third-party collection agencies and report these amounts to credit reporting agencies. Many landlords are unwilling to rent to tenants with outstanding rent debts, making it harder for these evicted tenants to find new housing.

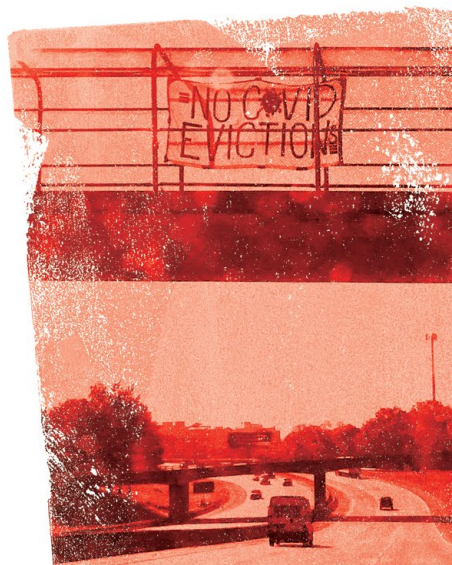
The National Consumer Law Center recently examined the various fees charged by landlords during application, tenancy, and after a lease termination or eviction. NCLC found that many tenants were charged “abusive junk fees” that made it hard for them to find affordable housing. In a recommendation written to the Federal Trade Commission, the NCLC and nearly forty partners recommended that the FTC “work with the Consumer Financial Protection Bureau (CFPB) and the Department of Housing and Urban Development (HUD) to investigate and prevent the imposition of these junk fees so that they do not contribute to the already growing financial burden that renters in this country face.”³⁹

“ I’ve communicated weekly with... management and now in eviction and fees they want me to pay double my rent amount. My lease is up at the end of October and I was told there is a moratorium on evictions. I will pay my rent I just can’t afford these... fees.”

-Pulaski County tenant³⁶

“ 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.”

- Washington County tenant³⁷



Arkansas Leaders did Little to Prevent Tenants from Evictions

As tenants fell behind on rent, increasing numbers of Arkansans were at risk of being evicted.

The federal government offered limited protections for Arkansas tenants

The CARES Act included a limited eviction moratorium that protected certain tenants from eviction during the moratorium period. Under the CARES Act, landlords of “covered dwellings” were prohibited from filing evictions for non-payment of rent. “Covered dwellings” included properties receiving federal housing subsidies and covered by federally backed mortgages. Landlords of covered dwellings could not charge late fees or penalties. The CARES Act eviction moratorium ended on July 25, 2020.

In September 2020, the Center for Disease Control issued a new eviction moratorium. This broader moratorium covered most rental properties. It prevented landlords from evicting tenants who were unable to pay their rent because of pandemic-related reasons. To qualify for the CDC protection, tenants had to sign a declaration and give a copy to their landlord. While the moratorium stopped evictions, it did not waive a tenant's rent obligations. The CDC moratorium ended on August 26, 2021.

Arkansas leaders did little to prevent evictions

Across the country, state and local governments enacted policies to safeguard renters. These protections included broader eviction moratoriums and restrictions on utility shutoffs. Many governments restricted landlords from charging late fees or lodging negative credit reports.

On March 16, 2020, Arkansas Renters United sent a letter urging Governor Asa Hutchinson to act to prevent homelessness and housing insecurity. In its letter, ARU appealed for an immediate eviction and foreclosure moratorium. On April 3, 2020, ARU followed up its letter with a “social distancing protest.” In late May, ARU joined other organizations in urging Governor Hutchinson to enact an eviction moratorium.

Governor Hutchinson disregarded calls for eviction prevention measures. He stated that a moratorium was unwarranted. The governor said he believed landlords would “work in a humanitarian fashion” with tenants affected by the pandemic.

On April 28th, the Arkansas Supreme Court issued an order on new filings for evictions for non-payment of rent. Under the order, landlords had to affirm their property was not a “covered dwelling” under the CARES Act moratorium. This order remained in effect until July 25, 2020.⁴³

“ I expect landlords to work in a humanitarian fashion. Now that the money is starting to flow a little bit more I hope that eases the burden some. But we know that they need to be patient. But at the same time the renters when they have the money they ought to be paying the rent and I expect that they are doing that. I'm relying on that trust relationship a little more and I want to see that work.”

**- Arkansas Governor Asa Hutchinson
April 29, 2020⁴²**

Arkansas Leaders did Little to Prevent Tenants from Evictions

Even efforts to reduce the compounding harm of pandemic-related evictions were rejected by Arkansas lawmakers. In 2021, Arkansas lawmakers Sen. Clarke Tucker and Rep. Ashley Hudson proposed a bill that would have allowed tenants who were evicted as the result of being adversely affected by the COVID-19 pandemic to ask that the eviction record be sealed. This bill would have reduced the harm on many tenants who had been evicted even though they were eligible for protection under the CDC moratorium. The bill failed after two lawmakers spoke against it, “saying it creates a problem for landlords who might be trying to find out whether a new tenant had failed to pay rent.”⁴⁵

The Eviction Lab at Princeton University monitored state eviction-prevention policies. The Eviction Lab assessed states’ eviction protections using a “Housing Policy Scorecard.” This scorecard looked at 22 potential protective measures adopted by states.

Out of 22 potential policy solutions, Arkansas only enacted the following three requirements:

- Until July 25, 2020, landlords filing new eviction actions had to certify the property was not a “covered dwelling” under the CARES Act.
- Utility providers were prohibited from disconnecting services due to nonpayment.
- Utility providers were required to waive fees to reconnect services.

Due to the state’s failure to enact any meaningful protections for tenants, Arkansas was one of only seven states to receive a 0.0 out of 5.0 score on the scorecard.⁴⁴

“...Arkansas was one of only seven states to receive a 0.0 out of 5.0 score...”



Eviction Filings Grew over the Pandemic

Methodology

Arkansas Community Institute reviewed court cases and data for all publicly available pandemic-related eviction cases. Individual cases were reviewed using the Arkansas Administrative Office of the Courts Public CourtConnect website. Additional case data was provided by the Administrative Office of the Courts. Most circuit courts report unlawful detainer data, but only a few district courts report their case data. Because of this, this report likely undercounts the true number of evictions, especially those filed in district courts.

No data exists on the number of tenants who moved out prior to a court filing, meaning that the numbers discussed below underestimate the true numbers of tenants who were displaced by the COVID-19 pandemic.

Unlawful Detainer filings increased throughout the pandemic

Unlawful detainer filings slowed only during the first few months of the pandemic. In 2019, landlords filed an average of 460 unlawful detainers monthly. In March 2020, evictions slowed mid-month and landlords filed 360 unlawful detainer actions. During the months that the Supreme Court per curiam order was in effect, unlawful detainer filings slowed. Filing rates returned to pre-pandemic levels by September 2020.

In 2021, landlords filed an average of 490 unlawful detainer cases monthly. The rate of filing increased throughout the year. From September 2020 to August 2021, the CDC moratorium protected many tenants from eviction for nonpayment of rent. During this period, most all unlawful detainer cases filed were for non-payment. The CDC moratorium ended in August 2021. In September 2021, landlords filed 695 unlawful detainer cases.

By 2022, landlords were filing an average of 696 unlawful detainer actions a month. The filing rate increased over the year. During the second half of 2022, an average of 754 unlawful detainers were filed monthly.

Landlord Snapshot

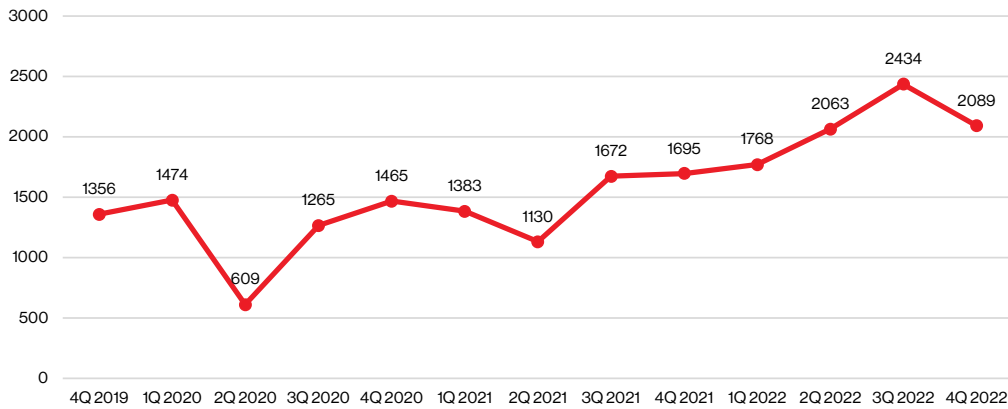
Who Was Filing Unlawful Detainers?

In Pulaski County, nearly 10 percent of the unlawful detainers filed in the first year of the pandemic were filed against tenants living in units managed by Lindsey Management, one of the state's largest property management company. Many evictions were also filed at properties with histories of poor housing conditions and lack of code compliance, including three that Arkansas Renters United has had organized tenant membership over the years (Bradford Estates, Big Country Chateau, and the Villas on 65th).



Eviction Filings Grew over the Pandemic

Total Unlawful Detainer Filings by Quarter



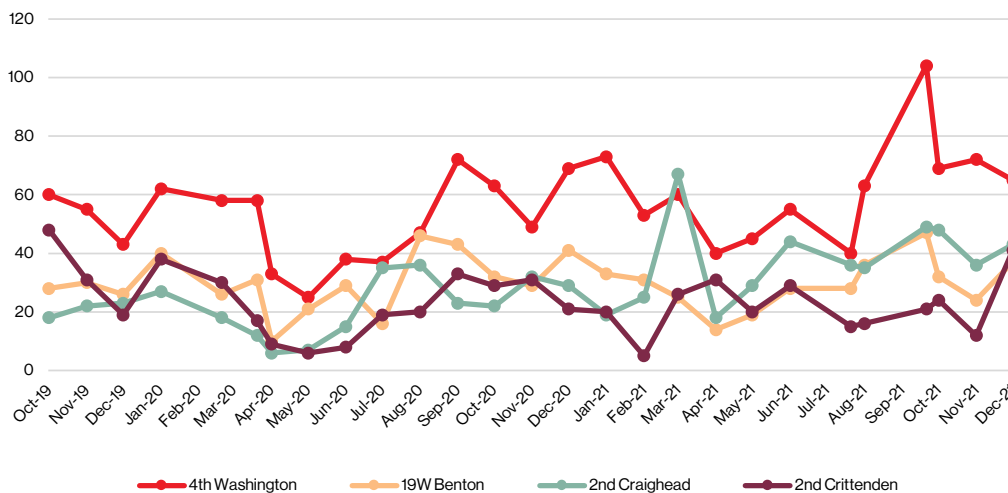
Across Counties, Unlawful Detainer Filing Rates Kept Increasing

Pulaski County, the state's most populous county, has the state's largest number of unlawful detainer filings. In 2022, Pulaski County unlawful detainer cases were 41% of all unlawful detainer cases filed statewide.

Pulaski County's unlawful detainer filings reflected filings statewide. Pulaski County saw a sharp drop in in unlawful detainer filings in March through August of 2020, with filings returning to at or above historic averages in September 2020. Pulaski County saw a decrease in filings during mid-2021, after which filings began increasing and continue to rise.

Washington, Benton, Craighead, Crittenden, and Faulkner County were the five counties with the next highest rates of eviction filings statewide. Unlawful detainer filings in these counties similarly decreased in the spring and summer of 2020 before returning to historical average numbers of filings that increased over time.

Unlawful Detainer Filings in Other Counties



Courts Continued to Issue Writs of Possession

In Washington and Pulaski County, courts issued writs of possession for approximately half of all unlawful detainer cases filed during the first year of the pandemic. Specifically, writs were issued in 852 of the 1895 cases filed in Pulaski County (45 percent), and in 299 of the 603 cases filed in Washington County (50 percent). In Benton County, these numbers were lower, with writs being issued on only one-third of all unlawful detainer cases filed during that period (115 writs issued on 349 cases).

In Pulaski County, the issuance of writs of possession stopped during the first months of the pandemic then slowed during the summer of 2020 before continuing to rise over the next year. Over 1,000 writs were issued to evict tenants during 2021.

Most Tenants were Evicted without a Hearing or Legal Assistance

Tenants rarely filed objections in unlawful detainer cases

After being served with the notice of intent to issue a writ of possession, tenants have five days (not including Sundays and holidays) to file an objection. If no objection is filed, the court can issue a writ of possession and the tenant is evicted.

In 2020, only one out of every five tenants in an unlawful detainer case filed an objection.⁴⁶ Many times, tenants failed to object because they were unaware of the rights and protections available to them.

Often, tenants report being confused by the large stack of papers they are served with. The top paper they are served with is often a summons, which tells the tenant they have thirty days to answer to the landlord's lawsuit. It is not until page three of the packet that the tenant is notified they have five days to file an objection or be evicted. Many tenants incorrectly believe they will be given a hearing date to explain their situation before an eviction occurs. As part of its eviction prevention project, Arkansas Community Organizations contacted tenants listed in court pleadings to inform them of the five-day period and the process for objecting.

The pandemic caused additional barriers for tenants trying to file an objection. Some tenants were unable to leave their homes due to illnesses, childcare obligations, and quarantines. Others faced transportation challenges or found local community agencies closed. In Pulaski County, Arkansas Community Organizations assisted these tenants by delivering their objections to the courthouse until the court clerk's office said that they would not accept objections unless the tenant delivered it themselves.

Even when tenants objected, they didn't know how to invoke available protections.

For over a year, the CDC moratorium protected many tenants from eviction for non-payment of rent. To invoke the CDC moratorium protections, a tenant had to sign a CDC declaration form and give it to their landlord.

“Many times, tenants failed to object because they were unaware of the rights and protections available to them.”

Most Tenants were Evicted without a Hearing or Legal Assistance

Many tenants did not know about the CDC protections or how to use them. In a review of fall 2020 unlawful detainer filings, Arkansans for Stronger Communities found that many tenants who might have been eligible for CDC protections did not complete the steps needed to invoke the protections.

In September 2020, 34.3 percent tenants who filed a written objection alleged facts that indicated they might have been eligible for CDC protections, but did not file or submit a CDC declaration. For later months, the number of eligible tenants who did not properly invoke protections were as follows: October: 45.5 percent (36 out of 79), November: 25.8 percent (16 out of 62), and December 45 percent (23 out of 51).⁴⁷

Tenants were Rarely Represented by Counsel in Eviction Cases

Legal representation can often lead to better outcomes for tenants facing evictions. However, in the three Arkansas counties with the highest rates of unlawful detainer filings, tenants were rarely represented by counsel. In Benton County, only one percent of tenants facing evictions in unlawful detainer cases were represented by an attorney. This number was only slightly higher in Pulaski County, where three percent of tenants in unlawful detainer cases were represented by counsel.

In Washington County, nearly ten percent of tenants in unlawful detainer cases were represented by counsel. In these cases, courts issued writs of possession at much lower rates than overall in Washington County. While Washington County judges issued writs of possession in 50% of all cases filed during the first year of the pandemic, writs of possession were only issued in 26% of cases where the tenant was represented by an attorney.

“...in the three Arkansas counties with the highest rates of unlawful detainer filings, tenants were rarely represented by counsel.”

	Total Cases Filed	# of Cases where Defendant had Attorney	Writs Issued in cases with Attorneys
Benton	349	3 (1%)	1 (33%)
Pulaski	1895	62 (3%)	25 (40%)
Washington	603	54 (9%)	14 (26%)

Eviction Cases Impacted More Female and BIPOC Arkansans

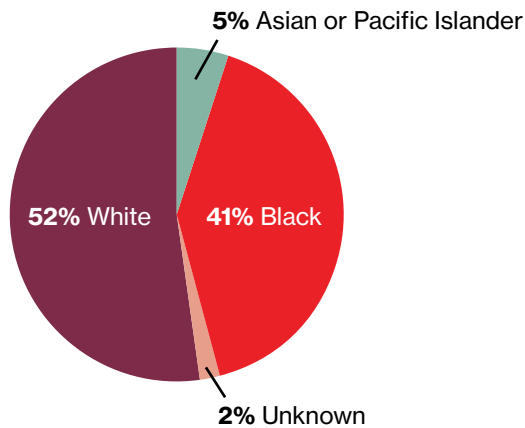
Tenants in Unlawful Detainer cases were Disproportionately People of Color

The Arkansas judiciary collects racial and gender data on case parties at the closing of a case. Between January 2020 and August 2021, only 13 percent of the cases filed reflect racial or gender data. In the cases where race was reported, 40.6 percent of defendants in unlawful detainer cases were Black. African Americans make up only 15 percent of

Eviction Cases Impacted More Female and BIPOC Arkansans

Arkansas's population. Despite the small sample size, this data suggests that Black Arkansans were disproportionately affected by unlawful detainer filings.

Unlawful Detainers by Race



Washington County reported the race and gender of over 30 percent of tenants facing evictions. Of those reported, 15 percent of tenants were Asian or Pacific Islanders, 22 percent were Black, and 58 percent were white. The overall population of Washington County is 86 percent white, 4 percent Black, and 6 percent Asian or Pacific Islander. Despite its small sample size, this data suggests that Asian / Pacific Islander and Black residents faced evictions at disparately higher rates in Washington County.

Craighead County also reported race or gender data in 30 percent of its unlawful detainer cases. Of those cases reported, 52 percent of tenants facing eviction were Black and 44 percent were white. Black residents make up only 17.5 percent of the overall population in Craighead County.

Data is unavailable on the number of Latinx tenants affected by evictions during this period.

Unlawful Detainer Defendants were Disproportionately Female

In cases where gender was reported, 56 percent of Washington County defendants and 58 percent of Craighead County defendants were female. Race and gender were reported in only 10 percent of cases in Pulaski County and in only one case in Benton County.

Arkansans for Stronger Communities, a nonprofit public benefit corporation, analyzed all unlawful detainer cases in the second through fourth quarters of 2020. Their analysis found that during this period, individual female tenants were named defendants in unlawful detainer cases at a much higher rate than individual male tenants or joint male and female tenants. 52 percent of defendants in all eviction cases were female, compared to 30 percent being males and 18 percent including both male and female defendants.⁴⁸

Failure to Vacate Prosecutions Also Disparately Impacted Female and BIPOC Tenants Court data indicates that at least 338 individuals were prosecuted for failure to pay rent or vacate during the first year and a half of the pandemic. As most district courts do

“...Black Arkansans were disproportionately affected by unlawful detainer filings.”

Eviction Cases Impacted More Female and BIPOC Arkansans

not report their cases through the CourtConnect system, this number was likely much higher. Of all cases:

- 80 percent of defendants were white (273)
- 15 percent of defendants were Black/African American (51)
- 41 percent of defendants were male (138) and 56 percent were female (190).
- 99 defendants plead or were found guilty of the crime of failure to vacate.
- 230 occurred in Garland County, 41 in Hot Spring County, and 32 in Polk County.
- 161 resulted in charges being dismissed (either because the tenant moved out or the landlord requested the dismissal), 101 resulted in defendants pleading or being found guilty, and 28 cases were dismissed.

From March to December 2020, over one hundred failure to vacate cases were reported in Court Connect. Of these cases, judges ordered tenants to be arrested (rather than issued summonses or citations) in 6 percent of cases. Tenants are jailed in those cases until they are released on bond or released on their own recognizance. In 28 percent of cases, tenants failed to appear at a hearing for their case, either the initial arraignment, subsequent hearing, or trial. In cases where tenants did not appear, judges often issued a failure to appear warrant for the tenant's arrest, requiring a bond of \$600-\$1,000.

The failure to vacate process does not give a judge the authority to evict a tenant. Nonetheless, docket entries indicate that regardless of a tenant's plea, the tenant is encouraged or ordered to leave the property before a trial date.

At a final hearing, Garland County Judges often issue a no contact order between the tenant and the property, meaning that the tenant cannot come near their former home. If the no contact order is violated, the former tenant can face additional criminal charges. In one case, a tenant appeared and reported he had moved out of the unit, and charges were dismissed because the landlord did not appear for the hearing. Nonetheless, the Court issued a no contact order between the tenant and the property, over the tenant's objection because he was employed as a maintenance man at the property. The Court told the defendant the landlord would have to call and ask to have the no contact order revoked, which did not occur. As a result, the tenant not only lost his housing, he had to give up his job in order to avoid additional criminal charges.

Court dockets also indicate tenants were ordered into payment plans with landlords, even in cases where the charges are dismissed, and some entries indicate that tenants' drivers' licenses may have been suspended related to these cases.

“...female tenants were named defendants in unlawful detainer cases at a much higher rate.”

Renter Snapshot

Victory!

The county reporting the second highest rate of failure to vacate prosecutions was Hot Spring County. In September 2021, tenants Cynthia and Terry Easley filed a federal lawsuit against the Hot Spring County sheriff and prosecutor after they were charged with failure to vacate when they fell behind on their rent after the water was shut off to their property due to disrepair. In their lawsuit, the Easleys argued that the criminal law was unconstitutional because it criminalized poverty and allowed for the imposition of excessive fees. The Easley's case was dismissed after the couple moved from the state. As a result of this case, the Hot Spring County prosecutor stopped prosecuting tenants criminally for non-payment of rent.⁴⁹

Evictions Have Long Lasting Negative Effects on Tenants

Evictions may have broad collateral impacts on tenants and their families. Most immediately, an eviction amplifies the tenant's financial crisis as unexpected financial costs and fees emerge. After being evicted, the tenant (who was unable to pay at least the current month's rent) now must come up with the funds to move and secure a new home. Moving often requires application fees, first and last month's rent, and security deposits for the unit and the utilities.

Along with the costs of moving, evicted tenants often end up owing large amounts for rent debt and costs and fees related to the eviction. In private evictions, landlords often send tenants to collection agencies over not only past due rent, but multiple other fees including late fees and rerenting fees. Many of those who fell behind on rent were unable to address their debts without neglecting other necessary expenses such as food, medicine, or utilities.

This massive rent debt haunts evicted tenants as they attempt to find and maintain stable housing. These tenants experience collection activities and adverse credit reporting. In civil cases, a landlord's judgment against a tenant for a rent debt can allow them to garnish a tenant's wages, bank account, or property. In criminal cases, tenants face additional criminal charges and jail time if they fail to pay their rent debt. In all cases, evictions create a court record that leads future landlords to deny them housing.

Renter Snapshot

September's Story

Throughout the COVID-19 pandemic, Arkansas Renters United worked with many tenants who fell behind on their rent and struggled to catch up and pay late fees. One of these tenants was September. Here is her story:

In early 2020, September got very sick and later got COVID. "Because Covid was so new, I was the first person at my work to catch it. It did nearly permanent damage to my kidney and liver. They fired me when I tried to go back to work, and I lost my income," she said.

September made all her rent payments but was evicted over late fees. She tried to find rental assistance and applied for assistance from three separate housing authorities, but she was unable to find help. September completed a CDC declaration and submitted it to her landlord, and she distributed copies of the CDC information to her neighbors.

The judge, who September says is also a landlord, refused to recognize the CDC moratorium and ordered September evicted. The eviction case was filed more than once, which made it appear like September had been evicted more than one.

After the eviction, September became homeless and struggled to find new housing. September said the eviction "made it impossible to rent and made me homeless for 7 months. If it wasn't for my church, I would never have gotten out of that hole. I lost everything I owned. I lost all the videos of my children, their baby books, jewelry, and every valuable possession that mattered to me.

According to September, the eviction took an immeasurable toll: "A lot of people don't have windfalls, inheritances, or win jackpots. My only windfall in life is when I get a tax return. When you don't have family, friends, or anyone else to turn to. When you don't have anyone who can or will help you, it destroys you when you're evicted. It devastates you completely. You have no self esteem, self worth, you lose your valuables, you feel humiliated, and it breaks your heart. To be evicted is to destroy a person to their soul. I cannot tell how much it hurts you."

"I am never late on my rent. I work hard at two jobs and it's still difficult to keep up with bills. I don't know if I would survive another eviction. Most people who have ever been through it know that you would rather be dead than go through that again."

Evictions Have Long Lasting Negative Effects on Tenants

Evictions disrupt many aspects of tenants' lives and can impact their jobs, their children's schools, medical care, and access to transportation. According to the researchers at Princeton University's Eviction Lab, "[t]he evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it."⁵⁰ During the pandemic, evictions also presented a public health concern as evicted tenants could no longer shelter in place to prevent the spread of diseases. Evicted tenants were often forced to double up in other family member's homes or in shelters, impacting social distancing efforts.

Recommendations

Based on the findings of this report, the Arkansas Community Institute offers the following recommendations to improve Arkansas's eviction processes and reduce the impact of evictions, especially on the state's most vulnerable residents:

1. Amend eviction laws

Arkansas's eviction laws should be amended to provide procedural protections for tenants and decrease the prevalence of evictions. Arkansas lawmakers should implement the following changes:

- Arkansas's archaic failure to vacate law, which allows delinquent tenants to be criminally prosecuted, should be abolished.
- Tenants should be given the "right to cure" a past due rent payment before their landlord begins an eviction case in court.
- After an eviction is filed, tenants should be given 30 days' notice of the eviction action and the right to counsel during the eviction proceedings.

2. Increase data collection

All Arkansas courts should collect and report eviction-related data including demographic data on tenants facing eviction actions (race, ethnicity, and gender), as well as case outcomes including evictions and amounts awarded to landlords. Data should be made available online.

3. Improve court proceedings

Courts can improve eviction procedures and decrease the number and impact of evictions by making the following changes:

- Courts should offer alternative dispute resolution options to allow landlords and tenants to work toward mutually agreeable resolutions.
- Court issued eviction notices should state, in plain language, the deadlines for responding, the process for responding, and the consequences for not responding.
- Eviction notices should include resources to help tenants who are facing evictions, including legal service providers and community resources.

“[t]he evidence strongly indicates that eviction is not just a condition of poverty, it is a cause of it.”

*Princeton University's
Eviction Lab*

Recommendations

4. Continue rental assistance programs

Arkansas should continue to build a system that provides rental assistance to tenants who have fallen behind on their rent or may fall behind soon due to circumstances outside their control. These funds ensure tenants avoid homelessness and landlords have access to funds to pay expenses related to the unit.

- Rental assistance programs should adopt practices to make funds accessible to meet urgent needs in a timely manner, such as providing simple, plain language applications and allowing tenant self-attestations in cases where documentation is unavailable.

5. Ban excessive fees

Arkansas lawmakers should enact policies to ensure that fees charged to tenants are reasonable and transparent throughout the rental process.

- Housing providers should be required to clearly disclose fees to applicants and tenants, including application fees, rental fees, and move-out fees. Leases should be required to clearly state the total amount that tenants will be required to pay at each stage.
- Allowable fees should be restricted to reasonable amounts reflecting the actual costs and expenses incurred by housing providers. Excessive and compounding fees should be banned.



Footnotes

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