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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No. R-22-0004
PETITION TO AMEND RULES	)	
OF PROCEDURE FOR	)	
EVICTON ACTIONS 4(d) and 9	)	

BACKGROUND

Various legal aid organizations filed a Petition to amend the Arizona Rules of Procedure for Eviction Actions (RPEA) to allow tenants who have paid residential eviction judgments to vacate them. Doing so would essentially mask an eviction action if the judgment has been paid in full. Many of the issues surrounding these proposed amendments are questions of policy. We take no position on policy issues; we do desire to provide some feedback on the proposed language and on the structure of the suggested amendments. These comments are filed on behalf of the Justice of the Peace Bench in Maricopa County.

I.

A LANDLORD IS ENTITLED TO REGAIN POSSESSION EVEN IF THE JUDGMENT IS PAID IN FULL.

Arizona is a “pay and stay” jurisdiction. A tenant can pay all of the rent and any late fees any time before the lawsuit is filed and avoid eviction.¹ If the eviction action has been filed, then the tenant must pay all past due rent, late fees, attorney’s fees and court costs.² If the tenant does so any time before a judgment is entered, he or she can also avoid eviction. However, after a judgment has been entered, reinstatement of the lease is generally solely in the landlord’s discretion.³

A residential eviction judgment has two separate and distinct parts. Unlike other civil judgments that provide only for the award of monetary relief, a residential eviction judgment also awards the landlord possession of the rental property.⁴

¹ A.R.S. § 33-1368(B); RAJI (Civil) Residential Eviction Actions 6, Tenant’s Right to Reinstate the Lease for Non-Payment of Rent (2013). A landlord can also obtain a judgment for rent, costs and attorney’s fees where possession of the dwelling was returned to landlord after the eviction was filed, but before the judgment was signed. *Keenen v. Biles*, 17 P.3d 111, 113 (Ariz. Ct. App. 2001).

² A.R.S. § 33-1368(B).

³ *Id.* Gerald A. Williams, *Representing Residential Tenants in Eviction Actions*, 48 Arizona Attorney, 12 (November 2011); RAJI (Civil) Residential Eviction Actions 4, Basis for Eviction (2013).

⁴ A.R.S. § 33-1377. RPEA 13(c)(1).

The term “satisfaction of judgment” in this context is somewhat confusing because a landlord can still file a writ of restitution and obtain possession even if the tenant pays the judgment in full. Likewise, an eviction judgment is not satisfied solely because a tenant surrendered possession.

II.

POLICYMAKERS SHOULD CONSIDER WHETHER ONLY JUDGMENTS IN NONPAYMENT OF RENT CASES SHOULD BE VACATED

The COVID-19 pandemic, and the subsequent eviction moratoriums and government rental assistance payments, focused nationwide attention on residential landlord and tenant issues.⁵ Many tenants, through no fault of their own, had difficulty paying rent. This is the group the Petitioners are seeking to help. However, the language in the Petition is so broad that it would cover every kind of residential eviction action.

In Maricopa County, landlords seek eviction for nonpayment of rent far more than they do for any other reason. Approximately 90% of our eviction

⁵ Gerald A. Williams & Charles Adornetto, *Pandemic Residential Eviction Moratoriums: An Analysis of Judicial Implementation and Recommendations for the Future*, -- Tex. Tech L. Rev. -- (Scheduled to be published in June 2022); Gerald A. Williams & Miles Keegan, *Justices of the Peace, Pandemics and Evictions*, 57 Arizona Attorney 24 (Feb. 2021); Daniel W. Bernal, *Pleadings in a Pandemic: The Role, Regulation, and Redesign of Eviction Court Documents*, 73 Okla. L. Rev. 573 (Summer 2021)(Suggests English only eviction documents prejudiced Spanish speaking tenants in Arizona, especially in Pima County).

cases allege nonpayment of rent as the primary basis. However, there are also evictions based on allegations of material health and safety violations, providing false information on a rental application, unauthorized occupants, or refusing to leave after the lease has expired. More significantly, there are cases where a landlord is seeking immediate possession of the residence due to one of the tenants allegedly committing a crime (e.g. domestic violence, assaulting a management representative or another tenant, misconduct involving fire or a firearm).⁶ Accordingly, there may be very valid reasons for future landlords to be put on notice of some of these issues with potential future tenants. Perhaps judges should only be authorized to vacate judgments in nonpayment of rent cases.

III.

SOME OF THE LANGUAGE IN THE PROPOSED AMENDMENTS IS PROBLEMATIC

The Petitioners' suggested language is somewhat ambiguous, uses terms that are generally not associated with eviction actions in Arizona, and

⁶ Eviction actions seeking immediate possession often do not include a rent claim. The only monetary component may be court costs and any attorney's fees. Thus, a defendant being evicted for brandishing a handgun and threatening to kill the property manager could monetarily "satisfy" the judgment by having the constable forcibly remove him from the property and then paying the attorney's fees and costs.

contains language too broad to provide meaningful guidance. The suggested language allows a court to vacate a judgment if:

The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or any other reason justifying relief.

There is no need to establish a system requiring a Motion to Satisfy as a prerequisite to submitting a Motion to Vacate. If a party believes the facts of the case warrant a judgment be vacated, only one motion should be required. There should be no need to apply to have a judgment satisfied and then also vacated. There are also arguably a few other concerns with the proposed language.

Eviction judgments are neither “released” nor “discharged.” However, more problematic is the proposed standard, which essentially states that a judgment could be vacated for any reason it might “no longer be equitable” or for “any other reason.” Although it is based on language in other rules, this is basically the same as having no standard. A balancing test between the interests of the former tenant and potential future landlords may be more

objective.⁷ Whatever the standard, we recommend that the language be inserted in RPEA 15, Relief from Judgment or Order, and not RPEA 9, Motions.

CONCLUSION

We respectfully offer this feedback for your consideration. We have suggested some alternative language that would meet the Petitioners' goals while also providing for additional clarity and consistency.

RESPECTFULLY SUBMITTED, this 14th day of April 2022.

/s/ Anna Huberman
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Justice Court Administration
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Attachment:
Appendix

⁷ A Minnesota law allows courts to “order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law ... that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.” Minn. Stat. Ann. § 484.014 (2010); Frances Mock, *Blacklisted: An Argument for Eviction Record Suppression in South Carolina in Response to the Housing Crisis*, 15 Charleston L. Rev. 529 (Winter 2021).

APPENDIX
(Proposed additions reflected by language in red)

Rule 9. Motions.

(No change).

Rule 15. Relief from Judgment or Order

e. Motion to Vacate Judgment. Any party may file a motion requesting the court to vacate a judgment if:

[(1) The judgment was granted based on a notice for nonpayment of rent; and]⁸

(2) The judgment has been satisfied as defined in Rule 18; and

(3) If a current or former tenant is the party requesting relief, the court concludes the vacating of the judgment is appropriate when the interests of the tenant are weighed against the interests of potential future landlords being aware of the tenant's rental history.

Rule 18. Definitions

i. "Rental agreement" shall include, but not be limited to, oral and written rental agreements and leases.

j. "Satisfied Judgment" means:

(1) The tenant is no longer in possession of the residence and the amount of the judgment has been paid in full; or

(2) The judgment has been paid in full and the parties have entered into a new rental agreement after the date of the judgment.

k. "Special detainer" refers to the procedures set forth at A.R.S. §§ 33-1377 and 33-1485.

⁸ If a policy decision is made to allow only nonpayment of rent cases to be vacated, this language is suggested. Another option would be to place an additional limit as follows, "The judgment was based on a notice for nonpayment of rent and was paid in full or in part with rental assistance funds."