Utility of the Landlord-Tenant Act
A Compendium on
Essential Services and Utilities

Note: Much of the text below is language culled from the landlord-tenant act. So, it may sound a bit dry and stilted, but better that than being of questionable accuracy. Thank you for your understanding. And your careful attention.

Some dislike it hot in Arizona. Some dislike it cold in Arizona. But everyone gets hot and bothered - or frosty - when delivered the short end of the utilities stick.

There are myriad ways a tenant can get shafted. Billings can be vague and excessive. Equipment faulty or non-operational. Services inadequate, absent or dangerous.

The subject of utility services can be considered both contractually, as well as through landlord-tenant mandates. It is widely addressed in the landlord-tenant act, both directly and implicitly. Some of the applicable statutes include A.R.S. §§ 33-1314.01, 33-1323, 33-1324, 33-1361, 33-1362, 33-1363, 33-1364, 33-1367, 33-1368, 33-1374, 33-1381 and 33-1901. Quite a confusing jigsaw puzzle of tenants' rights and obligations.

A. And the State said, let there be . . .

In the beginning, a landlord must provide all utilities and services specified in the lease agreement, and the property must be delivered to the tenant in compliance with both the rental agreement and A.R.S. § 33-1324.

A.R.S. §§ 33-1323 and 33-1364(B)

All electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances must be maintained in good and safe working order and condition. Running water must be supplied and reasonable amounts of hot water at all times, reasonable heat and reasonable air-conditioning or cooling, as seasonably required and when equipment is installed.

A.R.S. §§ 33-1324(A)(4) and 33-1324(A)(6)

The premises must be fit and habitable, and in compliance with local codes affecting health and safety.

A.R.S. §§ 33-1324(A)(1) and 33-1324(A)(2)

Some services are deemed essential. They include, but are not necessarily limited to, running water, gas or electrical services, reasonable amounts of hot water, heat, and air-conditioning or cooling when installed.

A.R.S. § 33-1364

If the tenant only recently moved in and the landlord, in violation of A.R.S. § 33-1324, does not provide the required utilities, it can be construed as a failure to provide "constructive" possession.

A.R.S. § 33-1362

The definition of slum property includes lack of potable water, adequate sanitation facilities, adequate water or waste pipe connections, hazardous electrical systems or gas connections.

A.R.S. §§ 33-1901(3)(C) and 33-1901(3)(D)

Finally, every rental involves the implied warranty of habitability, which, as public policy, supplements provisions of the landlord-tenant act.

A.R.S. § 33-1303

On that basis, one might make the argument that failure to adequately supply utilities serves as "constructive eviction."

B. Deficiencies and Cures

Wrongful failure to supply utilities is a serious matter, but the causes have a wide range. Sometimes landlords intentionally interrupt services, either physically or by closing an account with a utility provider. Other times landlords can't, or don't, pay the utility provider bills, and service is consequently disconnected. Often equipment is faulty, either providing inadequate service, or it breaks completely, causing a full shutoff. All of this is intolerable, and the law provides remedies for tenants.

1. With Intent

Legal

A landlord may discontinue utility services following the day that the tenant is evicted and legally removed from the premises. A landlord can have the utility company conduct the disconnection, but may not on his own physically perform the disconnection, such as by breaking an electrical connection solely operated by the service provider.

A.R.S. § 33-1368(D)

A landlord may temporarily discontinue utility services as necessary to make needed repairs.

A.R.S. § 33-1364(C)

Not Legal

However, a landlord may not take possession through willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential services to the tenant, except as per the landlord-tenant act. A.R.S. § 33-1374

A landlord may not retaliate by decreasing services after the tenant has: complained to a governmental agency charged with enforcing code violations; complained to the landlord about violations under A.R.S. § 33-1324; or organized or become a member of a tenants' union or similar organization.

A.R.S. § 33-1381

• See the article on Protection From Retaliation.

When a landlord's failure to supply essential services has been challenged by a tenant who procured substitute housing, and is thereby relieved of paying rent for the duration, the fact that the landlord's conduct is deliberate further entitles the tenant.

A.R.S. § 33-1364(F)

• See the article on Stopping the Rent Cycle.

A landlord's willful diminution of service by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, permits the tenant to: recover possession or terminate the rental agreement; AND recover damages of twice the rent or twice the actual damages suffered; and, if opting to terminate, get back the security deposit.

A.R.S. § 33-1367

Also, the tenant may give notice of noncompliance and thereupon terminate if not remedied, sue for damages, or sue for injunctive relief.

A.R.S. §§ 33-1361(A) and 33-1361(B)

2. Intentional or Not, Here I Come (or Go)
Alternatively, upon reasonable notice to the landlord who has failed to provide essential services, a tenant may either:
*Procure reasonable amounts of hot water, running water, heat and essential service during the period of the landlord's noncompliance, and then deduct the cost from the rent. This precludes the right to repair (which would be covered under the self-help remedy, A.R.S. § 33-1363.

A.R.S. § 33-1364(H)
Although unstated in the statute, my interpretation is that this does not permit a tenant to purchase a replacement appliance, such as an air-conditioner or heater. It would by implication, however, allow a tenant to rent an appliance. The statute also specifically permits a tenant to pay, either on his own or in conjunction with other tenants, the landlord's unpaid utility bill that brought about the utilities cutoff, and then deduct the payments from the rent.

A.R.S. § 33-1364(A)(1)
or
*Sue the landlord for damages based on the reduced rental value of the rental dwelling.

A.R.S. § 33-1364(A)(2)
or
*Temporarily relocate to substitute housing for the duration of the landlord's noncompliance, and during that period be excused from paying rent on a pro-rata basis. The amount would be deducted from the next monthly payment. How is that calculated? Let's say a tenant moves out for seven days in July due to no cooling, so the calculation would be seven out of (divided by) 31 days as a proportion of (multiplied by) the periodic monthly rent. If the relocation was to a relative's house and consequently there were no lodging expenses, this would equate to a deduction of rent at no cost to the tenant. However, if the tenant had to move to, for example, a motel, and the cost exceeded the daily rent, then the statute allows deduction up to 25% more than the daily rent, so long as proof of payment for such substitute housing is presented to the landlord.

A.R.S. § 33-1364(A)(3)
• See article on Stopping the Rent Cycle.
What constitutes "reasonable notice" in A.R.S. § 33-1364(A) is undefined. I would suspect 48 hours would suffice, given that the issues being addressed are construed to be essential. Although the statute does not mandate written notice, nevertheless it is a good idea, especially given the inherent anti-tenant bias of the justice courts. Notice delivery options should be irrefutable: certified mail or, preferably, hand-delivery by a process server. If you cannot get in touch with the actual landlord or agent, then deliver the notices to the owner's statutory agent, who should be identifiable through the applicable county assessor, the Arizona Corporation Commission or the Arizona Secretary of State. Still not found? See A.R.S. § 33-1309(B).
Limitation

Take note that, as to termination, recovery of damages or injunctive relief underA.R.S. § 33-1361, or conducting repairs under A.R.S. § 33-1363, these cannot be followed if the tenant is simultaneously exercising rights under A.R.S. § 33-1364, which specifically designates those provisions as mutually exclusive.

A.R.S. §§ 33-1364(G) and 33-1364(H)

Monetary Damages
Notwithstanding the preceding, monetary damages can be recovered per A.R.S. § 33-1367 or for those damages suffered before the tenant took remedial action under A.R.S. § 33-1364.

A.R.S. §§ 33-1364(D) and 33-1364(G)
If the tenant only recently moved in (i.e. within the past two months), and it can be shown that the landlord's failure to deliver possession -- in this case, "constructive" possession -- is willful and in bad faith, then the tenant could have a claim for not more than two months' periodic rent or twice the actual damages suffered, whichever is greater.

A.R.S. § 33-1362(C)
I recommend a paper trail to establish the landlord's culpability.
If the landlord's decrease of utility services is retaliatory, then the tenant is entitled to recover damages of not more than two months' rent or twice the actual damages suffered.

A.R.S. §§ 33-1367 and 33-1381
3. If It's Broke, Fix It
Many times utility services are interrupted because appliances or connections are faulty. They may be deteriorated, aged or just broken. Tenants have several scenarios for remedy.
*Provide a notice demanding remedy, after which the tenant may sue for injunctive relief. This means that the court would order the landlord to correct the problem. The type of notice for injunctive relief is not clearly specified, but in another subsection the governing statute, A.R.S. § 33-1361, suggests a 5-day notice for health/safety matters, and a 10-day notice for lease breaches. To be conservative, I would suggest both, simultaneously delivered. Except for limited circumstances, such as protective orders, the justice courts do not have jurisdiction for injunctive relief, and therefore the legal filings must be in superior court. As there are several applicable steps, such as a temporary restraining order, it is recommended to secure attorney representation to pursue this option, especially as the landlord is likely to have his own attorney.

A.R.S. § 33-1361(B)
*Under A.R.S. § 33-1363, upon having provided the requisite notice to the landlord, a tenant may conduct a small repair to the premises. This is only for actual repairs, and is limited to either one-half of the monthly rent, or $299.99, whichever is the greater amount. It is a one-time deal during a given month, requiring new notice each month. The repair cost is deducted off the next rental payment. There are numerous restrictions regarding exercise of this clause, including that the notice provides the landlord ten days to first remedy the matter (except for emergencies), the repair is conducted by a licensed contractor, an itemized statement is presented to the landlord, and a waiver of lien is presented to the landlord.

A.R.S. § 33-1363
• See the article on Making Repairs To Your Dwelling.
A landlord cannot evade his duty to maintain and repair, including facilities and appliances related to provision of utilities. A rental agreement may not permit the receipt of rent free of the landlord's obligation to comply with A.R.S. § 33-1324(A).

A.R.S. § 33-1316
Moreover, a rental agreement cannot provide that a tenant waive any of his tenant rights or remedies in the landlord-tenant act. Any such prohibited provision would be unenforceable, and if a landlord knowingly used such a rental agreement the tenant could recover his actual damages AND not more than two months' rent.

A.R.S. § 33-1315

In fact, a landlord and tenant only may in writing agree that the tenant is to perform repairs if predicated upon the following:

1. The agreement is supported by adequate consideration (such as a discount in rent);
2. The repairs are specified;
3. The transaction is entered into in good faith;
4. It is not for the purpose of evading the landlord's obligations;
5. The work is not necessary to cure noncompliance with the landlord's duties to comply with applicable health and safety building codes, and to keep the premises fit and habitable; and
6. In any dwelling unit other than a single family residence, the agreement is separate from the rental agreement and is signed by both parties.

A.R.S. §§ 33-1324(C) and 33-1324(D)

C. Responsibility for Services, and Changes in Responsibility

Default Duty of Landlord

The supply of the utilities required under A.R.S. § 33-1324(A)(6) used to mean that the landlord is to pay for them, except when directly connected and metered. Then, with the enactment of A.R.S. § 33-1314.01, the statutory contradiction was introduced to allow intermediate billings through submetering and utility allocation. The subsequent interpretation is that a landlord must provide the facilities and appliances to capacitate the supply. Now, in Arizona, it is common practice that tenants can be designated liable for the payment of utility services.

However, if there is no such designation, the fallback interpretation is that the landlord is liable, for these reasons: First, it is public policy that any confusing or vague elements of a contract are to be construed against the drafter (in this case, the landlord), and in the favor of the recipient party (in this case, the tenant).

Moreover, provision of running water, reasonable amounts of hot water at all times, reasonable heat and reasonable air-condition where such units are installed and offered (with the exception of installed appliance units exclusively controlled by the tenant with direct public utility connections) – all of this is, by default, the landlord's duty, unless the landlord and tenant of a single family residence agree otherwise in writing.

A.R.S. 33-1324(C)

Also, taken in the context of the essential nature of such services, as recognized in A.R.S. § 33-1364, it is incumbent upon the landlord to make sure they are provided and paid for. This is bolstered by the fact that a landlord must provide all utilities and services specified in the lease agreement and that, subsequent to signing the lease, a landlord may not transfer the responsibility for utility payments to the tenant without the tenant's written consent.

A.R.S. §§ 33-1364(B) and 33-1364(C)

Still, conspicuous by comparative absence is any authority for a landlord and tenant of any dwelling unit other than a single family residence to agree that the tenant can assume the landlord's responsibility under A.R.S. § 33-1324(A)(6) to supply hot water at all times, reasonable heat and reasonable air-condition where such units are installed and offered (with the exception of installed appliance units exclusively controlled by the tenant with direct public utility connections).

A.R.S. § 33-1324(D)

Furthermore, a rental agreement must identify utility services billed through any submetering or allocation system, and any administrative fee for the billings.

A.R.S. §§ 33-1314.01(A) and 33-1314.01(B)

False information regarding the provision of utility services and the designation of the party responsible for the payment of utility services constitutes a material falsification, which is a material noncompliance with the rental agreement.

A.R.S. § 33-1361(A)

Billing Methods

If a dwelling is individually metered for utilities, as with a house, determination of utility charges is straight forward. The tenant could directly contract with the utility provider, if that is what the lease calls for.

As to the other methods of billing by way of a submetering system or an allocation system, the landlord may recover charges imposed by the utility provider only if the rental agreement contains a disclosure that lists the utility services, and any administrative fee for billings.

A.R.S. §§ 33-1314.01(A) and 33-1314.01(B)

If a submetering or allocation system of billing utilities is not presently used, but is contemplated for imposition during the lease term, then not only must the rental agreement address this fact, but also, as to any allocation system, must contain a specific description of the ratio utility billing method used to allocate utility costs. Also, the landlord must provide at least ninety days' advance notice before charging the tenant through either method.

A.R.S. §§ 33-1314.01(C) and 33-1314.01(G)

Allocation ratio utility billing methods can substantially vary. For example, they can be per tenant, per type of unit, proportionately by livable square footage, and so on.

A.R.S. §§ 33-1314.01(F)

Billing formats must state total costs for the charges, opening meter readings, closing meter readings, dates of the meter readings, and show the administrative fee charged.

A.R.S. § 33-1314.01(E)

There are significant problems with this whole setup. First of all, based on the complaints our office frequently receives, landlords are regularly skimming charges off the top, billing individual tenants amounts that, in the aggregate, far exceed the actual utility charges imposed by the service providers. It is fraud and theft, and the Attorney General ought to investigate this. Second, the only remedy available to a tenant for any overcharge is enforcement through justice court.

A.R.S. § 33-1314.01(D)

What a ridiculous joke: Like any tenant is going to sue for a $10.00 per month overcharge, risking a battle against a landlord attorney in a biased court system! I'll bet there has not been more than a handful of such cases litigated since the law was enacted, yet the abuse is widespread. There is no effective accountability. Third, suing in justice court achieves next to nothing for the body of tenants in Arizona, because case law is not established in the superior

court, which is the next appeal level. So the flawed system is perpetuated. It's nothing but a scam to rip off tenants on a grand scale.
D. Municipal Codes and Mandates

Some municipalities, such as Phoenix, Glendale and Tempe (and, to a lesser degree, Youngtown and Surprise), regulate rental housing through ordinances. Provision of utility services is included. A tenant whose premises are lacking services, or have faulty facilities, may be able to initiate an inspection by the respective city, and citation of the landlord for violation. It is suggested that the tenant first register a written complaint with the landlord; this is a prerequisite for the City of Phoenix.

Phoenix and Glendale do not specify air-cooling standards. Tempe does. Our website has links to the codes, so check them out.

Should the property fall into the slum designation, including lack of potable water, adequate sanitation facilities, adequate water or waste pipe connections, hazardous electrical systems or gas connections, it may be that other governmental entities would become involved. Maricopa County maintains a slumlord hotline, for which the updated number is listed in the Links & Resources section of the Arizona Tenants Advocates website.
A.R.S. §§ 33-1901(3)(c) and 33-1901(3)(D)

E. Conclusion
Provision of utilities is governed by a hodgepodge of statutes. Few of them reference the others. Some of them are mutually exclusive in applicability.

A.R.S. §	Maintain	Repair	Terminate	Vacate	Deduct $	Damages
33-1314.01						
33-1323	X	X				
33-1324	X	X				
33-1361	X	X	X	X		X
33-1362	X	X	X	X		X
33-1363	X	X			X	X
33-1364	X			X	X	X
33-1367			X	X		X
33-1368						
33-1374			X	X		X
33-1381	X	X	X	X		X
33-1901	X	X				

One statute, A.R.S. § 33-1314.01, is merely a scheme for stealing money from tenants. Others provide hefty rights for tenants. However, anything involving court is fraught with risk and danger to tenants.

Following is a table summarizing the pertinent statutes as they empower tenants relative to utilities, directly or by way of other statutes.