

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Lewellen**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 18 BY ADDING A NEW
9 CHAPTER ESTABLISHING REMEDIES FOR ABSENCE, NONUSE AND
10 ABANDONMENT OF RESIDENTIAL RENTAL PROPERTY; AND FOR OTHER
11 PURPOSES."

Subtitle

14 "ESTABLISHING REMEDIES FOR ABSENCE, NONUSE AND ABANDONMENT
15 OF RESIDENTIAL RENTAL PROPERTY."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code Title 18 is amended to add a new chapter to
20 read as follows:

"CHAPTER 18

22 SUBCHAPTER 1. - CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF
23 THE CHAPTER.

24 18-18-101. Supplementary Principles of Law Applicable. Unless
25 displaced by the provisions of this chapter, the principles of law and equity,
26 including the law relating to capacity to contract, mutuality of obligations,
27 principal and agent, real property, public health, safety and fire prevention,
28 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or
29 other validating or invalidating cause supplement its provisions.

31 18-18-102. Construction Against Implicit Repeal. This chapter is
32 intended as a unified coverage of its subject matter, no part of it is to be
33 construed as impliedly repealed by subsequent legislation if that construction
34 can reasonably be avoided.

35

1 18-18-103. Administration of Remedies; Enforcement. (a) The remedies
2 provided by this chapter shall be so administered that an aggrieved party may
3 recover appropriate damages. The aggrieved party has a duty to mitigate
4 damages.

5 (b) Any right or obligation declared by this chapter is enforceable by
6 action unless the provision declaring it specifies a different and limited
7 effect.

8

9 18-18-104. Settlement of Disputed Claim or Right. A claim or right
10 arising under this chapter or on a rental agreement, if disputed in good
11 faith, may be settled by agreement.

12

13 SUBCHAPTER 2. - SCOPE AND JURISDICTION

14

15 18-18-201. Territorial Application. This chapter applies to,
16 regulates, and determines rights, obligations, and remedies under a rental
17 agreement, wherever made, for a dwelling unit located within this state.

18

19 18-18-202. Exclusions from Application of Chapter. Unless created to
20 avoid the application of this chapter, the following arrangements are not
21 governed by this chapter:

22 (1) Residence at an institution, public or private, if incidental to
23 detention or the provision of medical, geriatric, educational, counseling,
24 religious, or similar service;

25 (2) Occupancy under a contract of sale of a dwelling unit or the
26 property of which it is a part, if the occupant is the purchaser or a person
27 who succeeds to his or her interest;

28 (3) Occupancy by a member of a fraternal or social organization in the
29 portion of a structure operated for the benefit of the organization;

30 (4) Transient occupancy in a hotel, or motel;

31 (5) Occupancy by an employee of a landlord whose right of occupancy is
32 conditional upon employment in and about the premises;

33 (6) Occupancy by an owner of a condominium unit or a holder of a
34 proprietary lease in a cooperative;

35 (7) Occupancy under a rental agreement covering premises used by the

1 occupant primarily for agricultural purposes;
2 (8) Any non-residential rental property.

3

4 SUBCHAPTER 3. - GENERAL DEFINITIONS.

5

6 18-18-301. General Definitions. For purposes of this chapter:

7 (1) 'abandonment' means an absolute relinquishment or vacating of the
8 dwelling unit by the tenant with the intention of not returning.

9 (2) 'Dwelling Unit' means a structure or the part of a structure that
10 is used as a home, residence, or sleeping place by one (1) person who
11 maintains a household or by two (2) or more persons who maintain a common
12 household;

13 (3) 'Good Faith' means honesty in fact in the conduct of the
14 transaction concerned;

15 (4) 'Landlord' means the owner, lessor, or sublessor of the dwelling
16 unit or the building of which it is a part, and it also means a manager of the
17 premises who fails to disclose the name and address of the owner or person
18 authorized to act for and on behalf of the owner for the purpose of service of
19 process and receiving and receipting notices and demands, as required by law;

20 (5) 'Rental Agreement' means all agreements, written or oral, and valid
21 rules and regulations adopted under law embodying the terms and conditions
22 concerning the use and occupancy of a dwelling unit and premises;

23 (6) 'Tenant' means a person entitled under a rental agreement to occupy
24 a dwelling unit to the exclusion of others.

25

26 SUBCHAPTER 4. - LANDLORD REMEDIES

27

28 18-18-401. Remedies for Absence, Nonuse and Abandonment of Residential
29 Rental Property. (a) If the rental agreement requires the tenant to give
30 notice to the landlord of an anticipated extended absence in excess of seven
31 (7) days pursuant to law and the tenant willfully fails to do so, the landlord
32 may recover actual damages from the tenant.

33 (b) During any absence of the tenant in excess of seven (7) days, the
34 landlord may enter the dwelling unit at times reasonably necessary.

35 (c) If the tenant abandons the dwelling unit, the landlord shall make

1 reasonable efforts to rent it at a fair rental. If the landlord rents the
2 dwelling unit for a term beginning before the expiration of the rental
3 agreement, it terminates as of the date of the new tenancy. If the landlord
4 fails to use reasonable efforts to rent the dwelling unit at a fair rental or
5 if the landlord accepts the abandonment as a surrender, the rental agreement
6 is deemed to be terminated by the landlord as of the date the landlord has
7 notice of the abandonment. If the tenancy is from month-to-month or
8 week-to-week, the term of the rental agreement for this purpose is deemed to
9 be a month or a week, as the case may be.

10 (d) When a dwelling unit has been abandoned; or when the rental
11 agreement has come to an end and the tenant has removed a substantial portion
12 of his or her property; or when the tenant has vacated and has voluntarily and
13 permanently terminated his or her utilities; and the tenant has left personal
14 property with a fair market value of five hundred dollars (\$500) or less in
15 the dwelling unit or on the premises, the landlord may enter the dwelling
16 unit, and dispose of the property. Where property is disposed of by the
17 landlord pursuant to this section and the property value was actually in
18 excess of five hundred dollars (\$500), the landlord is not liable unless the
19 landlord was deliberately or grossly negligent.

20 (e)(1) When a dwelling unit has been abandoned or the rental agreement
21 has come to an end and the tenant has left personal property in the dwelling
22 unit or on the premises in cases not covered by subsection (d) above, the
23 landlord may notify the tenant that such property must be removed within the
24 dates set forth in such notice, but not less than twenty (20) days after
25 personal delivery, mailing or posting said notice on the premises. If the
26 property is not removed with the time specified in such notice, the landlord
27 may sell the property at a public or private sale in any manner which, under
28 the circumstances, is reasonably likely to obtain a fair price, taking into
29 account the age and condition of the property, and may retain the proceeds of
30 the sale as actual damages. If upon a sale the fair price for the proceeds
31 exceeds the actual damages sustained by the landlord, the tenant may recover
32 from the landlord any surplus provided the tenant notifies the landlord within
33 six (6) months of the sale. If six (6) months expires following the sale and
34 the tenant has not notified the landlord of any intention to recover a surplus
35 from the sale, all proceeds of the sale may then be retained by the landlord

1 as liquidated damages.

2 (2) After notice has been provided under subsection (e)(1) and
3 until the term of the tenancy has expired, the landlord shall store all goods,
4 and personal property of the tenant in a place of safe keeping and shall
5 exercise reasonable care of the property, but shall not be responsible to the
6 tenant for any loss not caused by the landlord's deliberate or grossly
7 negligent act. The landlord may elect to store the goods, and personal
8 property on the previously leased premises, in which event the storage cost
9 may not exceed the fair rental value of the premises. If the tenant's
10 property is removed to a commercial storage company, the storage cost may
11 include the actual charge for such storage and costs of removal from the
12 premises to the place of storage. After the landlord's notice under
13 subsection (e)(1), if the tenant gives timely notice of his or her intention
14 to remove the personal property from the premises and does not do so within
15 the time specified in the landlord's notice or within fifteen (15) days of the
16 personal delivery or mailing of the tenant's written response, whichever is
17 later, it shall be conclusively presumed that the tenant has abandoned such
18 property. In the event the tenant removes the property after notice, the
19 landlord shall be entitled to the costs of storage for the period the property
20 has remained in the landlord's safe keeping."

21

22 18-18-402. Obligation of Good Faith. Every duty under this subchapter
23 and every act which shall be performed as a condition precedent to the
24 exercise of a right or remedy under this subchapter imposes an obligation of
25 good faith in its performance or enforcement."

26

27 SECTION 2. Repealer. (a) The following section of the Arkansas Code is
28 repealed:

29 18-16-108. Property left on premises after termination of lease.

30

31 SECTION 3. Savings Clause. Transactions entered into before the
32 effective date of this act, and not extended or renewed on and after that
33 date, and the rights, duties, and interests flowing from them remain valid and
34 may be terminated, completed, consummated, or enforced as required or
35 permitted by any statute or other law amended or repealed by this act as

1 though the repeal or amendment had not occurred.

2

3 SECTION 4. Severability. If any provision of this act or the
4 application thereof to any person or circumstance is held invalid, the
5 invalidity does not affect other provisions or application of this act which
6 can be given effect without the invalid provision or application, and to this
7 end the provisions of the act are severable.

8

9 SECTION 5. All provisions of this act of a general and permanent nature
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
11 Revision Commission shall incorporate the same in the Code.

12

13 SECTION 6. Emergency Clause. It is found and determined by the General
14 Assembly of the state of Arkansas that the laws of this state concerning the
15 rights and liabilities of residential landlords and tenants are in need of
16 revision to simplify, clarify and modernize the laws; and this act is
17 necessary to provide adequate protection to both landlords and tenants.
18 Therefore, an emergency is hereby declared to exist and this act being
19 necessary for the preservation of the public peace, health and safety shall be
20 in full force and effect from and after its passage and approval.

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

- 1
- 2
- 3
- 4
- 5
- 6