

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 DEFINING RIGHTS AND DUTIES OF PARTIES TO LEASE  
10 AGREEMENTS FOR THE RENTAL OF RESIDENTIAL PROPERTY; AND FOR  
11 OTHER PURPOSES."

### Subtitle

14 "DEFINING RIGHTS AND DUTIES OF PARTIES TO LEASE AGREEMENTS  
15 FOR THE RENTAL OF RESIDENTIAL 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 17

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

24 18-17-101. Purposes; Rules of Construction. (a) This chapter shall be  
25 liberally construed and applied to promote its underlying purposes and  
26 policies.

27 (b) Underlying purposes and policies of this chapter are:

28 (1) To simplify, clarify, modernize, and revise the law governing  
29 the rental of dwelling units and the rights and obligations of landlords and  
30 tenants; and

31 (2) To encourage landlords and tenants to maintain and improve  
32 the quality of housing.

34 18-17-102. Supplementary Principles of Law Applicable. Unless  
35 displaced by the provisions of this chapter, the principles of law and equity,

1 including the law relating to capacity to contract, mutuality of obligations,  
2 principal and agent, real property, public health, safety and fire prevention,  
3 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or  
4 other validating or invalidating cause supplement its provisions.

5

6 18-17-103. Construction Against Implicit Repeal. This chapter is  
7 intended as a unified coverage of its subject matter, no part of it is to be  
8 construed as impliedly repealed by subsequent legislation if that construction  
9 can reasonably be avoided.

10

11 18-17-104. Administration of Remedies; Enforcement. (a) The remedies  
12 provided by this chapter shall be so administered that an aggrieved party may  
13 recover appropriate damages. The aggrieved party has a duty to mitigate  
14 damages.

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

18

19 18-17-105. Settlement of Disputed Claim or Right. A claim or right  
20 arising under this chapter or on a rental agreement, if disputed in good  
21 faith, may be settled by agreement.

22

23 SUBCHAPTER 2. - SCOPE AND JURISDICTION

24

25 18-17-201. Territorial Application. This chapter applies to,  
26 regulates, and determines rights, obligations, and remedies under a rental  
27 agreement, wherever made, for a dwelling unit located within this state.

28

29 18-17-202. Exclusions from Application of Chapter. Unless created to  
30 avoid the application of this chapter, the following arrangements are not  
31 governed by this chapter:

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

35 (2) Occupancy under a contract of sale of a dwelling unit or the

1 property of which it is a part, if the occupant is the purchaser or a person  
2 who succeeds to his or her interest;

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

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

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

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

10 (7) Occupancy under a rental agreement covering premises used by the  
11 occupant primarily for agricultural purposes;

12 (8) Any non-residential rental property.

13

14 SUBCHAPTER 3. - GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION:  
15 NOTICE.

16

17 18-17-301. General Definitions. Subject to additional definitions  
18 contained in subsequent subchapters of this chapter which apply to specific  
19 subchapters or part thereof, and unless the context otherwise requires, in  
20 this chapter:

21 (1) 'Action' includes recoupment, counterclaim, set-off, suit in  
22 equity, and any other proceeding in which rights are determined, including an  
23 action for possession;

24 (2) 'Building and Housing Codes' include any law, ordinance, or  
25 governmental regulation concerning fitness for habitation, or the  
26 construction, maintenance, operation, occupancy, use, or appearance of any  
27 premises or dwelling unit;

28 (3) 'Dwelling Unit' means a structure or the part of a structure that  
29 is used as a home, residence, or sleeping place by one (1) person who  
30 maintains a household or by two (2) or more persons who maintain a common  
31 household;

32 (4) 'Good Faith' means honesty in fact in the conduct of the  
33 transaction concerned;

34 (5) 'Landlord' means the owner, lessor, or sublessor of the dwelling  
35 unit or the building of which it is a part, and it also means a manager of the

1 premises who fails to disclose as required by Section 18-17-502;

2 (6) 'Multiple Unit Dwelling' means any building or portion thereof used  
3 for providing three or more separate dwelling units which may share means of  
4 egress or other essential facilities;

5 (7) 'Organization' includes a corporation, government, governmental  
6 subdivision or agency, business trust, estate, trust, partnership or  
7 association, two (2) or more persons having a joint or common interest, and  
8 any other legal or commercial entity;

9 (8) 'Owner' means one (1) or more persons, jointly or severally, in  
10 whom is vested:

11 (i) all or part of the legal title to property, or

12 (ii) all or part of the beneficial ownership and a right to  
13 present use and enjoyment of the premises. The term includes a mortgagee in  
14 possession;

15 (9) 'Person' includes an individual or organization;

16 (10) 'Premises' means a dwelling unit and the structure of which it is  
17 a part and facilities and appurtenances therein and grounds, areas, and  
18 facilities held out for the use of tenants generally or whose use is promised  
19 to the tenant;

20 (11) 'Rent' means all payments to be made to the landlord or for the  
21 benefit of the landlord under the rental agreement;

22 (12) 'Rental Agreement' means all agreements, written or oral, and  
23 valid rules and regulations adopted under Section 18-17-602 embodying the  
24 terms and conditions concerning the use and occupancy of a dwelling unit and  
25 premises;

26 (13) 'Roomer' means a person occupying a dwelling unit that does not  
27 include a toilet and either a bath tub or a shower and a refrigerator, stove,  
28 and kitchen sink, all provided by the landlord, and where one (1) or more of  
29 these facilities are used in common by occupants in the structure;

30 (14) 'Single Family Residence' means any dwelling unit which is not part  
31 of a multiple unit dwelling;

32 (15) 'Tenant' means a person entitled under a rental agreement to  
33 occupy a dwelling unit to the exclusion of others.

34

35 18-17-302. Obligation of Good Faith. Every duty under this chapter and

1 every act which shall be performed as a condition precedent to the exercise of  
2 a right or remedy under this chapter imposes an obligation of good faith in  
3 its performance or enforcement.

4

5 18-17-303. Unconscionability. (a) If the court, as a matter of law,  
6 finds:

7 (1) Any provision of a rental agreement was unconscionable when made,  
8 the court may enforce the remainder of the agreement without the  
9 unconscionable provision, or limit the application of any unconscionable  
10 provision to avoid an unconscionable result; or

11 (2) A settlement in which a party waives or agrees to forego a claim or  
12 right under this chapter or under a rental agreement was unconscionable when  
13 made, the court may refuse to enforce the settlement, enforce the remainder of  
14 the settlement without the unconscionable provision, or limit the application  
15 of any unconscionable provision to avoid an unconscionable result.

16 (b) If unconscionability is put into issue by a party or by the court  
17 upon its own motion the parties shall be afforded a reasonable opportunity to  
18 present evidence as to the setting, purpose, and effect of the rental  
19 agreement or settlement to aid the court in making the determination.

20

21 18-17-304. Notice. (a) A person has notice of a fact if:

22 (1) He or she has actual knowledge of it,

23 (2) He or she has received a notice or notification of it, or

24 (3) From all the facts and circumstances known to him or her at  
25 the time in question he has reason to know that it exists. A person 'knows'  
26 or 'has knowledge' of a fact if he or she has actual knowledge of it.

27 (b) A person 'notifies' or 'gives' a notice or notification to  
28 another person by taking steps reasonably calculated to inform the other in  
29 ordinary course whether or not the other actually comes to know of it. A  
30 person 'receives' a notice or notification when:

31 (1) It comes to his or her attention; or

32 (2) In the case of the landlord, it is delivered in writing at  
33 the place of business of the landlord through which the rental agreement was  
34 made, or mailed by first class, registered or certified mail to the landlord  
35 at the place of business of the landlord or at any place held out by him or

1 her as the place for receipt of the communication; or

2           (3) In the case of the tenant, it is delivered in hand to the  
3 tenant or mailed by first class, registered or certified mail to him or her at  
4 the place held out by him or her as the place for receipt of the  
5 communication, or in the absence of such designation, to his or her last known  
6 place of residence.

7           (c) 'Notice', knowledge, or a notice or notification received by an  
8 organization is effective for a particular transaction from the time it is  
9 brought to the attention of the individual conducting that transaction, and in  
10 any event from the time it would have been brought to his attention if the  
11 organization had exercised reasonable diligence.

12

13           SUBCHAPTER 4. - GENERAL PROVISIONS

14

15           18-17-401. Terms and Conditions of Rental Agreement. (a) A landlord  
16 and a tenant may include in a rental agreement terms and conditions not  
17 prohibited by this chapter or other rule of law, including rent, term of the  
18 agreement, and other provisions governing the rights and obligations of the  
19 parties.

20           (b) In absence of agreement, the tenant in possession of rental  
21 property with the landlord's consent shall pay as rent the fair rental value  
22 for the use and occupancy of the dwelling unit.

23           (c) Rent is payable without demand or notice at the time and place  
24 agreed upon by the parties. Unless otherwise agreed, rent is payable at the  
25 dwelling unit and periodic rent is payable at the beginning of any term of one  
26 (1) month or less and otherwise in equal monthly installments at the beginning  
27 of each month. Unless otherwise agreed, rent is uniformly apportionable from  
28 day-to-day.

29           (d) Unless the rental agreement fixes a definite term, the tenancy is  
30 week-to-week in case of a roomer who pays weekly rent, and in all other cases  
31 month-to-month.

32

33           18-17-402. Effect of Unsigned or Undelivered Rental Agreement.

34           (a) If the landlord does not sign and deliver a written rental  
35 agreement signed and delivered to him by the tenant, acceptance of rent

1 without reservation by the landlord gives the rental agreement the same effect  
2 as if it had been signed and delivered by the landlord.

3 (b) If the tenant does not sign and deliver a written rental agreement  
4 signed and delivered to him or her by the landlord, acceptance of possession  
5 and payment of rent without reservation gives the rental agreement the same  
6 effect as if it had been signed and delivered by the tenant.

7 (c) If a rental agreement given effect solely by the operation of this  
8 section provides for a term longer than one (1) year, it is effective for only  
9 one (1) year.

10

11 18-17-403. Prohibited Provisions in Rental Agreements.

12 (a) A rental agreement shall not provide that the tenant:

13 (1) Agrees to waive or forego rights or remedies under this  
14 chapter;

15 (2) Authorizes any person to confess judgment on a claim arising  
16 out of the rental agreement;

17 (3) Agrees to pay the landlord's attorney's fees regardless of  
18 outcome of a legal proceeding; or

19 (4) Agrees to the exculpation or limitation of any liability of  
20 the landlord arising under law or to indemnify the landlord for that liability  
21 or the costs connected therewith.

22 (b) A provision prohibited by subsection (a) included in a rental  
23 agreement is unenforceable. If a landlord deliberately uses a rental  
24 agreement containing provisions known by him or her to be prohibited, the  
25 tenant may recover in addition to his or her actual damages an amount up to  
26 three (3) months periodic rent and reasonable attorney's fees.

27

28 18-17-404. Separation of Rents and Obligations to Maintain Property  
29 Forbidden. A rental agreement, assignment, conveyance, trust deed, or  
30 security instrument shall not permit the receipt of rent free of the  
31 obligation to comply with Section 18-17-504(a).

32

33 SUBCHAPTER 5. - LANDLORD OBLIGATIONS

34

35 18-17-501. Security Deposits; Prepaid Rent. (a) A landlord shall not

1 demand or receive security, however denominated, in an amount or value in  
2 excess of two (2) months periodic rent. This subsection does not prohibit  
3 additional reasonable deposits for pets or for dwelling unit modifications  
4 undertaken by the tenant.

5 (b) Upon termination of the tenancy property or money held by the  
6 landlord as security may be applied to the payment of accrued rent and the  
7 amount of damages which the landlord has suffered by reason of the tenant's  
8 noncompliance with Section 18-17-601 all as itemized by the landlord in a  
9 written notice delivered to the tenant together with the amount due thirty  
10 (30) days after termination of the tenancy and delivery of possession and  
11 demand by the tenant.

12 (c) If the landlord fails to comply with subsection (b) or if he or she  
13 fails to return any prepaid rent required to be paid to the tenants under this  
14 chapter, the tenant may recover the property and money due him together with  
15 damages in an amount equal to twice the amount wrongfully withheld and  
16 reasonable attorney's fees.

17 (d) This section does not preclude the landlord or tenant from  
18 recovering other damages to which he or she may be entitled under this  
19 chapter.

20 (e) The holder of the landlord's interest in the premises at the time  
21 of the termination of the tenancy is bound by this section.

22

23 18-17-502. Disclosure. (a) A landlord or any person authorized to  
24 enter into a rental agreement on his behalf shall disclose to the tenant in  
25 writing at or before the commencement of the tenancy the name and address of:

- 26 (1) The person authorized to manage the premises; and  
27 (2) An owner of the premises or a person authorized to act for  
28 and on behalf of the owner for the purpose of service of process and receiving  
29 and receipting for notices and demands.

30 (b) The information required to be furnished by this section shall be  
31 kept current and this section extends to and is enforceable against any  
32 successor landlord, owner, or manager.

33 (c) A person who fails to comply with subsection (a) becomes an agent  
34 of each person who is a landlord for:

- 35 (1) Service of process and receiving and receipting for notices

1 and demands; and

2                   (2) Performing the obligations of the landlord under this chapter  
3 and under the rental agreement and expending or making available for the  
4 purpose all rent collected from the premises.

5

6           18-17-503. Landlord to Deliver Possession of Dwelling Unit. At the  
7 commencement of the term a landlord shall deliver possession of the premises  
8 to the tenant in compliance with the rental agreement and Section 18-17-504.

9           The landlord may bring an action for possession against any person  
10 wrongfully in possession and may recover the damages provided in Section  
11 18-17-901(c).

12

13           18-17-504. Landlord to Maintain Premises. (a) A landlord shall:

14                   (1) Comply with the requirements of applicable building and  
15 housing codes materially affecting health and safety;

16                   (2) Make all repairs and do whatever is necessary to put and keep  
17 the premises in a fit and habitable condition;

18                   (3) Keep all common areas of the premises in a clean and safe  
19 condition;

20                   (4) Maintain in good and safe working order and condition all  
21 electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and  
22 essential facilities and appliances, including elevators, supplied or required  
23 to be supplied by him or her;

24                   (5) Provide adequate means for the removal of ashes, garbage,  
25 rubbish, and other waste incidental to the occupancy of the dwelling unit and  
26 arrange for their removal; and

27                   (6) Supply reasonable running water and reasonable amounts of hot  
28 water at all times and reasonable heat between November 1 and May 1, except  
29 where the building that includes the dwelling unit is not required by law to  
30 be equipped for that purpose, or the dwelling unit is so constructed that heat  
31 or hot water is generated by an installation within the exclusive control of  
32 the tenant and supplied by a direct public utility connection.

33           (b) If the duty imposed by paragraph (1) of subsection (a) is greater  
34 than any duty imposed by any other paragraph of that subsection, the  
35 landlord's duty shall be determined by reference to paragraph (1) of

1 subsection (a).

2 (c) The landlord and tenant of a single family residence may agree in  
3 writing that the tenant perform the landlord's duties specified in paragraphs  
4 (5) and (6) of subsection (a) and also specified repairs, maintenance tasks,  
5 alterations, and remodeling, but only if the transaction is entered into in  
6 good faith.

7 (d) The landlord and tenant of any multiple unit dwelling may agree  
8 that the tenant is to perform specified repairs, maintenance tasks,  
9 alterations, or remodeling as specified in subsections (a)(5) and (6), only  
10 if:

11 (1) the agreement of the parties is entered into in good faith  
12 and is set forth in a separate writing signed by the parties;

13 (2) the work is not necessary to cure non-compliance with  
14 subsection (a)(1) of this section; and

15 (3) the agreement does not diminish or effect the obligation of  
16 the landlord to other tenants in the premises.

17 (e) The landlord shall not treat performance of the separate agreement  
18 described in subsection (d) as a condition to any obligation or performance of  
19 any rental agreement.

20

21 18-17-505. Limitation of Liability. (a) Unless otherwise agreed, a  
22 landlord who conveys premises that include a dwelling unit subject to a rental  
23 agreement in a good faith sale to a bona fide purchaser is relieved of  
24 liability under the rental agreement and this chapter as to events occurring  
25 after written notice to the tenant of the conveyance. However, the landlord  
26 remains liable to the tenant for all security recoverable by the tenant under  
27 18-17-501 and all prepaid rent.

28 (b) Unless otherwise agreed, a manager of premises that include a  
29 dwelling unit is relieved of liability under the rental agreement and this  
30 chapter as to events occurring after written notice to the tenant of the  
31 termination of his or her management.

32

33 SUBCHAPTER 6. - TENANT OBLIGATIONS

34

35 18-17-601. Tenant to Maintain Dwelling Unit. A tenant shall:

1 (1) Comply with all obligations primarily imposed upon tenants by  
2 applicable provisions of building and housing codes materially affecting  
3 health and safety;

4 (2) Keep that part of the premises that he or she occupies and uses as  
5 clean and safe as the condition of the premises permit;

6 (3) Dispose from his dwelling unit all ashes, garbage, rubbish, and  
7 other waste in a clean and safe manner;

8 (4) Keep all plumbing fixtures in the dwelling unit or used by the  
9 tenant as clean as their condition permits;

10 (5) Use in a reasonable manner all electrical, plumbing, sanitary,  
11 heating, ventilating, air-conditioning, and other facilities and appliances  
12 including elevators in the premises;

13 (6) Not deliberately or negligently destroy, deface, damage, impair, or  
14 remove any part of the premises or knowingly permit any person to do so; and

15 (7) Conduct himself and require other persons on the premises with his  
16 or her consent to conduct themselves in a manner that will not disturb his  
17 neighbors' peaceful enjoyment of the premises. A tenant's conviction during  
18 occupancy for a criminal offense involving manufacture, sale trafficking of a  
19 controlled substance at or near the premises shall be presumed to disturb the  
20 neighbors' peaceful enjoyment of the premises.

21

22 18-17-602. Rules and Regulations. (a) A landlord, from time to time,  
23 may adopt a rule or regulation, however described, concerning the tenant's use  
24 and occupancy of the premises. It is enforceable against the tenant only if:

25 (1) Its purpose is to promote the convenience, safety, or welfare  
26 of the tenants in the premises, reasonably promote the aesthetic appearance of  
27 the premises, preserve the landlord's property from abusive use, or make a  
28 fair distribution of services and facilities held out for the tenants  
29 generally;

30 (2) It is reasonably related to the purpose of which it is  
31 adopted;

32 (3) It applies to all tenants in the premises in a fair manner;

33 (4) It is sufficiently explicit in its prohibition, direction, or  
34 limitation of the tenant's conduct to fairly inform him of what he or she  
35 shall or shall not do to comply;

1           (5) It is not for the purpose of evading the obligations of the  
2 landlord; and

3           (6) The tenant has notice of it at the time he or she enters into  
4 the rental agreement, or when it is adopted.

5           (b) If a rule or regulation is adopted after the tenant enters into the  
6 rental agreement that works a substantial modification of his bargain it is  
7 not valid unless the tenant consents to it in writing.

8

9           18-17-603. Access. (a) A tenant shall not unreasonably withhold  
10 consent to the landlord to enter into the dwelling unit in order to inspect  
11 the premises, make necessary or agreed repairs, decorations, alterations, or  
12 improvements, supply necessary or agreed services, or exhibit the dwelling  
13 unit to prospective or actual purchasers, mortgagees, tenants, workmen, or  
14 contractors.

15           (b) A landlord may enter the dwelling unit without consent of the  
16 tenant in case of emergency.

17           (c) A landlord shall not abuse the right of access or use it to harass  
18 the tenant. Except in case of emergency or unless it is impracticable to do  
19 so, the landlord shall give the tenant at least two (2) days' notice of his  
20 intent to enter and may enter only at reasonable times.

21           (d) A landlord has no other right of access except:

22                 (1) pursuant to court order;

23                 (2) as permitted by Sections 18-17-802 and 18-17-803(b); or

24                 (3) unless the tenant has abandoned or surrendered the premises.

25

26           18-17-604. Tenant to Use and Occupy. Unless otherwise agreed, a tenant  
27 shall occupy his or her dwelling unit only as a dwelling unit. The rental  
28 agreement may require that the tenant notify the landlord of any anticipated  
29 extended absence from the premises in excess of seven (7) days no later than  
30 the first day of the extended absence.

31

32           SUBCHAPTER 7. - TENANT REMEDIES

33

34           18-17-701. Noncompliance by the Landlord - In General. (a) Except as  
35 provided in this chapter, if there is a material noncompliance by the landlord

1 with the rental agreement or a noncompliance with Section 18-17-504 materially  
2 affecting health and safety, the tenant may deliver a written notice to the  
3 landlord specifying the acts and omissions constituting the breach and that  
4 the rental agreement will terminate upon a date not less than thirty (30) days  
5 after receipt of the notice if the breach is not remedied in fourteen (14)  
6 days, and the rental agreement shall terminate as provided in the notice  
7 subject to the following:

8           (1) If the breach is remediable by repairs, the payment of  
9 damages or otherwise and the landlord adequately remedies the breach before  
10 the date specified in the notice, the rental agreement shall not terminate by  
11 reason of the breach.

12           (2) If substantially the same act or omission which constituted a  
13 prior noncompliance of which notice was given recurs within six (6) months,  
14 the tenant may terminate the rental agreement upon at least fourteen (14)  
15 days' written notice specifying the breach and the date of termination of the  
16 rental agreement.

17           (3) The tenant shall not terminate for a condition caused by the  
18 deliberate or negligent act or omission of the tenant, a member of his family,  
19 or other person on the premises with his or her consent.

20           (b) Except as provided in this chapter, the tenant may recover actual  
21 damages and obtain injunctive relief for any noncompliance by the landlord  
22 with the rental agreement or Section 18-17-504. If the landlord's  
23 noncompliance is willful the tenant may recover reasonable attorney's fees.

24           (c) The remedy provided in subsection (b) is in addition to any right  
25 of the tenant arising under Section 18-17-701(a).

26           (d) If the rental agreement is terminated, the landlord shall return  
27 all security recoverable by the tenant under Section 18-17-501 and all prepaid  
28 rent.

29

30           18-17-702. Failure to Deliver Possession. (a) If the landlord fails to  
31 deliver possession of the dwelling unit to the tenant as provided in Section  
32 18-17-503, rent abates until possession is delivered and the tenant may:

33           (1) Terminate the rental agreement upon at least five (5) days'  
34 written notice to the landlord and upon termination the landlord shall return  
35 all prepaid rent and security; or

1           (2) Demand performance of the rental agreement by the landlord  
2 and, if the tenant elects, obtain possession of the dwelling unit against the  
3 landlord or any person wrongfully in possession and recover the actual damages  
4 sustained by him.

5           (b) If a person's failure to deliver possession is wilful and not in  
6 good faith, an aggrieved person may recover from that person an amount not  
7 more than three (3) months' periodic rent or threefold the actual damages  
8 sustained, whichever is greater, and reasonable attorney's fees.

9

10           18-17-703. Self-Help for Specific Minor Defects. (a) If the landlord  
11 fails to comply with the rental agreement or Section 18-17-504, and the  
12 reasonable cost of compliance is less than one hundred fifty dollars (\$150) or  
13 an amount not to exceed the amount of the security deposit, whichever amount  
14 is greater, the tenant may recover damages for the breach under Section  
15 18-17-701(b) or shall notify the landlord of his or her intention to correct  
16 the condition at the landlord's expense. If the landlord fails to comply or  
17 show good faith effort to comply within fourteen (14) days after being  
18 notified by the tenant in writing or as promptly as conditions require in case  
19 of emergency, the tenant may cause the work to be done in a workmanlike manner  
20 and, after submitting to the landlord an itemized statement, deduct from his  
21 or her rent the actual and reasonable cost or the fair and reasonable value of  
22 the work, not exceeding the amount specified in this subsection in any given  
23 month.

24           (b) A tenant shall not repair at the landlord's expense if the  
25 condition was caused by the deliberate or negligent act or omission of the  
26 tenant, a member of his or her family, or other person on the premises with  
27 his consent.

28

29           18-17-704. Wrongful Failure to Supply Heat, Water, Hot Water, or  
30 Essential Services. (a) If contrary to the rental agreement or Section  
31 18-17-504 the landlord willfully or negligently fails to supply heat, running  
32 water, hot water, electric, gas, or other essential service, the tenant may  
33 give written notice to the landlord specifying the breach and may:

34           (1) Take reasonable and appropriate measures to secure reasonable  
35 amounts of heat, hot water, running water, electric, gas, and other essential

1 service during the period of the landlord's noncompliance and deduct their  
2 actual and reasonable cost from the reasonable rent; or

3 (2) Recover damages based upon the diminution in the fair rental  
4 value of the dwelling unit; or

5 (3) Procure reasonable substitute housing during the period of the  
6 landlord's noncompliance, in which case the tenant is excused from paying rent  
7 for the period of the landlord's noncompliance.

8 (b) In addition to the remedy provided in paragraph (3) of subsection  
9 (a) the tenant may recover the actual and reasonable cost or fair and  
10 reasonable value of the substitute housing not in excess of an amount equal to  
11 the periodic rent, and in any case under subsection (a) reasonable attorney's  
12 fees.

13 (c) If the tenant proceeds under this section, he or she shall not  
14 proceed under Section 18-17-701 or Section 18-17-703 as to that breach.

15 (d) Rights of the tenant under this section do not arise until he or  
16 she has given notice to the landlord or if the condition was caused by the  
17 deliberate or negligent act or omission of the tenant, a family member, or  
18 other person on the premises with the tenant's consent.

19

20 18-17-705. Landlord's Noncompliance as Defense to Action for Possession  
21 or Rent. (a) In an action for possession based upon nonpayment of the rent  
22 or in an action for rent when the tenant is in possession, the tenant may  
23 counterclaim for any amount he or she may recover under the rental agreement  
24 or this chapter. In that event the court from time to time may order the  
25 tenant to pay into court all or part of the rent accrued and thereafter  
26 accruing, and shall determine the amount due to each party. The party to whom  
27 a net amount is owed shall be paid first from the money paid into court, and  
28 the balance by the other party. If no rent remains due after application of  
29 this section, judgment shall be entered for the tenant in the action for  
30 possession. If the defense or counterclaim by the tenant is without merit and  
31 is not raised in good faith, the landlord may recover reasonable attorney's  
32 fees.

33 (b) In an action for rent when the tenant is not in possession, he or  
34 she may counterclaim as provided in subsection (a) but is not required to pay  
35 any rent into court.

1

2           18-17-706. Fire or Casualty Damage. (a) If the dwelling unit or  
3 premises are damaged or destroyed by fire or casualty to an extent that  
4 enjoyment of the dwelling unit is substantially impaired, the tenant may:

5                   (1) Immediately vacate the premises and notify the landlord in  
6 writing within fourteen (14) days thereafter of his intention to terminate the  
7 rental agreement, in which case the rental agreement terminates as of the date  
8 of vacating; or

9                   (2) If continued occupancy is lawful, vacate any part of the  
10 dwelling unit rendered unusable by the fire or casualty, in which case the  
11 tenant's liability for rent is reduced in proportion to the diminution of the  
12 fair rental value of the dwelling unit.

13           (b) If the rental agreement is terminated the landlord shall return all  
14 security recoverable under Section 18-17-501 and all prepaid rent. Accounting  
15 for rent in the event of termination or apportionment shall be made as of the  
16 date of the fire or casualty.

17

18           18-17-707. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion,  
19 or Diminution of Service. If a landlord unlawfully removes or excludes the  
20 tenant from the premises or willfully diminishes services to the tenant by  
21 interrupting or causing the interruption of heat, running water, hot water,  
22 electric, gas, or other essential service, the tenant may recover possession  
23 or terminate the rental agreement and, in either case, recover an amount not  
24 more than three (3) months' periodic rent or threefold the actual damages  
25 sustained by him, whichever is greater, and reasonable attorney's fees. If  
26 the rental agreement is terminated the landlord shall return all security  
27 recoverable under Section 18-17-501 and all prepaid rent.

28

29           SUBCHAPTER 8. - LANDLORD REMEDIES

30

31           18-17-801. Noncompliance with Rental Agreement; Failure to Pay Rent.

32           (a) Except as provided in this chapter, if there is a material  
33 noncompliance by the tenant with the rental agreement other than nonpayment of  
34 grants or a noncompliance with Section 18-17-601 materially affecting health  
35 and safety, the landlord may deliver a written notice to the tenant specifying

1 the acts and omissions constituting the breach and that the rental agreement  
2 will terminate upon a date not less than thirty (30) days after receipt of the  
3 notice. If the breach is not remedied in fourteen (14) days, the rental  
4 agreement shall terminate as provided in the notice subject to the following.  
5 If the breach is remediable by repairs or the payment of damages or otherwise  
6 and the tenant adequately remedies the breach before the date specified in the  
7 notice, the rental agreement shall not terminate. If substantially the same  
8 act or omission which constituted a prior noncompliance of which notice was  
9 given recurs within six (6) months, the landlord may terminate the rental  
10 agreement upon at least fourteen (14) days' written notice specifying the  
11 breach and the date of termination of the rental agreement. As used in this  
12 subsection, material noncompliance means one or more substantial violations of  
13 the lease or repeated minor violations of the lease which disturb peaceful  
14 enjoyment of neighbors, or adversely affect the health and safety of any  
15 person, or which disrupt the right to quiet enjoyment of any other tenant, any  
16 repeated minor violations of the lease which have an adverse financial effect  
17 on the premises at large.

18 (b) If rent is unpaid when due and the tenant fails to pay rent within  
19 five (5) days after written notice by the landlord of nonpayment and his or  
20 her intention to terminate the rental agreement if the rent is not paid within  
21 that period, the landlord may terminate the rental agreement.

22 (c) Except as provided in this chapter, the landlord may recover actual  
23 damages and obtain injunctive relief for noncompliance by the tenant with the  
24 rental agreement or section 18-17-601. In addition, the landlord may recover  
25 reasonable attorney's fees.

26 18-17-802. Failure to Maintain. If there is noncompliance by the  
27 tenant with Section 18-17-601 materially affecting health and safety that can  
28 be remedied by repair, replacement of a damaged item, or cleaning, and the  
29 tenant fails to comply as promptly as conditions require in case of emergency  
30 or within fourteen (14) days after written notice by the landlord specifying  
31 the breach and requesting that the tenant remedy it within that period of  
32 time, the landlord may enter the dwelling unit and cause the work to be done  
33 in a workmanlike manner and submit the itemized bill for the actual and  
34 reasonable cost or the fair and reasonable value thereof as rent on the next  
35 date periodic rent is due, or if the rental agreement has terminated, for

1 immediate payment.

2

3 18-17-803. Waiver of Landlord's Right to Terminate. Acceptance of rent  
4 with knowledge of a default by the tenant or acceptance of performance by him  
5 that varies from the terms of the rental agreement constitutes a waiver of the  
6 landlord's right to terminate the rental agreement for that breach, unless  
7 otherwise agreed after the breach has occurred.

8

9 18-17-804. Landlord Liens; Distress for Rent. (a) A lien or security  
10 interest on behalf of the landlord in the tenant's household goods is not  
11 enforceable unless perfected before the effective date of this chapter.

12 (b) Distraint for rent is abolished.

13

14 18-17-805. Remedy after Termination. If the rental agreement is  
15 terminated, the landlord has a claim for possession and for rent and a  
16 separate claim for actual damages for breach of the rental agreement and  
17 reasonable attorney's fees as provided in Section 18-17-801(c).

18

19 18-17-806. Recovery of Possession Limited. A landlord shall not  
20 recover or take possession of the dwelling unit by action or otherwise,  
21 including willful diminution of services to the tenant by interrupting or  
22 causing the interruption of heat, running water, hot water, electric, gas, or  
23 other essential service to the tenant, except in case of abandonment,  
24 surrender, or as permitted in this chapter.

25

26 SUBCHAPTER 9. - PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

27

28 18-17-901. Periodic Tenancy; Holdover Remedies. (a) The landlord or  
29 the tenant may terminate a week-to-week tenancy by a written notice given to  
30 the other at least ten (10) days before the termination date specified in the  
31 notice.

32 (b) The landlord or the tenant may terminate a month-to-month tenancy  
33 by a written notice given to the other at least thirty (30) days before the  
34 periodic rental date specified in the notice.

35 (c) If the tenant remains in possession without the landlord's consent

1 after expiration of the term of the rental agreement or its termination, the  
2 landlord may bring an action for possession and if the tenant's holdover is  
3 willful and not in good faith the landlord may also recover an amount not more  
4 than three (3) month's periodic rent or threefold the actual damages sustained  
5 by him, whichever is greater, and reasonable attorney's fees. If the landlord  
6 consents to the tenant's continued occupancy, Section 18-17-401(d) applies.

7

8       18-17-902. Landlord and Tenant Remedies for Abuse of Access. (a) If  
9 the tenant refuses to allow lawful access, the landlord may obtain injunctive  
10 relief to compel access, or terminate the rental agreement. In either case  
11 the landlord may recover actual damages and reasonable attorney's fees.

12       (b) If the landlord makes an unlawful entry or a lawful entry in an  
13 unreasonable manner or makes repeated demands for entry otherwise lawful but  
14 which have the effect of unreasonably harassing the tenant, the tenant may  
15 obtain injunctive relief to prevent the recurrence of the conduct or terminate  
16 the rental agreement. In either case the tenant may recover actual damages  
17 not less than an amount equal to one (1) month's rent and reasonable  
18 attorney's fees.

19

20       SUBCHAPTER 10. - RETALIATORY CONDUCT

21

22       18-17-1001. Retaliatory Conduct Prohibited. (a) Except as provided in  
23 this section, a landlord shall not retaliate by increasing rent or decreasing  
24 services or by bringing or threatening to bring an action for possession  
25 after:

26               (1) The tenant has complained to a governmental agency charged  
27 with responsibility for enforcement of a building or housing code of a  
28 violation applicable to the premises materially affecting health and safety;  
29 or

30               (2) The tenant has complained to the landlord of a violation  
31 under Section 18-17-504; or

32               (3) The tenant has organized or become a member of a tenant's  
33 union or similar organization.

34       (b) If the landlord acts in violation of subsection (a), the tenant is  
35 entitled to the remedies provided in 18-17-707 and has a defense in any

1 retaliatory action against him for possession. In an action by or against the  
2 tenant, evidence of a complaint within ninety (90) days before the alleged act  
3 of retaliation creates presumption that the landlord's conduct was in  
4 retaliation. The presumption does not arise if the tenant made the complaint  
5 after notice of a proposed rent increase or diminution of services.  
6 'Presumption' means that the trier of fact shall find the existence of the  
7 fact presumed unless and until evidence is introduced which would support a  
8 finding of its nonexistence.

9 (c) Notwithstanding subsections (a) and (b), a landlord may bring an  
10 action for possession if:

11 (1) The violation of the applicable building or housing code was  
12 caused primarily by lack of reasonable care by the tenant, a family member, or  
13 other person on the premises with the tenant's consent; or

14 (2) The tenant is in default in rent; or

15 (3) Compliance with the applicable building or housing code  
16 requires alteration, remodeling, or demolition which would effectively deprive  
17 the tenant of use of the dwelling unit.

18 (d) The maintenance of an action under subsection (c) does not release  
19 the landlord from liability under 18-17-701(b)."

20

21 SECTION 2. This act applies to rental agreements entered into or  
22 extended or renewed on and after the date this act becomes effective.

23

24 SECTION 3. Repealer. (a) The following sections of the Arkansas Code  
25 are repealed:

26 (1) 18-16-102. Lessee unlawfully collecting from subtenant;

27 (2) 18-16-107. Failure to quit after notice of intention;

28 and

29 (3) 18-16-301 - 18-16-306. Security deposits.

30

31 SECTION 4. 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 5. 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 6. 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 7. 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.