

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
87th General Assembly
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As Engrossed: H3/26/09

A Bill

HOUSE BILL 2141

By: Representative Harrelson

For An Act To Be Entitled

AN ACT TO AMEND AND CLARIFY VARIOUS PROVISIONS OF
THE ARKANSAS RESIDENTIAL LANDLORD – TENANT ACT OF
2007; CONCERNING LANDLORD REMEDIES AND EVICTION
PROCEEDINGS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND AND CLARIFY VARIOUS PROVISIONS
OF THE ARKANSAS RESIDENTIAL LANDLORD –
TENANT ACT OF 2007.

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

SECTION 1. Arkansas Code § 18-16-101 is repealed.

~~18-16-101. Failure to pay rent—Refusal to vacate upon notice—
Penalty.~~

~~(a) Any person who shall rent any dwelling house or other building or
any land situated in the State of Arkansas and who shall refuse or fail to
pay the rent therefor when due according to contract shall at once forfeit
all right to longer occupy the dwelling house or other building or land.~~

~~(b)(1) If, after ten (10) days' notice in writing shall have been
given by the landlord or the landlord's agent or attorney to the tenant to
vacate the dwelling house or other building or land, the tenant shall
willfully refuse to vacate and surrender the possession of the premises to
the landlord or the landlord's agent or attorney, the tenant shall be guilty
of a misdemeanor.~~

~~(2) Upon conviction before any justice of the peace or other
court of competent jurisdiction in the county where the premises are~~



1 ~~situated, the tenant shall be fined twenty five dollars (\$25.00) per day for~~
2 ~~each day that the tenant fails to vacate the premises.~~

3 ~~(c)(1) Any tenant charged with refusal to vacate upon notice who~~
4 ~~enters a plea of not guilty to the charge of refusal to vacate upon notice~~
5 ~~and who continues to inhabit the premises after notice to vacate pursuant to~~
6 ~~subsection (b) of this section shall be required to deposit into the registry~~
7 ~~of the court a sum equal to the amount of rent due on the premises. The~~
8 ~~rental payments shall continue to be paid into the registry of the court~~
9 ~~during the pendency of the proceedings in accordance with the rental~~
10 ~~agreement between the landlord and the tenant, whether the agreement is~~
11 ~~written or oral.~~

12 ~~(2)(A) If the tenant is found not guilty of refusal to vacate~~
13 ~~upon notice, the rental payments shall be returned to the tenant.~~

14 ~~(B) If the tenant is found guilty of refusal to vacate~~
15 ~~upon notice, the rental payment paid into the registry of the court shall be~~
16 ~~paid over to the landlord by the court clerk.~~

17 ~~(3) Any tenant who pleads guilty or nolo contendere to or is~~
18 ~~found guilty of refusal to vacate upon notice and has not paid the required~~
19 ~~rental payments into the registry of the court shall be guilty of a Class B~~
20 ~~misdemeanor.~~

21
22 SECTION 2. Arkansas Code §§ 18-17-701 and 18-17-702 are amended to
23 read as follows:

24 18-17-701. Noncompliance with rental agreement – Failure to pay rent –
25 Removal of evicted tenant's personal property.

26 (a) Except as provided in this chapter, if there is a material
27 noncompliance by the tenant with the rental agreement, the landlord may
28 deliver a written notice to the tenant specifying the acts and omissions
29 constituting the ~~breach~~ material noncompliance and that the rental agreement
30 will terminate upon a date not less than ~~fourteen (14)~~ thirty (30) days after
31 receipt of the notice, if the ~~breach~~ material noncompliance is not remedied
32 in ~~fourteen (14)~~ thirty (30) days. The rental agreement terminates as
33 provided in the notice except that if the ~~breach~~ material noncompliance is
34 remediable by repairs or otherwise and the tenant adequately remedies the
35 ~~breach~~ material noncompliance before the date specified in the notice.

36 (b) If rent is unpaid when due and the tenant fails to pay rent within

1 ~~five (5)~~ fourteen (14) days from the date due, the landlord may terminate the
2 rental agreement.

3 (c)(1) Except as provided in this chapter, the landlord may recover
4 actual damages and obtain injunctive relief, judgments, or evictions in
5 circuit court or district court ~~without posting bond for any a material~~
6 noncompliance by the tenant with the rental agreement.

7 (2) If the tenant's noncompliance is willful other than
8 nonpayment of rent, the landlord may recover reasonable attorney's fees,
9 provided the landlord is represented by an attorney.

10 (3) If the tenant's nonpayment of rent is not in good faith, the
11 landlord is entitled to reasonable attorney's fees, provided the landlord is
12 represented by an attorney.

13 (d)(1) Except as provided in this chapter, if there is a material
14 noncompliance by the landlord with the rental agreement, the tenant may
15 deliver a written notice to the landlord specifying the acts and omissions
16 constituting the material noncompliance and that the rental agreement will
17 terminate upon a date not less than thirty (30) days after receipt of the
18 notice if the material noncompliance is not remedied in thirty (30) days.

19 (2) The rental agreement shall terminate as provided in
20 the notice subject to the following:

21 (A) If the material noncompliance is remedial by repairs,
22 the payment of damages, or otherwise, and the landlord adequately remedies
23 the material noncompliance before the date specified in the notice, the
24 rental agreement shall not terminate by reason of the material noncompliance;

25 (B) If substantially the same act or omission that
26 constituted a prior material noncompliance of which notice was given recurs
27 within six (6) months, the tenant may terminate the rental agreement upon at
28 least fourteen (14) days written notice specifying the material noncompliance
29 and the date of termination of the rental agreement; and

30 (C) If the material noncompliance is caused by the
31 deliberate or negligent act or omission of the tenant, a member of the
32 tenant's family, or other person on the premises with the tenant's consent,
33 the tenant may not terminate the rental agreement.

34 (e)(1) Except as provided in this chapter, the tenant may recover
35 actual damages and obtain injunctive relief for material noncompliance with
36 the rental agreement by the landlord or material noncompliance with the

1 landlord's obligation to maintain the premises.

2 (2) If the landlord's material noncompliance is willful, the
3 tenant may recover reasonable attorney's fees if the tenant is represented by
4 an attorney.

5 (f) If the rental agreement is terminated, the landlord shall return
6 all security recoverable by the tenant under § 18-16-306 and all prepaid
7 rent.

8
9 18-17-702. Noncompliance affecting health and safety.

10 (a) If there is noncompliance by the tenant with § 18-17-601
11 materially affecting health and safety that may be remedied by repair,
12 replacement of a damaged item, or cleaning, and the tenant fails to comply as
13 promptly as conditions require in case of emergency or within ~~fourteen (14)~~
14 thirty (30) days after written notice by the landlord specifying the ~~breach~~
15 noncompliance and requesting that the tenant remedy it within that period of
16 time, the landlord may enter the dwelling unit and cause the work to be done
17 in a workmanlike manner and the tenant shall reimburse the landlord for the
18 cost and, in addition, the landlord shall have the remedies available under
19 this chapter.

20 (b) If there is noncompliance by the tenant with this subchapter
21 materially affecting health and safety other than as stated in subsection (a)
22 of this section, and the tenant fails to comply as promptly as conditions
23 require in case of emergency, or within ~~fourteen (14)~~ thirty (30) days after
24 written notice by the landlord if it is not an emergency, specifying the
25 ~~breach~~ noncompliance and requesting that the tenant remedy within that period
26 of time, the landlord may terminate the rental agreement.

27 (c)(1) If there is noncompliance by the landlord under § 18-17-501 et
28 seq. that materially affects health and safety, the tenant may deliver a
29 written notice to the landlord specifying the acts and omissions that
30 constitute the noncompliance and that the rental agreement will terminate
31 upon a date not less than thirty (30) days after receipt of the notice if the
32 noncompliance is not remedied in thirty (30) days.

33 (2) The rental agreement shall terminate as provided in
34 the notice subject to the following:

35 (A) If the noncompliance is remedial by repairs, the
36 payment of damages, or otherwise, and the landlord adequately remedies the

noncompliance before the date specified in the notice, the rental agreement shall not terminate by reason of the noncompliance;

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

(C) If the noncompliance is caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent, the tenant may not terminate.

(d)(1) In addition to any right of the tenant arising under subsection (c) of this section, except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for noncompliance by the landlord.

(2) If the landlord's noncompliance is willful, the tenant may recover reasonable attorney's fees if the tenant is represented by an attorney.

(e) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under § 18-16-305 and all prepaid rent.

SECTION 3. Arkansas Code Title 18, Chapter 17, Subchapter 5 is amended to add three (3) additional sections to read as follows:

18-17-502. Landlord to maintain premises.

(a) A landlord shall:

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

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

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

(4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be required by the landlord;

1 (5) Provide and maintain appropriate receptacles and
2 conveniences for the removal of ashes, garbage, rubbish, and other waste
3 incidental to the occupancy of the dwelling unit and arrange for their
4 removal; and

5 (6) Supply running water and reasonable amounts of hot water at
6 all times and reasonable heat between October 1 and May 1 except where the
7 building that includes the dwelling unit is not required by law to be
8 equipped for that purpose, or the dwelling unit is so constructed that heat
9 or hot water is generated by an installation with exclusive control of the
10 tenant and supplied by a direct public utility connection.

11 (b) If the duty imposed on the landlord in subdivision (a)(1) of this
12 section is greater than any duty imposed by any one of subdivisions (a)(2)-
13 (6) of this section, the landlord's duty shall be determined by reference to
14 subdivision (a)(1) of this section.

15 (c) The landlord and tenant of a single-family residence may make a
16 separate good faith agreement in writing that the tenant will perform the
17 landlord's duties specified in subdivisions (a)(5) and (a)(6) of this section
18 as well as specified repairs, maintenance tasks, alterations, and remodeling.

19 (d)(1) The landlord and tenant of a dwelling unit other than a single-
20 family residence may make separate a good faith agreement in writing
21 supported by adequate consideration that the tenant is to perform specified
22 repairs, maintenance tasks, alterations, or remodeling only if:

23 (A) The work is not necessary to cure noncompliance with
24 subdivision (a)(1) of this section; and

25 (B) The agreement does not diminish or affect the
26 obligation of the landlord to other tenants in the premises.

27 (2) The landlord may not treat performance of the separate
28 agreement under this subsection (d) as a condition to any obligation or
29 performance of any rental agreement.

30
31 18-17-503. Wrongful failure to supply heat, water, or essential
32 services.

33 (a) If contrary to the rental agreement or the landlord's obligation
34 to maintain the rental premises under § 18-17-501 et seq., the landlord
35 willfully or negligently fails to supply heat, running water, hot water,
36 electricity, gas, or other essential services, the tenant may give written

1 notice to the landlord specifying the noncompliance and may:

2 (1) Take reasonable and appropriate measures to secure
3 reasonable amounts of heat, hot water, running water, electricity, gas, and
4 other essential services during the period of the landlord's noncompliance
5 and deduct the tenant's actual and reasonable costs for obtaining those
6 services from the rent owed to the landlord;

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

9 (3)(A) Procure reasonable substitute housing during the period
10 of the landlord's noncompliance.

11 (B) If the tenant procures reasonable substitute housing,
12 the tenant:

13 (i) Is excused from paying rent for the period
14 of the landlord's noncompliance;

15 (ii) May recover the actual and reasonable cost or
16 fair and reasonable value of the substitute housing not in excess of an
17 amount equal to the periodic rent; and

18 (iii) May recover reasonable attorney's fees if the
19 tenant is represented by an attorney.

20 (b) If the tenant proceeds under this section, he or she may not
21 proceed under § 18-17-702 as to the same noncompliance.

22 (c)(1) The rights of the tenant under this section do not arise until
23 the tenant has given notice to the landlord.

24 (2) If the condition was caused by the deliberate or negligent
25 act or omission of the tenant, a member of the tenant's family, or other
26 person on the premises with the tenant's consent, the tenant has no rights to
27 proceed under this section.

28
29 18-17-504. Prohibited provisions in rental agreements.

30 (a) A rental agreement shall not provide that the tenant agrees to
31 waive or forego rights or remedies under the Arkansas Residential Landlord-
32 Tenant Act of 2007, § 18-17-101 et seq.

33 (b)(1) A provision prohibited by the Arkansas Residential Landlord-
34 Tenant Act of 2007, § 18-17-101 et seq. is unenforceable.

35 (2) If a landlord deliberately uses a rental agreement
36 containing provisions known by him or her to be prohibited, the tenant may

recover in addition to the tenant's actual damages, an amount up to two (2)
months' periodic rent and reasonable attorney's fees.

/s/ Harrelson