

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 951

5 By: Senator J. Woods
6 By: Representative Leding
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For An Act To Be Entitled

9 AN ACT TO IMPLEMENT CERTAIN LANDLORD AND TENANT
10 REFORMS RECOMMENDED BY THE NON-LEGISLATIVE COMMISSION
11 ON THE STUDY OF LANDLORD-TENANT LAWS; TO REQUIRE
12 MINIMUM HABITABILITY STANDARDS FOR TENANTS OF
13 RESIDENTIAL REAL PROPERTY; TO PROTECT TENANTS FROM
14 UNREASONABLE INTRUSIONS AND AGAINST RETALIATION; AND
15 FOR OTHER PURPOSES.
16

Subtitle

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19 TO IMPLEMENT CERTAIN RECOMMENDED LANDLORD
20 AND TENANT REFORMS; TO REQUIRE MINIMUM
21 HABITABILITY STANDARDS FOR TENANTS OF
22 RESIDENTIAL REAL PROPERTY; AND TO PROTECT
23 TENANTS FROM UNREASONABLE INTRUSIONS AND
24 AGAINST RETALIATION.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. Arkansas Code Title 18, Chapter 17, Subchapter 3, is
30 amended to add an additional section to read as follows:

31 18-17-304. Unconscionability.

32 (a) If the court as a matter of law finds that:

33 (1) A rental agreement or a provision of a rental agreement was
34 unconscionable when made, the court may:

35 (A) Refuse to enforce the rental agreement;

36 (B) Enforce the remainder of the rental agreement without



1 the unconscionable provision; or

2 (C) Limit the application of any unconscionable provision
3 to avoid an unconscionable result; or

4 (2) A settlement in which a party waives or agrees to forego a
5 claim or right provided by this chapter, the rental agreement, or other law
6 was unconscionable when made, the court may:

7 (A) Refuse to enforce the settlement;

8 (B) Enforce the remainder of the settlement without the
9 unconscionable provision; or

10 (C) Limit the application of any unconscionable provision
11 to avoid an unconscionable result.

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

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18 SECTION 2. Arkansas Code Title 18, Chapter 17, Subchapter 4, is
19 amended to add an additional section to read as follows:

20 18-17-402. Prohibited provisions in rental agreements.

21 (a) A rental agreement may not provide that the tenant:

22 (1) Agrees to waive or forego rights or remedies provided by
23 this chapter, the rental agreement, or other law;

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

26 (3) Agrees to pay the landlord's attorney's fees; or

27 (4) Agrees to the exculpation or limitation of a liability of
28 the landlord arising under law or to indemnify the landlord for the liability
29 or the costs connected with the liability.

30 (b)(1) A provision prohibited by subsection (a) of this section that
31 is included in a rental agreement is unenforceable.

32 (2) If a landlord deliberately uses a rental agreement
33 containing provisions known by the landlord to be prohibited, the tenant may
34 recover in addition to the tenant's actual damages an amount up to three (3)
35 months' periodic rent and reasonable attorney's fees.

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

3 18-17-502. Disclosure.

4 (a) A landlord or any person authorized to enter into a rental
5 agreement on the landlord's behalf shall disclose to the tenant in writing on
6 or before the commencement of the tenancy the name, telephone number, and
7 post office and email address of:

8 (1) The person authorized to manage the premises; and

9 (2) An owner of the premises or a person authorized to act for
10 and on behalf of the owner of the premises for the purpose of:

11 (A) Service of process; and

12 (B) Receiving and receipting for notices and demands.

13 (b)(1) The information required to be furnished by this section shall
14 be kept current.

15 (2) This section extends to and is enforceable against any
16 successor landlord, owner, or manager.

17 (c) A person who fails to comply with subsection (a) of this section
18 becomes an agent for each person who is a landlord for:

19 (1) Service of process and receiving and receipting for notices
20 and demands; and

21 (2) The purpose of performing the obligations of the landlord
22 under this chapter, the rental agreement, or other law and expending or
23 making available all rent collected from the premises.

24
25 18-17-503. Landlord to maintain premises.

26 (a) A landlord shall:

27 (1) Comply with the requirements of applicable building and
28 housing codes that materially affect health and safety;

29 (2) Make all repairs and do whatever is necessary to put and
30 keep the premises in a reasonably safe and habitable condition;

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

33 (4) Maintain the structural components, including without
34 limitation the roofs, floors, walls, chimneys, fireplaces, foundations, and
35 all other structural components in reasonable repair and usable condition;

36 (5) Maintain in good and safe working order and condition all

1 electrical, plumbing, sanitary, heating, ventilating, air conditioning, and
2 other facilities and appliances, including elevators, supplied or required to
3 be supplied by the landlord;

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

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

14 (8) Supply smoke detection devices and carbon monoxide detection
15 devices; and

16 (9) Provide tenants with current contact information of the
17 person authorized to accept repair requests and make repairs.

18 (b) If the duty imposed by subdivision (a)(1) of this section is
19 greater than another duty imposed by this section, the landlord shall comply
20 with subdivision (a)(1) of this section.

21 (c) A tenant shall not petition a court for repairs under this section
22 if the tenant is in default under the tenant's rental agreement.

23 (d) A landlord:

24 (1) Shall have a reasonable time within which to make repairs;
25 and

26 (2) Is not liable for repairs to conditions caused by the
27 negligent or wrongful act or omission of the tenant, a member of the tenant's
28 family, or a person on the premises with the consent of the tenant.

29
30 18-17-504. Retaliatory conduct prohibited.

31 (a) Except as provided in this section, a landlord may not retaliate
32 by increasing rent or decreasing services, by bringing or threatening to
33 bring an action for possession, or by filing or threatening to file a charge
34 of failure to vacate after the tenant has:

35 (1) Complained to a governmental agency charged with
36 responsibility for enforcement of a building or housing code of a violation

1 applicable to the premises materially affecting health and safety;

2 (2) Complained to the landlord of a violation under § 18-17-503;

3 or

4 (3) Organized or become a member of a tenant's union or similar
5 organization.

6 (b)(1) If a landlord acts in violation of subsection (a) of this
7 section, a tenant is entitled to the remedies provided in § 18-17-505 and has
8 a defense in an action against the tenant for possession.

9 (2)(A) In an action by or against the tenant, evidence of a
10 complaint within one (1) year before the alleged act of retaliation creates a
11 presumption that the landlord's conduct was in retaliation.

12 (B) The presumption does not arise if the tenant made the
13 complaint after notice of a proposed rent increase or diminution of services.

14 (3) As used in this subsection, "presumption" means that the
15 trier of fact must find the existence of the fact presumed unless and until
16 evidence is introduced that would support a finding of its nonexistence.

17 (c) Subsections (a) and (b) of this section do not prevent a landlord
18 from bringing an action for possession if:

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

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

23 (3) Compliance with the applicable building or housing code
24 requires alteration, remodeling, or demolition that would effectively deprive
25 the tenant of use of the dwelling unit.

26
27 18-17-505. Tenant's remedies for landlord's unlawful ouster,
28 exclusion, or diminution of service.

29 (a) If a landlord unlawfully removes or excludes the tenant from the
30 premises or willfully diminishes services to the tenant by interrupting or
31 causing the interruption of heat, running water, hot water, electric, gas, or
32 other essential service, the tenant may recover possession or terminate the
33 rental agreement and, in either case, recover an amount not more than three
34 (3) months' periodic rent or three (3) times the actual damages sustained by
35 the tenant, whichever is greater, and reasonable attorney's fees.

36 (b) If the rental agreement is terminated, the landlord shall return

1 all security deposits recoverable under § 18-16-301 et seq. and all prepaid
2 rent.

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4 SECTION 4. Arkansas Code § 18-17-602 is amended to read as follows:
5 18-17-602. Access.

6 (a) A tenant shall not unreasonably withhold consent to the landlord
7 to enter into the dwelling unit in order to inspect the premises, make
8 necessary or agreed repairs, decorations, alterations, or improvements,
9 supply necessary or agreed services, ~~investigate possible rule or lease~~
10 ~~violations, investigate possible criminal activity,~~ or exhibit the dwelling
11 unit to prospective or actual purchasers, mortgagees, tenants, workers, or
12 contractors.

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

15 (c) A landlord shall not abuse the right of access or use it to harass
16 the tenant.

17 (d) Except in case of emergency, pursuant to court order, when the
18 tenant has abandoned or surrendered the premises, or when it is impractical
19 to give notice, the landlord shall give the tenant at least two (2) days'
20 notice of his or her intent to enter and may enter only at reasonable times.

21 (e) A tenant shall not change locks on the dwelling unit without the
22 permission of the landlord.

23
24 SECTION 5. Arkansas Code § 18-17-705 is amended to read as follows:
25 18-17-705. Landlord and tenant remedies for abuse of access.

26 (a)(1) If the tenant refuses to allow lawful access, the landlord may
27 obtain injunctive relief ~~in district court without posting bond~~ to compel
28 access, or terminate the rental agreement.

29 ~~(b)(2)~~ In either case the landlord may recover actual damages
30 and reasonable attorney's fees.

31 (b)(1) If the landlord makes an unlawful entry or a lawful entry in an
32 unreasonable manner or makes repeated demands for an otherwise lawful entry
33 that has the effect of unreasonably harassing the tenant, the tenant may
34 obtain injunctive relief to prevent the recurrence of the conduct or
35 terminate the rental agreement.

36 (2) In either case the tenant may recover actual damages of not

1 less than an amount equal to one (1) month's rent and reasonable attorney's
2 fees.

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