

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1410

5 By: Representative Gazaway
6

For An Act To Be Entitled

8 AN ACT TO CLARIFY THE OBLIGATIONS OF RESIDENTIAL
9 LANDLORDS AND RESIDENTIAL TENANTS; TO REQUIRE MINIMUM
10 HABITABILITY STANDARDS FOR TENANTS OF RESIDENTIAL
11 REAL PROPERTY; AND FOR OTHER PURPOSES.
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13

Subtitle

14 TO CLARIFY THE OBLIGATIONS OF RESIDENTIAL
15 LANDLORDS AND RESIDENTIAL TENANTS; AND TO
16 REQUIRE MINIMUM HABITABILITY STANDARDS
17 FOR TENANTS OF RESIDENTIAL REAL PROPERTY.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 18-17-102, concerning the purposes and
24 rules of construction of the Arkansas Residential Landlord-Tenant Act of
25 2007, is amended to add an additional subsection to read as follows:

26 (c) This chapter applies to the residential landlord and tenant
27 relationship only and does not:

28 (1) Create any duties in tort or causes of action in tort; or

29 (2) Deprive a person of any causes of action in tort that may
30 exist.
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32 SECTION 2. Arkansas Code Title 18, Chapter 17, Subchapter 5, is
33 amended to add additional sections to read as follows:

34 18-17-502. Landlord to maintain premises.

35 (a) Except when prevented by circumstances outside a landlord's
36 control, the landlord shall:



1 (1) Comply with the requirements of applicable building,
2 housing, fire, and health codes or laws that materially affect the health and
3 safety of the tenant;

4 (2) Ensure that the premises and all common areas are safe and
5 fit for the use consistent with the rental agreement;

6 (3) Provide and maintain in good working order:

7 (A) Effective waterproofing and weather protection of the
8 roof and exterior walls, including without limitation waterproofing and water
9 protection of the doors and windows;

10 (B) A reasonably safe structure, including without
11 limitation structurally sound walls, floors, ceilings, stairs, and railings;

12 (C) Locks or security devices on all exterior doors and on
13 windows that can be opened and closed;

14 (D) Access to a water supply approved under applicable law
15 that provides hot and cold running water;

16 (E) Plumbing and adequate ventilation and heating systems
17 that conform to the law applicable at the time of installation;

18 (F) Access to electricity with wiring and equipment that
19 conform to the law applicable at the time of installation;

20 (G) Except in the case of a single family residence, an
21 adequate number of exterior trash receptacles if the landlord is obligated to
22 provide trash removal by law or under a rental agreement;

23 (H) Air conditioning that conforms to the law applicable
24 at the time of installation, if the landlord has agreed to provide air
25 conditioning;

26 (I) Safety from fire hazards, including a working smoke
27 alarm, with working batteries if solely battery-operated, provided when the
28 tenant first takes possession of the premises; and

29 (J) A functioning carbon monoxide detector if the dwelling
30 unit contains a carbon monoxide source or has an attached garage.

31 (b) A landlord is in compliance with this section if the rental
32 agreement requires that the tenant pay for any utility service and the tenant
33 fails to pay for the service.

34 (c) If the duty imposed by subdivision (a)(1) of this section is
35 greater than another duty imposed by this section, the landlord shall comply
36 with subdivision (a)(1) of this section.

1 (d) A landlord and tenant may agree that the tenant may perform
2 specified repairs, maintenance, alteration, or remodeling only if:

3 (1) The agreement is:

4 (A) In a writing other than the rental agreement;

5 (B) Signed by the parties; and

6 (C) Supported by adequate consideration; and

7 (2) The tenant's failure to meet the terms and conditions of the
8 rental agreement does not excuse the landlord's obligations under the rental
9 agreement or this act.

10 (e) The rights of a tenant under this section do not apply if the
11 condition of the premises was caused by a willful or negligent act or
12 omission on behalf of the tenant.

13
14 18-17-503. Repairs.

15 (a) A landlord shall provide each tenant with the following
16 information and keep the information current:

17 (1) The name, business address, telephone number, and email
18 address of the person authorized to manage the premises; and

19 (2) The name of the person authorized to act on behalf of the
20 landlord for the purpose of receiving service of process, notices, and
21 demands.

22 (b) A landlord who fails to comply with subsection (a) of this section
23 becomes an agent of each tenant for the purposes of:

24 (1) Receiving service of process, notices, and demands;

25 (2) Performing his or her obligations as a landlord under this
26 chapter and under the rental agreement; and

27 (3) Making himself or herself available for the purpose of
28 collecting rent owed for the premises.

29 (c) Except as provided in § 18-17-502(d), the landlord is responsible
30 for all repairs to the premises.

31 (d) A landlord shall cause repairs to be performed in compliance with
32 the building and housing codes and laws in effect at the time of the repair.

33 (e) A landlord is not liable for a repair to the premises that was
34 caused by a negligent or wrongful act or omission of the tenant or a person
35 on the premises with the tenant's consent.

36

18-17-504. Notice and opportunity to remedy.

(a) Except as provided in § 18-17-505, if a landlord materially fails to comply with the rental agreement, §§ 18-17-502 or 18-17-503 so that the tenant's health and safety are materially affected or the use and enjoyment of the premises are materially affected, the tenant has the remedies available under § 18-17-505 if the tenant gives the landlord:

(1) Notice in writing of an act or omission constituting the noncompliance of the landlord, either by certified mail or any method provided for by the rental agreement; and

(2) An opportunity to remedy the noncompliance of the landlord no later than fourteen (14) days after the receipt of notice.

(b)(1) The fourteen-day period of time allowed for the remedying of the noncompliance under (a)(2) of this section may be extended due to factors such as inclement weather, the duration of insurance claim processing, and availability of repair technicians.

(2) The landlord shall make reasonable temporary repairs during the time period of the extension to mitigate the severity of the noncompliance.

18-17-505. Noncompliance by landlord.

(a) Except as otherwise provided in § 18-17-503, if a landlord's material noncompliance with the rental agreement or § 18-17-502 materially interferes with the health and safety of the tenant or materially interferes with the use and enjoyment of the premises, and the noncompliance is not remedied during the period specified in § 18-17-504, the tenant may:

(1) Terminate the rental agreement as provided in § 18-17-506;
or

(2) Continue the rental agreement and elect one (1) or more of the following remedies:

(A) Recover actual damages that may include the diminution in the value of the leasehold caused by the landlord's noncompliance with the rental agreement and the cost of moving, provided the tenant pays rent due into the registry of the court or into an escrow account while litigation is pending for the period beginning on the date the tenant gives notice of the landlord's noncompliance under § 18-17-504;

(B) Obtain injunctive or other equitable relief provided

1 that the tenant pays rent due into the registry of the court or into an
 2 escrow account while litigation is pending; or

3 (C) Make repairs and deduct the cost of the repairs from
 4 the rent as provided under § 18-17-508.

5 (b) A tenant is not entitled to a remedy under this section if the:

6 (1) Landlord's noncompliance was caused by an act or omission of
 7 the tenant or a person on the premises with the tenant's consent; or

8 (2) Tenant prevented the landlord from having access to the
 9 dwelling unit to remedy the act or omission described in the notice under §
 10 18-17-504.

11
 12 18-17-506. Limitations on remedies – Termination.

13 (a) If a landlord's noncompliance with a rental agreement or § 18-17-
 14 502 materially interferes with the health and safety or the use and enjoyment
 15 of the premises and the noncompliance is not remedied within the period
 16 specified in § 18-17-504, the tenant may terminate the rental agreement by
 17 giving the landlord notice in a record of the tenant's intent to terminate
 18 the rental agreement on a specified date, which must be at least fourteen
 19 (14) days after the expiration of the period of time allowed under § 18-17-
 20 504 for the remedy of noncompliance.

21 (b) If a rental agreement is terminated under this section, the
 22 landlord shall return the security deposit and any unearned rent to which the
 23 tenant is entitled to the tenant under §§ 18-16-301--§ 18-16-306.

24 (c) This section does not preclude a:

25 (1) Landlord from seeking actual damages from the tenant under
 26 the law other than this act for damage to the premises caused by an act or
 27 omission of the tenant, tenant's family member, co-tenant or invitee; or

28 (2) Tenant from seeking actual damages from the landlord under a
 29 law other than this act if the noncompliance was caused by an act or omission
 30 of the landlord or the landlord's agent.

31
 32 18-17-507. Repair by tenant.

33 (a) Subject to subsection (d) of this section, a tenant may make
 34 repairs to remedy a noncompliance of a landlord at the landlord's expense if:

35 (1) The landlord fails to comply with the rental agreement or §
 36 18-17-502;

1 (2) The tenant has given notice to the landlord under § 18-17-
 2 504 specifying the noncompliance; and

3 (3) The landlord fails to remedy the noncompliance within the
 4 period of time under § 18-17-504 and the cost to remedy the noncompliance
 5 does not exceed one (1) month's periodic rent.

6 (b)(1) A tenant that makes repairs under subsection (a) of this
 7 section is entitled to recover the actual and reasonable cost incurred or the
 8 reasonable value of the work performed to remedy the noncompliance so long as
 9 the cost does not exceed one (1) month's periodic rent.

10 (2) Unless the tenant has been reimbursed by the landlord, the
 11 tenant may deduct the cost or value from the rent due after submitting to the
 12 landlord an itemized statement, accompanied by receipts for purchased items
 13 and services.

14 (c) A repair under subsection (a) of this section shall be made in a
 15 professional manner and in compliance with applicable law.

16 (d) A tenant may not repair a noncompliance of a landlord at the
 17 landlord's expense under subsection (a) of this section if the:

18 (1) Noncompliance of a landlord was caused by an act or omission
 19 of the tenant or a person on the premises with the tenant's consent; or

20 (2) Landlord was unable to remedy the noncompliance within the
 21 period specified under § 18-17-504 because the tenant or a person on the
 22 premises with the tenant's consent denied the landlord access to the dwelling
 23 unit.

24 (e) A tenant's use of the remedy under this section is limited to one
 25 (1) month's periodic rent during any twelve-month period.

26 (f) A tenant may not use this remedy if at the time the remedy becomes
 27 available the tenant is not current with rent payments.

28
 29 18-17-508. Landlord noncompliance as defense for nonpayment of rent or
 30 failure to vacate – Escrow account.

31 (a) If a landlord fails to comply with the rental agreement or § 18-17-
 32 502 and the tenant has complied with § 18-17-504, the tenant may defend:

33 (1) An action by the landlord based on possession of the
 34 premises or nonpayment of rent on the ground that no rent is due because of
 35 the noncompliance of the landlord and counterclaim for any amount the tenant
 36 may recover under the rental agreement or this act; or

1 (2) A failure to vacate action on the ground that no rent is due
2 because of the noncompliance of the landlord.

3 (b) It is in the court's discretion whether the tenant is to remain in
4 possession of the premises.

5 (c)(1) The tenant shall pay into the registry of the court or into an
6 escrow account held by an entity authorized by the court to collect the rent
7 accrued and subsequently accruing as it becomes due.

8 (2) It is the duty of the court to determine the amount due to
9 each party.

10 (3) The party to whom a net amount is owed shall be paid first
11 from the money paid into court or the escrow account, and the balance to the
12 other party.

13 (4) If no rent remains due after application of this section, a
14 judgment shall be entered for the tenant on the issue of nonpayment of rent.

15 (d) If the court determines the defense is frivolous or the
16 counterclaim by the tenant is without merit and is not raised in good faith,
17 the court may enter a judgment on behalf of the landlord allowing the
18 landlord to recover reasonable attorney's fees.

19 (e) In an action for rent when the tenant is not in possession of the
20 premises, the tenant may bring a counterclaim as provided in this section but
21 is not required to pay any rent into the registry of the court or an escrow
22 account.

23
24 18-17-509. Prohibited conduct.

25 (a) Except as provided in this section, a landlord may not use
26 retaliatory measures retaliate against a tenant by increasing rent or fees,
27 decreasing services, terminating a periodic tenancy, refusing to renew a
28 tenancy for a fixed term under a rental agreement containing a renewal option
29 that is exercisable by the tenant without negotiation with the landlord, or
30 bringing or threatening to bring a failure to vacate charge or an action for
31 possession of the premises because the tenant:

32 (1) Complained to a governmental agency responsible for the
33 enforcement of a building or housing code or other law, alleging a violation
34 applicable to the premises materially affecting the health and safety of the
35 tenant;

36 (2) Complained to a governmental agency responsible for the

1 enforcement of laws prohibiting discrimination in rental housing;

2 (3) Complained to the landlord of noncompliance of the landlord
 3 with the rental agreement or § 18-17-502;

4 (4) Organized or became a member of a tenant's union or similar
 5 organization; or

6 (5) Has made use of the remedies provided under this
 7 subchapter.

8 (b)(1) Notwithstanding subsection (a) of this section, a landlord may
 9 bring an action for possession of the premises if:

10 (A) A violation of this subchapter or of building and
 11 housing codes was caused by lack of reasonable care of the premises on behalf
 12 of the tenant, a family member, a co-tenant, or an invitee;

13 (B) The tenant's conduct described in subsection (a) of
 14 this section was in an unreasonable manner or at an unreasonable time or was
 15 repeated in a manner that is considered to be harassing to the landlord;

16 (C) The tenant is in default in the payment of rent;

17 (D) The tenant or a person on the premises with the
 18 tenant's consent engaged in conduct that threatened the health and safety of
 19 another tenant on the premises;

20 (E) The landlord is seeking to recover for nonpayment of
 21 rent or possession of the premises based on a notice to terminate the rental
 22 agreement given to the tenant before the tenant engaged in conduct described
 23 in subsection (a) of this section; or

24 (F) Compliance with a building, housing, fire, or health
 25 code or other law requiring repair, alteration, remodeling, or demolition
 26 that deprives the tenant of the use and enjoyment of the premises.

27 (c) Maintaining an action for possession of the premises by the
 28 landlord does not release the landlord from liability under this subchapter.

29 (d)(1) A rental agreement shall not require a tenant to waive or
 30 forego a right or remedy under this subchapter except as allowed under § 18-
 31 17-502(d).

32 (2) A provision in a rental agreement that violates subdivision (d)(1)
 33 of this section is unenforceable.

34
 35 18-17-510. Remedies.

36 (a) If a tenant engages in conduct described in § 18-17-509(a) with no

1 factual or legal basis for the conduct, the landlord may recover actual
 2 damages and the court may award the landlord up to three (3) times the
 3 periodic rent specified under the rental agreement.

4 (b) If a landlord's purpose for using retaliatory measures against the
 5 tenant for conduct described in § 18-17-509(a) the tenant:

6 (1) Has a defense against an action for possession of the
 7 premises, may recover possession, or may terminate the rental agreement; and

8 (2) May recover three (3) times the periodic rent or three (3)
 9 times the actual damages, whichever is greater.

10 (c) If a tenant terminates a rental agreement under subsection (b) of
 11 this section, the landlord shall return any security deposit and unearned
 12 rent to which the tenant is entitled to the tenant.

13 (d) A tenant's exercise of a right under this section does not release
 14 the landlord from liability under § 18-17-502.

15
 16 SECTION 2. Arkansas Code § 18-17-602 is amended to read as follows:
 17 18-17-602. Access.

18 (a) A tenant shall not unreasonably withhold consent to the landlord
 19 to enter into ~~the~~ a dwelling unit in order to inspect the premises, make
 20 necessary or ~~agreed~~ agreed-upon repairs, decorations, alterations, or
 21 improvements, supply necessary or ~~agreed~~ agreed-upon services, investigate
 22 possible rule or ~~lease~~ rental agreement violations, ~~investigate possible~~
 23 ~~criminal activity~~, or exhibit the dwelling unit to prospective or actual
 24 purchasers, mortgagees, tenants, workers, or contractors.

25 (b) A landlord may enter the dwelling unit without the consent of the
 26 tenant in the case of an emergency.

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

29 (d) With the exception of an emergency or while under court order,
 30 when the tenant has abandoned or surrendered possession of the premises, when
 31 it is impractical to give notice, or upon mutual agreement between the
 32 landlord and tenant, the landlord shall give the tenant at least twenty-four
 33 (24) hours' notice of his or her intent to enter the premises and may enter
 34 only at reasonable times.

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

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SECTION 3. Arkansas Code § 18-17-705 is amended to read as follows:

18-17-705. Landlord remedies for refusal of access to rental property.

(a)(1) If ~~the a~~ tenant refuses to allow lawful access to a dwelling unit by a landlord, the landlord may:

(A) ~~obtain~~ Obtain injunctive relief ~~in district court without posting bond~~ to compel access; or

(B) ~~terminate~~ Terminate the rental agreement.

~~(b)(2)~~ In either case under subdivision (a)(1) of this section, the landlord may recover actual damages and reasonable attorney's fees.

(b)(1) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands in connection with an otherwise lawful entry that has the effect of harassing the tenant, the tenant may:

(A) Obtain injunctive relief to prevent the recurrence of the conduct; or

(B) Terminate the rental agreement.

(2) In either case under subdivision (b)(1) of this section, the tenant may recover actual damages and reasonable attorney's fees.

SECTION 4. Arkansas Code Title 18, Chapter 17, Subchapter 8, is amended to add an additional section to read as follows:

18-17-803. Administration of remedies – Enforcement.

(a) Under this subsection, the aggrieved party has an obligation and duty to mitigate damages.

(b) A right or obligation declared by this chapter is enforceable by legal action unless the provision declaring the right or obligation specifies a different and limited effect.