

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

As Engrossed: H2/28/19

# 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.  
12  
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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20

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 in  
29 addition to the causes of action under § 18-16-110; or

30 (2) Deprive a person of any causes of action in tort that may  
31 exist.  
32

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

35 18-17-502. Landlord to maintain premises.

36 (a) Except when prevented by circumstances outside a landlord's



1 control, including without limitation acts of God and force majeure, the  
2 landlord shall:

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

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

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

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

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

13 (C) Working locks or security devices on all exterior  
14 doors and on windows that can be opened and closed;

15 (D) A water supply approved under applicable law that is  
16 capable of providing hot and cold running water and that provides safe  
17 drinking water;

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

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

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

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

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

31 (J) A working carbon monoxide detector, with working  
32 batteries if solely battery-operated, provided when the tenant first takes  
33 possession of the premises, if the dwelling unit contains a carbon monoxide  
34 source.

35 (b) A landlord is in compliance with this section if the rental  
36 agreement requires that the tenant pay for any utility service and the tenant

1 fails to pay for the service.

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

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

7 (1) The repair agreement is:

8 (A) In a writing, including electronic communication via  
9 email or text message, other than the rental agreement; and

10 (B) Supported by adequate consideration; and

11 (2) The tenant's failure to meet the terms and conditions of the  
12 repair agreement does not excuse the landlord's obligations under the rental  
13 agreement or this act.

14 (e) The rights of a tenant under this section do not apply if the  
15 condition of the premises was caused by a willful or negligent act or  
16 omission by the tenant or by a person other than the landlord or person  
17 acting on behalf of the landlord.

18  
19 18-17-503. Repairs.

20 (a) A landlord shall provide the tenant with the following information  
21 and keep the information current:

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

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

27 (b) Failure to comply with subsection (a) of this section renders the  
28 manager and the landlord's agent subject to the following:

29 (1) Service of process and receiving and receipting for notices  
30 and demands; and

31 (2) Performing the operations of the landlord under the rental  
32 agreement and spending and making available for the purpose of performing the  
33 landlord's obligations all rent collected from the premises.

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

36 (d) A landlord shall cause repairs to be performed in compliance with

1 the building and housing codes and laws in effect at the time of the repair.

2 (e) A landlord is not liable for a repair to the premises if the  
3 defect was caused by a willful or negligent act or omission by the tenant or  
4 a person other than the landlord or person acting on behalf of the landlord.

5  
6 18-17-504. Notice and opportunity to remedy.

7 (a) Except as provided in § 18-17-505, if a landlord materially fails  
8 to comply with the rental agreement, §§ 18-17-502, or 18-17-503 so that the  
9 tenant's health and safety are materially affected or the use of the premises  
10 is materially affected, the tenant has the remedies available under § 18-17-  
11 505 if the tenant gives the landlord:

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

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

17 (b)(1) The fourteen-day period of time allowed for the remedying of  
18 the noncompliance under subdivision (a)(2) of this section may be extended  
19 due to circumstances outside the landlord's control such as inclement  
20 weather, the duration of insurance claim processing, and availability of  
21 repair technicians.

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

25  
26 18-17-505. Noncompliance by landlord.

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

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

34 (2) Continue the rental agreement and obtain injunctive or other  
35 equitable relief provided that the tenant pays rent due into the registry of  
36 the court or into an escrow account while litigation is pending.

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

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

4 (2) Tenant prevented the landlord from having access to the  
5 dwelling unit to remedy the act or omission described in the notice under §  
6 18-17-504.

7 (c)(1) A tenant is not entitled to injunctive relief under this  
8 section if the landlord's noncompliance was caused by circumstances outside  
9 the landlord's control and repair would cause the landlord undue financial  
10 hardship.

11 (2) In such a case, the tenant is entitled to the remedies of  
12 termination of the rental agreement and restitution, and the landlord may not  
13 relet the premises until the landlord can prove by a preponderance of the  
14 evidence that the dwelling unit complies with § 18-17-502(a).

15 (d) A landlord who relets the noncompliant premises without complying  
16 with a court order and who is subsequently a defendant under this section may  
17 not use the defense again and will be liable for costs and attorney's fees.

18  
19 18-17-506. Limitations on remedies – Termination.

20 (a) If a landlord's noncompliance with a rental agreement of § 18-17-  
21 502 materially interferes with the tenant's health and safety or use of the  
22 premises and the noncompliance is not remedied within the period specified in  
23 § 18-17-504, the tenant may terminate the rental agreement by giving the  
24 landlord notice in a record of the tenant's intent to terminate the rental  
25 agreement on a specified date, which must be at least fourteen (14) days  
26 after the expiration of the period of time allowed under § 18-17-504 for the  
27 remedy of noncompliance.

28 (b) If a rental agreement is terminated under this section, the  
29 landlord shall return to the tenant the amount of the security deposit and  
30 any unearned rent to which the tenant is entitled under § 18-16-301 et seq.

31 (c) This section does not preclude a:

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

35 (2) Tenant from seeking actual damages from the landlord under a  
36 law other than this act if the noncompliance was caused by an act or omission

1 of the landlord or the landlord's agent.

2  
3 18-17-507. Prohibited conduct.

4 (a) Except as provided in this section, a landlord may not retaliate  
5 against a tenant by discriminatorily increasing rent or fees, decreasing  
6 services, terminating a periodic tenancy, refusing to renew a tenancy for a  
7 fixed term under a rental agreement containing a renewal option that is  
8 exercisable by the tenant without negotiation with the landlord, or bringing  
9 or threatening to bring a failure to vacate charge or an action for  
10 possession of the premises because the tenant:

11 (1) Complained to a governmental agency responsible for the  
12 enforcement of a building or housing code or other law, alleging a violation  
13 applicable to the premises materially affecting the health and safety of the  
14 tenant;

15 (2) Complained to a governmental agency responsible for the  
16 enforcement of laws prohibiting discrimination in rental housing;

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

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

21 (5) Has made use of the remedies provided under this  
22 subchapter.

23 (b)(1) Notwithstanding subsection (a) of this section, a landlord may  
24 bring an action in unlawful detainer or eviction if:

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

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

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

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

35 (E) The landlord is seeking a judgment in unlawful  
36 detainer or eviction based on a notice to terminate the rental agreement

1 given to the tenant before the tenant engaged in conduct described in  
 2 subsection (a) of this section; or

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

6 (c)(1) A rental agreement shall not require a tenant to waive or  
 7 forego a right or remedy under this subchapter except as allowed under § 18-  
 8 17-502(d).

9 (2) A provision in a rental agreement that violates subdivision (c)(1)  
 10 of this section is unenforceable.

11  
 12 18-17-508. Remedies.

13 (a) If a tenant engages in conduct described in § 18-17-507(a) with no  
 14 factual or legal basis for the conduct, the landlord may recover actual  
 15 damages and the court may award the landlord up to three (3) times the  
 16 periodic rent specified under the rental agreement.

17 (b) If a landlord's purpose for using retaliatory measures against the  
 18 tenant is for conduct described in § 18-17-507(a), the tenant

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

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

23 (c) If a tenant terminates a rental agreement under subsection (b) of  
 24 this section, the landlord shall return to the tenant the amount of the  
 25 security deposit and any unearned rent to which the tenant is entitled under  
 26 § 18-17-301 et seq.

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

29  
 30 SECTION 2. Arkansas Code § 18-17-602 is amended to read as follows:  
 31 18-17-602. Access.

32 (a) A tenant shall not unreasonably withhold consent to the landlord  
 33 to enter into ~~the~~ a dwelling unit in order to inspect the premises, make  
 34 necessary or ~~agreed~~ agreed-upon repairs, decorations, alterations, or  
 35 improvements, supply necessary or ~~agreed~~ agreed-upon services, investigate  
 36 possible rule or ~~lease~~ rental agreement violations, ~~investigate possible~~

1 ~~criminal activity~~, or exhibit the dwelling unit to prospective or actual  
2 purchasers, mortgagees, tenants, workers, or contractors.

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

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

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

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

15  
16 SECTION 3. Arkansas Code § 18-17-705 is amended to read as follows:

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

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

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

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

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

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

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

31 (B) Terminate the rental agreement.

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

34  
35 SECTION 4. Arkansas Code Title 18, Chapter 17, Subchapter 8, is  
36 amended to add an additional section to read as follows:



