

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.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

HOUSE BILL 2335

4  
5 By: Representatives Lendall, J. Elliott  
6  
7

## For An Act To Be Entitled

UNI FORM RESIDENTIAL LANDLORD AND TENANT ACT.

### Subtitle

UNI FORM RESIDENTIAL LANDLORD AND TENANT  
ACT.

8  
9  
10  
11  
12  
13  
14  
15  
16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
17

18 SECTION 1. This act shall be known and may be cited as the "Uni form  
19 Residential Landlord and Tenant Act."  
20

21 SECTION 2. Purposes - Rules of Construction.

22 (a) This act shall be liberally construed and applied to promote its  
23 underlying purposes and policies.

24 (b) The underlying purposes and policies of this act are:

25 (1) to simplify, clarify, modernize, and revise the law governing  
26 the rental of dwelling units and the rights and obligations of landlords and  
27 tenants;

28 (2) to encourage landlords and tenants to maintain and improve  
29 the quality of housing.  
30

31 SECTION 3. Supplementary Principles of Law Applicable.

32 Unless displaced by the provisions of this act, the principles of law  
33 and equity, including the law relating to capacity to contract, mutuality of  
34 obligations, principal and agent, real property, public health, safety and  
35 fire prevention, estoppel, fraud, misrepresentation, duress, coercion,  
36 bankruptcy, or other validating or invalidating cause supplement its

1 provisions.

2

3 SECTION 4. Construction Against Implicit Repeal.

4 This act being a general act intended as a unified coverage of its  
5 subject matter, no part of it is to be construed as impliedly repealed by  
6 subsequent legislation if that construction can reasonably be avoided.

7

8 SECTION 5. Remedies and Enforcement, Generally.

9 (a) The remedies provided by this act shall be so administered that an  
10 aggrieved party may recover appropriate damages. The aggrieved party has a  
11 duty to mitigate damages.

12 (b) Any right or obligation declared by this act is enforceable by  
13 action unless the provision declaring it specifies a different and limited  
14 effect.

15

16 SECTION 6. Scope.

17 This act applies to, and regulates rights, obligations, and remedies  
18 under a rental agreement, wherever made, for a dwelling unit located within  
19 Arkansas. This act concerns landlord/tenant relationships under rental  
20 agreements for residential purposes. This act does not apply to rental  
21 agreements made for commercial, industrial, agricultural, or any purpose other  
22 than residential.

23

24 SECTION 7. Exclusions.

25 Unless created to avoid the application of this act, the following  
26 arrangements are not governed by this act:

27 (1) residence at an institution, public or private, if incidental  
28 to detention or the provision of medical, geriatric, educational, counseling,  
29 religious, or similar service;

30 (2) occupancy under a contract of sale of a dwelling unit or the  
31 property of which it is a part, if the occupant is the purchaser or a person  
32 who succeeds to his interest;

33 (3) occupancy by a member of a fraternal or social organization  
34 in the portion of a structure operated for the benefit of the organization;

35 (4) transient occupancy in a hotel, or motel;

36 (5) occupancy by an employee of a landlord whose right to

1 occupancy is conditional upon employment in and about the premises;

2 (6) occupancy by an owner of a condominium unit or a holder of a  
3 proprietary lease in a cooperative;

4 (7) occupancy under a rental agreement covering premises used by  
5 the occupant primarily for agricultural purposes.

6  
7 SECTION 8. Definitions. As used in this act, unless the context  
8 otherwise requires:

9 (1) "Action" includes recoupment, counterclaim, set-off, suit in  
10 equity, and any other proceeding in which rights are determined, including an  
11 action for possession;

12 (2) "Building and housing codes" include any law, ordinance, or  
13 governmental regulation concerning fitness for habitation, or the  
14 construction, maintenance, operation, occupancy, use, or appearance of any  
15 premises, or dwelling unit;

16 (3) "Dwelling unit" means a structure or the part of a structure that  
17 is used as a home, residence, or sleeping place by one person who maintains a  
18 household or by two (2) or more persons who maintain a common household;

19 (4) "Good faith" means honesty in fact in the conduct of the  
20 transaction concerned;

21 (5) "Landlord" means the owner, lessor, or sublessor of the dwelling  
22 unit or the building of which it is a part, and it also means a manager of the  
23 premises who fails to disclose as required by Section 16 of this act;

24 (6) "Organization" includes a corporation, government, governmental  
25 subdivision or agency, business trust, estate, trust, partnership or  
26 association, two (2) or more persons having a joint or common interest, and  
27 any other legal or commercial entity;

28 (7) "Owner" means one or more persons, jointly or severally, in whom is  
29 vested:

30 (A) all or part of the legal title to property; or

31 (B) all or part of the beneficial ownership and a right to  
32 present use and enjoyment of the premises. The term includes a mortgagee in  
33 possession;

34 (8) "Person" includes an individual or organization;

35 (9) "Premises" means a dwelling unit and the structure of which it is a  
36 part and facilities and appurtenances therein and grounds, areas, and

1 facilities held out for the use of tenants generally or whose use is promised  
2 to the tenant;

3 (10) "Rent" means all payments to be made to or for the benefit of the  
4 landlord under the rental agreement;

5 (11) "Rental agreement" means all agreements, written or oral,  
6 concerning the use and occupancy of a dwelling unit and premises;

7 (12) "Roomer" means a person occupying a dwelling unit that does not  
8 include a toilet and either a bath tub or a shower and a refrigerator, stove,  
9 and kitchen sink, all provided by the landlord, and where one or more of these  
10 facilities are used in common by occupants in the structure;

11 (13) "Single family residence" means a structure maintained and used as  
12 a single dwelling unit. Notwithstanding that a dwelling unit shares one or  
13 more walls with another dwelling unit, it is a single family residence if it  
14 has direct access to a street or thoroughfare and shares neither heating  
15 facilities, hot water equipment, nor any other essential facility or service  
16 with any other dwelling unit;

17 (14) "Tenant" means a person entitled under a rental agreement to  
18 occupy a dwelling unit to the exclusion of others.

19

20 SECTION 9. Obligation of Good Faith.

21 Every duty under this act and every act which must be performed as a  
22 condition precedent to the exercise of a right or remedy under this act  
23 imposes an obligation of good faith in its performance or enforcement.

24

25 SECTION 10. Unconscionability.

26 (a) If the court, as a matter of law, finds:

27 (1) a rental agreement or any provision thereof was  
28 unconscionable when made, the court may refuse to enforce the agreement,  
29 enforce the remainder of the agreement without the unconscionable provision,  
30 or limit the application of any unconscionable provision to avoid an  
31 unconscionable result; or

32 (2) a settlement in which a party waives or agrees to forego a  
33 claim or right under this act or under a rental agreement was unconscionable  
34 when made, the court may refuse to enforce the settlement, enforce the  
35 remainder of the settlement without the unconscionable provision, or limit the  
36 application of any unconscionable provision to avoid an unconscionable result.

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

5  
6 SECTION 11. Notice.

7 (a) A person has notice of a fact if:

- 8 (1) he has actual knowledge of it;
- 9 (2) he has received a notice or notification of it; or
- 10 (3) from all the facts and circumstances known to him at the time  
11 in question he has reason to know that it exists.

12 (b) A person "notifies" or "gives" a notice or notification to another  
13 person by taking steps reasonably calculated to inform the other in ordinary  
14 course whether or not the other actually comes to know of it. A person  
15 "receives" a notice or notification when:

- 16 (1) it comes to his attention; or
- 17 (2) in the case of the landlord, it is delivered at the place of  
18 business of the landlord through which the rental agreement was made or at any  
19 place held out by him as the place for receipt of the communication; or
- 20 (3) in the case of the tenant, it is delivered in hand to the  
21 tenant or mailed by registered or certified mail to him at the place held out  
22 by him as the place for receipt of the communication, or in the absence of  
23 such designation, to his last known place of residence.

24 (c) "Notice," knowledge of a notice or notification received by an  
25 organization is effective for a particular transaction from the time it is  
26 brought to the attention of the individual conducting that transaction, and in  
27 any event from the time it would have been brought to his attention if the  
28 organization had exercised reasonable diligence.

29  
30 SECTION 12. Terms and Conditions of Rental Agreement.

31 (a) A landlord and a tenant may include in a rental agreement terms and  
32 conditions not prohibited by this act or other rule of law, including rent,  
33 term of the agreement, and other provisions governing the rights and  
34 obligations of the parties.

35 (b) In absence of agreement, the tenant shall pay as rent the fair  
36 rental value for the use and occupancy of the dwelling unit.

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

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

10  
11 SECTION 13. Effect of Unsigned or Undelivered Rental Agreement.

12 (a) If the landlord does not sign and deliver a written rental  
13 agreement signed and delivered to him by the tenant, acceptance of rent  
14 without reservation by the landlord gives the rental agreement the same effect  
15 as if it had been signed and delivered by the landlord.

16 (b) If the tenant does not sign and deliver a written rental agreement  
17 signed and delivered to him by the landlord, acceptance of possession and  
18 payment of rent without reservation gives the rental agreement the same effect  
19 as if it had been signed and delivered by the tenant.

20  
21 SECTION 14. Prohibited Provisions in Rental Agreements.

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

23 (1) agrees to waive or forego rights or remedies under this act;

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

26 (3) agrees to the exculpation or limitation of any liability of  
27 the landlord arising under law or to indemnify the landlord for that liability  
28 or the costs connected therewith.

29 (b) A provision prohibited by subsection (a) of this section included  
30 in a rental agreement is unenforceable. If a landlord deliberately uses a  
31 rental agreement containing provisions known by him to be prohibited, the  
32 tenant may recover in addition to his actual damages an amount up to three (3)  
33 months' periodic rent and reasonable attorney's fees.

34  
35 SECTION 15. Security Deposits.

36 (a) A landlord may not demand or receive security, however denominated,

1 in an amount or value in excess of two (2) months periodic rent.

2 (b) Upon termination of the tenancy, property or money held by the  
3 landlord as security may be applied to the payment of accrued rent and the  
4 amount of damages which the landlord has suffered by reason of the tenant's  
5 noncompliance with Section 20 of this act all as itemized by the landlord in a  
6 written notice delivered to the tenant together with the amount due fourteen  
7 (14) days after termination of the tenancy and delivery of possession by the  
8 tenant.

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

14 (d) This section does not preclude the landlord or tenant from  
15 recovering other damages to which he may be entitled under this act.

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

18  
19 SECTION 16. Disclosure.

20 (a) A landlord or any person authorized to enter into a rental  
21 agreement on his behalf shall disclose to the tenant in writing at or before  
22 the commencement of the tenancy the name and address of:

23 (1) the person authorized to manage the premises; and

24 (2) an owner of the premises or a person authorized to act for  
25 and on behalf of the owner for the purpose of service of process and receiving  
26 and receipting for notices and demands.

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

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

32 (1) service of process and receiving and receipting for notices  
33 and demands; and

34 (2) performing the obligations of the landlord under this act and  
35 under the rental agreement and expending or making available for the purpose  
36 all rent collected from the premises.

SECTION 17. Landlord to Deliver Possession of Dwelling Unit.

At the commencement of the term a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and Section 18 of this act. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 38(c) of this act.

SECTION 18. 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 put and keep 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 supplied by him;

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

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

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

(c) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in paragraphs (5) and (6) of subsection (a) of this section and also specified repairs,



1 maintenance tasks, alterations, and remodeling, but only if the transaction is  
2 entered into in good faith.

3 (d) The landlord and tenant of any dwelling unit other than a single  
4 family residence may agree that the tenant is to perform specified repairs,  
5 maintenance tasks, alterations, or remodeling only if:

6 (1) the agreement of the parties is entered into in good faith  
7 and is set forth in a separate writing signed by the parties and supported by  
8 adequate consideration;

9 (2) the work is not necessary to cure noncompliance with  
10 subsection (a)(1) of this section; and

11 (3) the agreement does not diminish or affect the obligation of  
12 the landlord to other tenants in the premises.

13 (e) The landlord may not treat performance of the separate agreement  
14 described in subsection (d) of this section as a condition to any obligation  
15 or performance of any rental agreement.

16

17 SECTION 19. Limitation of Liability.

18 (a) Unless otherwise agreed, a landlord who conveys premises that  
19 include a dwelling unit subject to a rental agreement in a good faith sale to  
20 a bona fide purchaser is relieved of liability under the rental agreement and  
21 this act as to events occurring after written notice to the tenant of the  
22 conveyance. However, he remains liable to the tenant for all security  
23 recoverable by the tenant under Section 15 of this act and all prepaid rent.

24 (b) Unless otherwise agreed, a manager of premises that include a  
25 dwelling unit is relieved of liability under the rental agreement and this act  
26 as to events occurring after written notice to the tenant of the termination  
27 of his management.

28

29 SECTION 20. Tenant to Maintain Dwelling Unit.

30 A tenant shall:

31 (1) comply with all obligations primarily imposed upon tenants by  
32 applicable provisions of building and housing codes materially affecting  
33 health and safety;

34 (2) keep that part of the premises that he occupies and uses as  
35 clean and safe as the condition of the premises permit;

36 (3) dispose from his dwelling unit all ashes, garbage, rubbish,

1 and other waste in a clean and safe manner;

2 (4) keep all plumbing fixtures in the dwelling unit or used by  
 3 the tenant as clear as their condition permits;

4 (5) use in a reasonable manner all electrical, plumbing,  
 5 sanitary, heating, ventilating, air-conditioning, and other facilities and  
 6 appliances including elevators in the premises;

7 (6) not deliberately or negligently destroy, deface, damage,  
 8 impair, or remove any part of the premises or knowingly permit any person to  
 9 do so; and

10 (7) conduct himself and require other persons on the premises  
 11 with his consent to conduct themselves in a manner that will not disturb his  
 12 neighbors' peaceful enjoyment of the premises.

13  
 14 SECTION 21. Rules and Regulations.

15 (a) A landlord, from time to time, may adopt a rule or regulation,  
 16 however described, concerning the tenant's use and occupancy of the premises.  
 17 It is enforceable against the tenant only if:

18 (1) its purpose is to promote the convenience, safety, or welfare  
 19 of the tenants in the premises, preserve the landlord's property from abusive  
 20 use, or make a fair distribution of services and facilities held out for the  
 21 tenants generally;

22 (2) it is reasonably related to the purpose of which it is  
 23 adopted;

24 (3) it applies to all tenants in the premises in a fair manner;

25 (4) it is sufficiently explicit in its prohibition, direction, or  
 26 limitation of the tenant's conduct to fairly inform him of what he must or  
 27 must not do to comply;

28 (5) it is not for the purpose of evading the obligations of the  
 29 landlord; and

30 (6) the tenant has notice of it at the time he enters into the  
 31 rental agreement, or when it is adopted.

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

35  
 36 SECTION 22. Access.

1 (a) A tenant shall not unreasonably withhold consent to the landlord to  
2 enter into the dwelling unit in order to inspect the premises, make necessary  
3 or agreed repairs, decorations, alterations, or improvements, supply necessary  
4 or agreed services, or exhibit the dwelling unit to prospective or actual  
5 purchasers, mortgagees, tenants, workmen, or contractors.

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

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

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

13 (1) pursuant to court order;

14 (2) as permitted by Sections 32 and 33(b) of this act; or

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

16  
17 SECTION 23. Tenant Use and Absences.

18 Unless otherwise agreed, a tenant shall occupy his dwelling unit only as  
19 a dwelling unit. The rental agreement may require that the tenant notify the  
20 landlord of any anticipated extended absence from the premises in excess of  
21 seven (7) days no later than the first (1<sup>st</sup>) day of the extended absence.

22  
23 SECTION 24. Tenant Remedies - Noncompliance by the Landlord - In  
24 General.

25 (a) Except as provided in this act, if there is a material  
26 noncompliance by the landlord with the rental agreement or a noncompliance  
27 with Section 18 of this act materially affecting health and safety, the tenant  
28 may deliver a written notice to the landlord specifying the acts and omissions  
29 constituting the breach and that the rental agreement will terminate upon a  
30 date not less than thirty (30) days after receipt of the notice if the breach  
31 is not remedied in fourteen (14) days, and the rental agreement shall  
32 terminate as provided in the notice subject to the following:

33 (1) If the breach is remedial by repairs, the payment of damages  
34 or otherwise, and the landlord adequately remedies the breach before the date  
35 specified in the notice, the rental agreement shall not terminate by reason of  
36 the breach.

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

6           (3) The tenant may not terminate for a condition caused by the  
7 deliberate or negligent act or omission of the tenant, a member of his family,  
8 or other person on the premises with his consent.

9           (b) Except as provided in this act, the tenant may recover actual  
10 damages and obtain injunctive relief for noncompliance by the landlord with  
11 the rental agreement or Section 18 of this act. If the landlord's  
12 noncompliance is willful the tenant may recover reasonable attorney's fees.

13           (c) The remedy provided in subsection (b) of this section is in  
14 addition to any right of the tenant arising under Section 24(a) of this act.

15           (d) If the rental agreement is terminated, the landlord shall return  
16 all security recoverable by the tenant under Section 15 of this act and all  
17 prepaid rent.

18  
19           SECTION 25. Tenant Remedies - Failure to Deliver Possession.

20           (a) If the landlord fails to deliver possession of the dwelling unit to  
21 the tenant as provided in Section 17 of this act, rent abates until possession  
22 is delivered and the tenant may:

23           (1) terminate the rental agreement upon at least five (5) days'  
24 written notice to the landlord, and upon termination the landlord shall return  
25 all prepaid rent and security; or

26           (2) demand performance of the rental agreement by the landlord  
27 and, if the tenant elects, obtain possession of the dwelling unit from the  
28 landlord or any person wrongfully in possession and recover the actual damages  
29 sustained by him.

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

34  
35           SECTION 26. Tenant Remedies - Self-Help for Minor Defects.

36           (a) If the landlord fails to comply with the rental agreement or

1 Section 18 of this act, and the reasonable cost of compliance is less than one  
 2 hundred dollars (\$100), or an amount equal to one-half (1/2) the periodic  
 3 rent, whichever amount is greater, the tenant may recover damages for the  
 4 breach under Section 24(b) of this act or may notify the landlord of his  
 5 intention to correct the condition at the landlord's expense. If the landlord  
 6 fails to comply within fourteen (14) days after being notified by the tenant  
 7 in writing or as promptly as conditions require in case of emergency, the  
 8 tenant may cause the work to be done in a workmanlike manner and, after  
 9 submitting to the landlord an itemized statement, deduct from his rent the  
 10 actual and reasonable cost or the fair and reasonable value of the work, not  
 11 exceeding the amount specified in this subsection.

12 (b) A tenant may not repair at the landlord's expense if the condition  
 13 was caused by the deliberate or negligent act or omission of the tenant, a  
 14 member of his family, or other person on the premises with his consent.

15  
 16 SECTION 27. Tenant Remedies - Wrongful Failure to Supply Heat, Water,  
 17 Hot Water, or Essential Services.

18 (a) If contrary to the rental agreement or Section 18 of this act the  
 19 landlord willfully or negligently fails to supply heat, running water, hot  
 20 water, electric, gas, or other essential service, the tenant may give written  
 21 notice to the landlord specifying the breach and may:

22 (1) take reasonable and appropriate measures to secure reasonable  
 23 amounts of heat, hot water, running water, electric, gas, and other essential  
 24 service during the period of the landlord's noncompliance and deduct their  
 25 actual and reasonable cost from the rent; or

26 (2) recover damages based upon the diminution in the fair rental  
 27 value of the dwelling unit; or

28 (3) procure reasonable substitute housing during the period of  
 29 the landlord's noncompliance, in which case the tenant is excused from paying  
 30 rent for the period of the landlord's noncompliance.

31 (b) In addition to the remedy provided in paragraph (3) of subsection  
 32 (a) of this section the tenant may recover the actual and reasonable cost or  
 33 fair and reasonable value of the substitute housing not in excess of an amount  
 34 equal to the periodic rent, and in any case under subsection (a) of this  
 35 section, reasonable attorney's fees.

36 (c) If the tenant proceeds under this section, he may not proceed under

1 Sections 24 or 26 of this act as to that breach.

2 (d) Rights of the tenant under this section do not arise until he has  
 3 given notice to the landlord or if the condition was caused by the deliberate  
 4 or negligent act or omission of the tenant, a member of his family, or other  
 5 person on the premises with his consent.

6  
 7 SECTION 28. Tenant Remedies - Landlord's Noncompliance as Defense to  
 8 Action for Possession or Rent.

9 (a) In an action for possession based upon nonpayment of the rent or in  
 10 an action for rent when the tenant is in possession, the tenant may  
 11 counterclaim for any amount he may recover under the rental agreement or this  
 12 act. In that event the court from time to time may order the tenant to pay  
 13 into court all or part of the rent accrued and thereafter accruing, and shall  
 14 determine the amount due to each party. The party to whom a net amount is owed  
 15 shall be paid first from the money paid into court, and the balance by the  
 16 other party. If no rent remains due after application of this section,  
 17 judgment shall be entered for the tenant in the action for possession. If the  
 18 defense or counterclaim by the tenant is without merit and is not raised in  
 19 good faith, the landlord may recover reasonable attorney's fees.

20 (b) In an action for rent when the tenant is not in possession, he may  
 21 counterclaim as provided in subsection (a) of this section but is not required  
 22 to pay any rent into court.

23  
 24 SECTION 29. Tenant Remedies - Fire or Casualty Damage.

25 (a) If the dwelling unit or premises are damaged or destroyed by fire  
 26 or casualty to an extent that enjoyment of the dwelling unit is substantially  
 27 impaired, the tenant may:

28 (1) immediately vacate the premises and notify the landlord in  
 29 writing within fourteen (14) days thereafter of his intention to terminate the  
 30 rental agreement, in which case the rental agreement terminates as of the date  
 31 of vacating; or

32 (2) if continued occupancy is lawful, vacate any part of the  
 33 dwelling unit rendered unusable by the fire or casualty, in which case the  
 34 tenant's liability for rent is reduced in proportion to the diminution in the  
 35 fair rental value of the dwelling unit.

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

1 security recoverable under Section 15 of this act and all prepaid rent.  
2 Accounting for rent in the event of termination or apportionment shall be made  
3 as of the date of the fire or casualty.

4  
5 SECTION 30. Tenant's Remedies - Landlord's Unlawful Ouster, Exclusion,  
6 or Diminution of Service.

7 If a landlord unlawfully removes or excludes the tenant from the  
8 premises or willfully diminishes services to the tenant by interrupting or  
9 causing the interruption of heat, running water, hot water, electric, gas, or  
10 other essential service, the tenant may recover possession or terminate the  
11 rental agreement and, in either case, recover an amount not more than three  
12 (3) months' periodic rent or threefold the actual damages sustained by him,  
13 whichever is greater, and reasonable attorney's fees. If the rental agreement  
14 is terminated the landlord shall return all security recoverable under Section  
15 15 of this act and all prepaid rent.

16  
17 SECTION 31. Landlord Remedies - Noncompliance with Rental Agreement;  
18 Failure to Pay Rent.

19 (a) Except as provided in this act, if there is a material  
20 noncompliance by the tenant with the rental agreement or a noncompliance with  
21 Section 20 of this act materially affecting health and safety, the landlord  
22 may deliver a written notice to the tenant specifying the acts and omissions  
23 constituting the breach and that the rental agreement will terminate upon a  
24 date not less than thirty (30) days after receipt of the notice. The rental  
25 agreement shall terminate as provided in the notice unless the breach is  
26 remediable by repairs or the payment of damages or otherwise and the tenant  
27 adequately remedies the breach before the date specified in the notice. If  
28 substantially the same act or omission which constituted a prior noncompliance  
29 of which notice was given recurs within six (6) months, the landlord may  
30 terminate the rental agreement upon at least fourteen (14) days' written  
31 notice specifying the breach and the date of termination of the rental  
32 agreement.

33 (b) If rent is unpaid when due and the tenant fails to pay rent within  
34 fourteen (14) days after written notice by the landlord of nonpayment and his  
35 intention to terminate the rental agreement if the rent is not paid within  
36 that period, the landlord may terminate the rental agreement.

1        (c) Except as provided in this act, the landlord may recover actual  
2 damages and obtain injunctive relief for noncompliance by the tenant with the  
3 rental agreement or Section 20 of this act. If the tenant's noncompliance is  
4 willful the landlord may recover reasonable attorney's fees.

5  
6        SECTION 32. Landlord Remedies - Failure to Maintain.

7        If there is noncompliance by the tenant with Section 20 of this act  
8 materially affecting health and safety that can be remedied by repair,  
9 replacement of a damaged item, or cleaning, and the tenant fails to comply as  
10 promptly as conditions require in case of emergency or within fourteen (14)  
11 days after written notice by the landlord specifying the breach and requesting  
12 that the tenant remedy it within that period of time, the landlord may enter  
13 the dwelling unit and cause the work to be done in a workmanlike manner and  
14 submit the itemized bill for the actual and reasonable cost or the fair and  
15 reasonable value thereof as rent on the next date periodic rent is due, or if  
16 the rental agreement has terminated, for immediate payment.

17  
18        SECTION 33. Landlord Remedies - Absence, Nonuse and Abandonment.

19        (a) If the rental agreement requires the tenant to give notice to the  
20 landlord of an anticipated extended absence in excess of seven (7) days  
21 pursuant to Section 23 of this act and the tenant willfully fails to do so,  
22 the landlord may recover actual damages from the tenant.

23        (b) During any absence of the tenant in excess of seven (7) days, the  
24 landlord may enter the dwelling unit at times reasonably necessary.

25        (c) If the tenant abandons the dwelling unit, the landlord shall make  
26 reasonable efforts to rent it at a fair rental. If the landlord rents the  
27 dwelling unit for a term beginning before the expiration of the rental  
28 agreement, it terminates as of the date of the new tenancy. If the landlord  
29 fails to use reasonable efforts to rent the dwelling unit at a fair rental or  
30 if the landlord accepts the abandonment as a surrender, the rental agreement  
31 is deemed to be terminated by the landlord as of the date the landlord has  
32 notice of the abandonment. If the tenancy is from month-to-month or week-to-  
33 week, the term of the rental agreement for this purpose is deemed to be a  
34 month or a week, as the case may be.

35  
36        SECTION 34. Waiver of Landlord's Right to Terminate.



1 Acceptance of rent with knowledge of a default by the tenant or  
2 acceptance of performance by him that varies from the terms of the rental  
3 agreement constitutes a waiver of the landlord's right to terminate the rental  
4 agreement for that breach, unless otherwise agreed after the breach has  
5 occurred.

6  
7 SECTION 35. Landlord Liens - Distress for Rent.

8 (a) A lien or security interest on behalf of the landlord in the  
9 tenant's household goods is not enforceable unless perfected before the  
10 effective date of this act.

11 (b) Distraint for rent is abolished.

12  
13 SECTION 36. Remedy after Termination.

14 If the rental agreement is terminated, the landlord has a claim for  
15 possession and for rent and a separate claim for actual damages for breach of  
16 the rental agreement and reasonable attorney's fees as provided in Section  
17 31(c) of this act. Once a tenancy has been terminated pursuant to this act,  
18 the landlord may proceed to recover possession as provided in Arkansas Code §§  
19 18-60-301 through 18-60-312.

20  
21 SECTION 37. Recovery of Possession Limited.

22 A landlord may not recover or take possession of the dwelling unit by  
23 action or otherwise, including willful diminution of services to the tenant by  
24 interrupting or causing the interruption of heat, running water, hot water,  
25 electric, gas, or other essential service to the tenant, except in case of  
26 abandonment, surrender, or as permitted in this act.

27  
28 SECTION 38. Periodic Tenancy - Holdover Remedies.

29 (a) The landlord or the tenant may terminate a week-to-week tenancy by  
30 a written notice given to the other at least ten (10) days before the  
31 termination date specified in the 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 sixty (60) days before the  
34 periodic rental date specified in the notice.

35 (c) If the tenant remains in possession without the landlord's consent  
36 after expiration of the term of the rental agreement or its termination, the

1 landlord may bring an action for possession and if the tenant's holdover is  
2 willful and not in good faith, the landlord may also recover an amount not  
3 more than three (3) month's periodic rent or threefold the actual damages  
4 sustained by him, whichever is greater, and reasonable attorney's fees. If the  
5 landlord consents to the tenant's continued occupancy, Section 12(d) of this  
6 act applies.

7

8 SECTION 39. Landlord and Tenant Remedies for Abuse of Access.

9 (a) If the tenant refuses to allow lawful access, the landlord may  
10 obtain injunctive relief to compel access, or terminate the rental agreement.  
11 In either case the landlord may recover actual damages and reasonable  
12 attorney's fees.

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

20

21 SECTION 40. Retaliatory Conduct Prohibited.

22 (a) Except as provided in this section, a landlord may not retaliate by  
23 increasing rent or decreasing services or by bringing or threatening to bring  
24 an action for possession within three (3) months:

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

29 (2) the tenant has complained to the landlord of a violation  
30 under Section 18 of this act; or

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

33 (b) If the landlord acts in violation of subsection (a) of this  
34 section, the tenant is entitled to the remedies provided in Section 30 of this  
35 act and has a defense in any retaliatory action against him for possession. In  
36 an action by or against the tenant, evidence of a complaint within three (3)

1 months before the alleged act of retaliation creates a presumption that the  
2 landlord's conduct was in retaliation. The presumption does not arise if the  
3 tenant made the complaint after notice of a proposed rent increase or  
4 diminution of services. "Presumption" means that the trier of fact must find  
5 the existence of the fact presumed unless and until evidence is introduced  
6 which would support a finding of its nonexistence.

7 (c) Notwithstanding subsections (a) and (b) of this section, a landlord  
8 may bring an action for possession if:

9 (1) the violation of the applicable building or housing code was  
10 caused primarily by lack of reasonable care by the tenant, a member of his  
11 family, or other person on the premises with his consent; or

12 (2) the tenant is in default in rent; or

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

16 (d) The maintenance of an action under subsection (c) of this section  
17 does not release the landlord from liability under Section 24(b) of this act.

18  
19 SECTION 41. Specific Repealer. Arkansas Code §§ 18-16-101, 18-16-106,  
20 18-16-107, and 18-16-108 are repealed.

21  
22 SECTION 42. Savings Clause.

23 Transactions entered into before the effective date of this Act, and not  
24 extended or renewed on and after that date, and the rights, duties, and  
25 interests flowing from them remain valid and may be terminated, completed,  
26 consummated, or enforced as required or permitted by any statute or other law  
27 amended or repealed by this Act as though the repeal or amendment had not  
28 occurred.

29  
30  
31  
32  
33  
34  
35  
36