

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1563

5 By: Representative Gazaway  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS RESIDENTIAL LANDLORD-  
9 TENANT ACT OF 2007; TO CREATE A CIVIL EVICTION  
10 PROCESS; TO REQUIRE MINIMUM HABITABILITY STANDARDS  
11 FOR TENANTS OF RESIDENTIAL REAL PROPERTY; AND FOR  
12 OTHER PURPOSES.  
13  
14

## Subtitle

15 TO AMEND THE ARKANSAS RESIDENTIAL  
16 LANDLORD-TENANT ACT OF 2007; TO CREATE A  
17 CIVIL EVICTION PROCESS; AND TO REQUIRE  
18 MINIMUM HABITABILITY STANDARDS FOR  
19 TENANTS OF RESIDENTIAL REAL PROPERTY.  
20  
21  
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
24

25 SECTION 1. Arkansas Code § 18-17-701(a) and (b), concerning a tenant's  
26 noncompliance with a rental agreement, is amended to read as follows;

27 (a)(1) Except as provided in this chapter, if there is a noncompliance  
28 by the tenant with the rental agreement, the landlord may deliver a written  
29 notice to the tenant;

30 (A) specifying ~~Specifying~~ the acts and omissions  
31 constituting the noncompliance ~~and~~;

32 (B) Stating that the rental agreement will terminate upon  
33 a date not less than fourteen (14) days after receipt of the notice, if the  
34 noncompliance is not remedied in fourteen (14) days; and

35 (C) Stating that an eviction action may be filed against  
36 the tenant.





1 ~~17-705.~~

2 ~~(b) Upon the filing by the landlord or his or her agent or attorney of~~  
 3 ~~a complaint and supporting affidavit of eviction, the district court shall~~  
 4 ~~issue an order requiring the tenant to vacate the occupied premises or to~~  
 5 ~~show cause why he or she should not be evicted by the court within ten (10)~~  
 6 ~~calendar days after the date of service of a copy of the order upon the~~  
 7 ~~tenant.~~

8  
 9 ~~18-17-903. Service of order — Posting and mailing requirements.~~

10 ~~(a) The copy of the order to vacate under § 18-17-902 may be served in~~  
 11 ~~the manner as is provided by law for the service of the summons in actions~~  
 12 ~~pending in the district court of this state.~~

13 ~~(b) When service in accordance with subsection (a) of this section has~~  
 14 ~~been unsuccessfully attempted and no person is found in possession of the~~  
 15 ~~premises, the copy of the order to vacate may be served by leaving it affixed~~  
 16 ~~to the most conspicuous part of the premises.~~

17  
 18 ~~18-17-904. Tenant ejected on failure to show cause.~~

19 ~~If the tenant fails to appear and show cause within the ten-calendar-~~  
 20 ~~day period provided in § 18-17-902(b) as directed by the order or at the~~  
 21 ~~court appointed hearing date, the court shall enter judgment in favor of the~~  
 22 ~~plaintiff and direct the clerk to issue a writ of possession, and the tenant~~  
 23 ~~shall be evicted by the sheriff of the county.~~

24  
 25 ~~18-17-905. Trial of issue.~~

26 ~~If the tenant appears and contests eviction, the court shall hear and~~  
 27 ~~determine the case as any other civil case.~~

28  
 29 ~~18-17-906. Designation of parties in eviction.~~

30 ~~In any eviction proceeding in a district court, the landlord shall be~~  
 31 ~~designated as plaintiff and the tenant as defendant.~~

32  
 33 ~~18-17-907. Effect of judgment for plaintiff.~~

34 ~~If the judgment is for the plaintiff, the district court shall within~~  
 35 ~~three (3) days issue a writ of eviction, and the tenant shall be evicted by~~  
 36 ~~the sheriff of the county.~~

~~18-17-908. Effect of judgment for defendant.~~

~~If the judgment is for the defendant, the tenant shall be entitled to remain in possession until:~~

~~(1) The termination of his or her tenancy by agreement or operation of law;~~

~~(2) Failure or neglect to pay rent; or~~

~~(3) Eviction in another proceeding under this chapter or by the judgment of a court of competent jurisdiction.~~

~~18-17-909. Appeal.~~

~~Either party may appeal in an eviction case and the appeal shall be heard and determined as other appeals in civil cases.~~

~~18-17-910. Bond required to stay eviction on appeal.~~

~~(a) An appeal in an eviction case will not stay eviction unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the court and conditioned for the payment of all costs and damages that the landlord may sustain.~~

~~(b) If the tenant fails to file the bond within five (5) days after service of the notice of appeal, the appeal shall be dismissed.~~

~~18-17-911. Accrual of rent after institution of proceedings.~~

~~(a)(1) After the commencement of eviction proceedings by the issuance of an order to vacate or to show cause as provided in § 18-17-902, the rent for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises at the rate as prevailed immediately before the issuance of the order to vacate or show cause.~~

~~(2) The tenant shall be liable for the payment of the rent, the collection of which may be enforced as provided with respect to other rents.~~

~~(b) The acceptance by the landlord of any rent, whether it shall have accrued at the time of the issuance of the order to vacate or to show cause or shall subsequently accrue, shall not operate as a waiver of the landlord's right to insist upon eviction or as a renewal or extension of the tenancy, but the rights of the parties as they existed at the time of the issuance of~~

1 ~~the order to vacate or to show cause shall control.~~

2  
3 ~~18-17-912. Commercial leases.~~

4 ~~(a) In any action involving a commercial lease in which the landlord~~  
5 ~~sues for possession and the tenant raises defenses or counterclaims under~~  
6 ~~this chapter or the lease agreement:~~

7 ~~(1)(A) The tenant shall pay the landlord all rent that becomes~~  
8 ~~due after the issuance of the order requiring the tenant to vacate or show~~  
9 ~~cause as rent becomes due.~~

10 ~~(B) The landlord shall provide the tenant with a written~~  
11 ~~receipt for each payment except when the tenant pays by check; and~~

12 ~~(2)(A) The tenant shall pay the landlord all rent allegedly owed~~  
13 ~~before the issuance of the order to vacate or to show cause.~~

14 ~~(B) However, in lieu of the payment under subdivision~~  
15 ~~(a)(2)(A) of this section the tenant may be allowed to submit to the court a~~  
16 ~~receipt or cancelled check, or both, indicating that payment has been made to~~  
17 ~~the landlord.~~

18 ~~(b)(1) If the amount of rent is in controversy, the court shall~~  
19 ~~preliminarily determine the amount of rent to be paid to the landlord.~~

20 ~~(2)(A) If the tenant appears in response to the order to vacate~~  
21 ~~or to show cause and alleges that rent due owed under § 18-17-911 and this~~  
22 ~~section has been paid, the court shall determine the issue.~~

23 ~~(B) If the tenant has failed to comply with § 18-17-911~~  
24 ~~and this section, the court shall issue a writ of possession, and the~~  
25 ~~landlord shall be placed in full possession of the premises by the sheriff.~~

26 ~~(3) If the amount of rent due is determined at final~~  
27 ~~adjudication to be less than the amount alleged by the landlord, judgment~~  
28 ~~shall be entered for the tenant if the court determines that the tenant has~~  
29 ~~complied fully with the provisions of § 18-17-911, this section, and the~~  
30 ~~lease agreement.~~

31 ~~(4) If the court orders that the tenant pay all rent due and~~  
32 ~~accruing as of and during the pendency of the action, the judgment may~~  
33 ~~require the payments to be made to either the:~~

34 ~~(A) Commercial landlord; or~~

35 ~~(B)(i) Clerk of the district court who shall hold the~~  
36 ~~payments until the final disposition of the case.~~



1       The period of time required for following the proper procedures  
2 provided for in this subchapter subsequent to issuing a notice to pay rent or  
3 vacate the residential rental property may be shortened or extended by the  
4 court upon:

- 5               (1) Stipulation; or  
6               (2) Motion for good cause shown.

7  
8       18-17-903. Notice to tenant for nonpayment of rent.

9       (a) Before beginning an eviction proceeding under this subchapter for  
10 the nonpayment of rent, a landlord, his or her agent, or attorney shall give  
11 the tenant a written notice to pay rent within three (3) days or vacate the  
12 residential rental property.

13       (b) The notice shall state the amount of rent due and inform the  
14 tenant that failure to pay or vacate the residential rental property within  
15 three (3) days may result in civil proceedings for eviction.

16       (c) The landlord, his or her agent, or attorney shall deliver the  
17 notice to the tenant by any manner reasonably calculated to provide actual  
18 notice to the tenant, including without limitation by:

- 19               (1) Personal delivery;  
20               (2) Regular or certified mail; or  
21               (3) Commercial delivery service.

22  
23       18-17-904. Proper parties.

24       (a) In an eviction proceeding under this subchapter, the landlord  
25 shall be designated as plaintiff and the tenant as defendant.

26       (b) The designations required under subsection (a) of this section  
27 shall not be used:

- 28               (1) By public housing authorities as created in § 14-169-207;  
29               (2) In tenancies governed by a federal or state regulatory  
30 scheme with prescribed eviction procedures inconsistent with this subchapter;  
31 or  
32               (3) In contracts for deed or other contracts involving the  
33 permanent conveyance of real property.

34  
35       18-17-905. Complaint – Requirements generally.

36       (a) A complaint for eviction shall:

1           (1) Include a verification or supporting affidavit signed by the  
 2 landlord or another person with personal knowledge of the grounds for  
 3 eviction; and

4           (2) Be filed in the county where the residential rental property  
 5 is located.

6           (b) A complaint for eviction under this subchapter may be filed in:

7                   (1) A circuit court; or

8                   (2) A district court if jurisdiction is established by the  
 9 Supreme Court under Arkansas Constitution, Amendment 80, § 7, and if the  
 10 eviction cases are assigned to district courts through the administrative  
 11 plan under Supreme Court Administrative Order No. 14.

12           (c)(1) A complaint for eviction shall:

13                   (A) Specify by street address the residential rental  
 14 property that is being unlawfully possessed;

15                   (B) Identify the individual or individuals who are in  
 16 possession of the residential rental property;

17                   (C) If for the nonpayment of rent:

18                           (i) Explain the nature of the rental agreement, the  
 19 amount of rent past due, and the frequency with which rent payments are due;

20                           (ii) Identify the date when rent was due and rent  
 21 was not paid; and

22                           (iii) Identify the date when written notice to pay  
 23 rent or vacate the residential rental property was made;

24                   (D) If based on any other grounds, explain the grounds the  
 25 eviction is based upon;

26                   (E) State that the landlord is lawfully entitled to  
 27 possession of the property; and

28                   (F) Include the following statement: "I certify that all  
 29 of the statements made in this Complaint are true and accurate to the best of  
 30 my knowledge and that I am not filing this eviction for any discriminatory  
 31 reason based on the Defendant's race, color, national origin, religion,  
 32 familial status, or disability."

33           (2) The complaint shall be accompanied by a copy of the three-  
 34 day notice to pay rent or vacate the residential rental property made in  
 35 writing for the residential rental property or if the eviction is based on  
 36 other grounds a copy of the noncompliance or termination notice provided to

1 the tenant.

2 (3) If the complaint is based on a written rental agreement, a  
 3 copy of the rental agreement shall be attached to the complaint.

4  
 5 18-17-906. Court costs and attorney's fees.

6 (a) As used in this section, "prevailing party" means a party that:

7 (1) Initiated the enforcement of a right or a remedy under a  
 8 lease or this subchapter and substantially prevailed on the right or remedy  
 9 asserted; or

10 (2) Substantially prevailed in defending against a right or  
 11 remedy asserted by the other party.

12 (b) In a contested action for eviction due to nonpayment of rent, the  
 13 court shall award court costs to the prevailing party.

14 (c) The court may award reasonable attorney's fees to the prevailing  
 15 party if the court determines that the other party did not act in good faith,  
 16 willfully performed an act prohibited by the rental agreement or this  
 17 chapter, or willfully refrained from performing an act required by the rental  
 18 agreement or this subchapter.

19 (d) A court shall not award attorney's fees or court costs to a  
 20 landlord in an uncontested action for eviction.

21  
 22 18-17-907. Hearing – Service.

23 (a)(1) When a complaint for eviction is filed under this subchapter,  
 24 the court shall order a hearing to be held on the complaint not later than  
 25 twenty-one (21) days from the date on which the complaint is filed or the  
 26 next available court date, whichever is later.

27 (2) However, this section does not preclude the court from  
 28 setting an earlier hearing.

29 (b)(1) A copy of the complaint and notice of hearing shall be served  
 30 upon the tenant:

31 (A) At least five (5) days before the date of the hearing  
 32 if the eviction is for the nonpayment of rent;

33 (B) At least ten (10) days before the date of the hearing  
 34 if the eviction is based on grounds other than the nonpayment of rent; and

35 (C) In accordance with the applicable rules of service  
 36 under the Arkansas Rules of Civil Procedure.

1           (2) If service cannot be made on the tenant, the court may set a  
2 new date for the hearing.

3           (c) The notice to the tenant required under subdivision (b)(1) of this  
4 section shall include the following language:

5  
6 SUMMONS AND NOTICE OF EVICTION HEARING

7 Your landlord has filed a complaint for your eviction due to your nonpayment  
8 of rent.

9 A hearing on the eviction complaint is scheduled for \_\_\_\_\_, 20\_\_ in  
10 (location).

11 At the hearing, you will be given the opportunity to respond to the  
12 landlord's complaint. If you wish to remain in the property, you must prove  
13 that either 1) you paid the rent due or 2) you have a legal defense excusing  
14 you from paying rent. You have the right to have an attorney represent you in  
15 the hearing.

16 If you do not appear at the hearing, or if the landlord proves that you have  
17 not paid rent, the Court will immediately order the sheriff to evict you and  
18 return possession of the rental property to the landlord. If you appear at  
19 the hearing and do not prove you paid the rent due or present a defense for  
20 not paying rent, the court will order you to pay court costs. If the court  
21 finds you did not act in good faith or willfully violated your lease, you can  
22 also be ordered to pay the landlord's attorney's fees.

23 Be warned that intentionally causing destruction to the premises may not only  
24 make you liable for damages but also is a criminal act and may subject you to  
25 prosecution.

26  
27 18-17-908. Hearing – Written objection or answer not required.

28 (a) Due to the expedited nature of this proceeding, a tenant is not  
29 required to file a written objection or answer to dispute possession of the  
30 residential rental property.

31 (b) At the hearing, the tenant may:

32 (1) Object orally to the landlord's request for possession of  
33 the residential rental property;

34 (2) Offer proof of payment of rent; or

35 (3) Raise defenses to excuse nonpayment.

36

1 18-17-909. Continuances.

2 (a) If the court grants a continuance to either party at the hearing,  
3 the court shall order the tenant to continue making his or her rental  
4 payments into the court registry as the rental payments become due:

5 (1) In accordance with the rental agreement; or

6 (2) If the terms of the rental agreement are disputed, in an  
7 amount to be determined by the court.

8 (b) Unless the court finds good cause to order otherwise, the clerk  
9 shall disperse any rent paid by the tenant and held in the registry of the  
10 court to the landlord within five (5) days of the rent being deposited into  
11 the registry of the court.

12 (c) A tenant's failure to make the rental payments required by  
13 subsection (a) of this section is grounds for the court to order an immediate  
14 writ of possession.

15  
16 18-17-910. Effect of judgment for landlord.

17 If judgment is for the landlord, the court shall order the clerk to  
18 issue a writ of possession, and the tenant shall be evicted by the sheriff of  
19 the county according to the process described in § 18-60-310.

20  
21 18-17-911. Effect of judgment for tenant.

22 If judgment is for the tenant, the tenant may remain in possession of  
23 the residential rental property, under the terms of the rental agreement,  
24 until:

25 (1) The termination of his or her tenancy by agreement or  
26 operation of law; or

27 (2) The tenant is evicted in another proceeding under this  
28 subchapter or by judgment of a court of competent jurisdiction.

29  
30 SECTION 4. Arkansas Code § 18-17-102, concerning the purposes and  
31 rules of construction of the Arkansas Residential Landlord-Tenant Act of  
32 2007, is amended to add an additional subsection to read as follows:

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

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

36 (2) Deprive a person of any causes of action in tort that may

1 exist.

2  
 3 SECTION 5. Arkansas Code Title 18, Chapter 17, Subchapter 4, is  
 4 amended to add an additional section to read as follows:

5 18-17-402. Prohibited terms and conditions of rental agreement.

6 (a) A rental agreement shall not require the tenant to:

7 (1) Unless permitted by this chapter, waive or forego a right or  
 8 remedy under this chapter or under § 18-16-301 et seq.;

9 (2) Authorize any person to confess judgment on a claim arising  
 10 out of the rental agreement;

11 (3) Perform a duty imposed on the landlord by § 18-17-503; or

12 (4) Agree to exculpate or limit the landlord's liability arising  
 13 under this chapter or other law or indemnify the landlord for the liability  
 14 and the costs connected with the liability.

15 (b) A provision in a rental agreement prohibited under subdivision  
 16 (a)(1) of this section or prohibited by any other law is unenforceable.

17  
 18 SECTION 6. Arkansas Code Title 18, Chapter 17, Subchapter 5, is  
 19 amended to add additional sections to read as follows:

20 18-17-502. Landlord to disclose information.

21 (a) Before entering into a rental agreement, a prospective landlord  
 22 shall disclose to the prospective tenant in writing the following  
 23 information:

24 (1) Any condition of the premises which the landlord knows or  
 25 should know upon a reasonable inspection of the premises would constitute a  
 26 noncompliance under § 18-17-503 and would materially interfere with the  
 27 health or safety of the tenant or an immediate family member of the tenant;

28 (2) Whether, to the knowledge of the landlord, a foreclosure  
 29 action or nonjudicial foreclosure proceeding has been commenced against the  
 30 premises; and

31 (3) Any rules affecting the tenant's use and enjoyment of the  
 32 premises, whether adopted by the landlord or another authorized person.

33 (b) On or before commencement of the tenancy, the landlord shall give  
 34 the tenant notice in writing specifying:

35 (1) The name of:

36 (A) The landlord;

1                   (B) Any person authorized to manage the premises;

2                   (C) Any person authorized to act for the owner of the  
3 premises for service of process; and

4                   (D) Any person authorized to receive a notice or demand  
5 for the owner of the premises;

6                   (2) The mailing address and email address of the landlord or any  
7 person designated by the landlord to which a notice or demand shall be sent;  
8 and

9                   (3) The address to, or the method by, which the tenant must  
10 deliver rent.

11                  (c) A landlord shall keep current the information required by  
12 subsection (b).

13

14                  18-17-503. Landlord duty to maintain habitable premises.

15                  (a) The remedies of the tenant under this subchapter do not arise if  
16 the noncompliance under this section was caused by a willful or negligent act  
17 or omission of the tenant, the tenant's family member, a licensee, or any  
18 other person on the premises with the tenant's consent.

19                  (b) A landlord has a duty to maintain the premises in a habitable  
20 condition, including making necessary repairs.

21                  (c) The landlord shall ensure the premises:

22                   (1) Comply with the requirements of building, housing, fire,  
23 health, and safety codes materially affecting the health and safety of the  
24 occupants;

25                   (2) Have reasonable waterproofing and weather protection of the  
26 roof and exterior walls, doors, and windows so that the health and safety of  
27 the occupants are not materially affected;

28                   (3) Have plumbing, heating facilities, ventilation, and if  
29 supplied air conditioning that conform to the law and are maintained in good  
30 working order;

31                   (4) Have hot and cold running water;

32                   (5) Have electrical lighting with wiring and equipment that  
33 conform to the law and are maintained in good working order;

34                   (6) Have reasonable measures in place to control the presence of  
35 rodents, insects, and vermin that could materially affect the health and  
36 safety of the occupants;

1           (7) Have reasonable measures in place to prevent exposure to  
2 unsafe levels of lead paint, asbestos, and other hazardous substances;

3           (8) Are maintained in a condition as to prevent the accumulation  
4 of moisture and the growth of harmful mold, which if left untreated could  
5 materially affect the health and safety of the occupants;

6           (9) Have an adequate number of appropriate trash or recycling  
7 receptacles if the landlord is obligated to provide trash removal or  
8 recycling service by law or under the rental agreement;

9           (10)(A) Have a working smoke alarm or smoke detector.

10           (B) If the smoke alarm or smoke detector is solely  
11 battery-operated, the smoke alarm or smoke detector shall be equipped with  
12 functioning batteries at the beginning of the tenancy;

13           (11)(A) Have a working carbon monoxide alarm if the dwelling  
14 unit contains a carbon monoxide source or is connected to a carbon monoxide  
15 source by a door, ductwork, or a ventilation shaft.

16           (B) If the carbon monoxide alarm is solely battery-  
17 operated, the carbon monoxide alarm shall be equipped with functioning  
18 batteries at the beginning of the tenancy;

19           (12) Have floors, doors, windows, walls, ceilings, stairways,  
20 and railings that are in good repair so as not to materially affect the  
21 health and safety of the occupants;

22           (13) Have working locks or other security devices on all  
23 exterior doors and latches on any first-floor window that opens and closes;

24           (14) Have in good repair other facilities and appliances  
25 supplied or required to be supplied by the landlord under the rental  
26 agreement or by law; and

27           (15) If containing common areas under the landlord's control,  
28 keep the common areas in a clean and fit condition;

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

32           (e) A landlord and tenant may agree in writing that the tenant is to  
33 perform specified repairs, maintenance tasks, alterations, or remodeling of  
34 the premises if the:

35           (1) Agreement is entered into in good faith and not for the  
36 purposes of evading the obligations of the landlord;

1           (2) Agreement does not diminish the obligations of the landlord  
2 to other tenants on the premises; and

3           (3) Terms and conditions of the agreement are clearly and fairly  
4 disclosed and adequate consideration is specifically stated in the agreement.

5           (f) A landlord may not treat performance of an agreement described in  
6 subsection (d) of this section as a condition to the performance of any  
7 obligation required under the rental agreement or this section.

8           (g) If the duty imposed by subdivision (b)(1) of this section is  
9 greater than another duty imposed by this section, the landlord shall comply  
10 with subdivision (b)(1) of this section.

11  
12           18-17-504. Noncompliance by the landlord.

13           (a) The tenant is not entitled to any of the remedies under subsection  
14 (b) of this section if the noncompliance is caused by or is a result of a  
15 willful or negligent act or omission of the tenant, the tenant's family  
16 member, a licensee, or other person on the premises with the tenant's  
17 consent.

18           (b) Except as provided in this chapter, if there is a material  
19 noncompliance by the landlord with the rental agreement or a noncompliance  
20 with § 18-17-503 that materially affects the health and safety of the tenant,  
21 the tenant may deliver a written notice to the landlord specifying the acts  
22 and omissions constituting the noncompliance and if the noncompliance is not  
23 remedied within fourteen (14) days from the date of delivery of the written  
24 notice, the tenant may:

25           (1) Terminate the rental agreement, by giving the landlord  
26 written notice of the tenant's intent to terminate the rental agreement by a  
27 specified date that is not later than thirty (30) days after the delivery  
28 date of the written notice; or

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

31                   (A) Recover damages for the landlord's noncompliance;

32                   (B) Obtain injunctive relief for the landlord's  
33 noncompliance; or

34                   (C) Make repairs to the premises in a workmanlike manner  
35 and deduct the actual and reasonable cost from the rent, not to exceed one  
36 (1) month's periodic rent, contingent on providing the landlord with the

1 receipt and the deduction not exceeding one (1) month's periodic rent in any  
2 twelve-month period.

3 (c) If the noncompliance is remediable by repairs or the payment of  
4 damages or otherwise and the landlord adequately remedies the noncompliance  
5 before the date specified in the written notice, the rental agreement shall  
6 not terminate by reason of the noncompliance.

7 (d) The fourteen-day period of time allowed for the remedying of the  
8 noncompliance under subdivision (b) of this section may be extended due to  
9 circumstances outside the landlord's control, including without limitation  
10 due to:

11 (1) The nature of the repair needed to remedy the noncompliance;

12 (2) Inclement weather;

13 (3) The duration of the processing of an insurance claim; or

14 (4) The availability of a repair technician needed to remedy the  
15 noncompliance.

16 (e) Except as provided in this chapter, the tenant may recover  
17 reasonable attorney's fees and costs for a material noncompliance of the  
18 rental agreement by the landlord or § 18-16-503 that has materially affected  
19 the health and safety of the tenant.

20 (f) If fire or other casualty or natural disaster substantially  
21 damages the premises so that continued occupation of the dwelling unit is  
22 unlawful or dangerous or requires repairs that can be made only if the tenant  
23 vacates the premises, the landlord may terminate the rental agreement by  
24 giving the tenant written notice that the rental agreement will terminate on  
25 a specified date that is at least five (5) days after the date the written  
26 notice is given to the tenant.

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

30 (h) This section does not preclude a:

31 (1) Landlord from seeking actual damages from the tenant under  
32 the law for damage to the premises caused by an act or omission of the  
33 tenant, the tenant's family member, a licensee, or other person on the  
34 premises with the tenant's consent; or

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

1 omission of the landlord or the landlord's agent.

2  
3 18-17-505. Landlord noncompliance as defense for nonpayment of rent or  
4 failure to vacate – Escrow account.

5 (a)(1) If a landlord fails to comply with the rental agreement or §  
6 18-17-503 so as to materially affect the health and safety of the tenant and  
7 the tenant has complied with § 18-17-504, the tenant may counterclaim an  
8 action by the landlord based on possession of the premises or nonpayment of  
9 rent on the grounds of material noncompliance with § 18-17-503 and  
10 counterclaim for any amount the tenant may recover under the rental agreement  
11 or this chapter.

12 (2) A tenant prosecuted in a failure to vacate action may assert  
13 a defense on the grounds that no rent is due based on the material  
14 noncompliance of the landlord.

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

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

20 (2) The court shall determine the amount of rent due to each  
21 party.

22 (3) If no rent remains due after the application of this  
23 section, a court shall enter a judgment for the tenant on the issue of  
24 nonpayment of rent.

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

29 (e) In an action for nonpayment of rent, a tenant who brings a  
30 counterclaim but is not in possession of the premises is not required to pay  
31 any rent into the court's registry or an escrow account.

32  
33 18-17-506. Retaliation prohibited.

34 (a) Except as provided in this section, a landlord may not retaliate  
35 against a tenant by increasing rent or fees, decreasing services, terminating  
36 a periodic tenancy, refusing to renew a tenancy for a fixed term under a

1 rental agreement containing a renewal option that is exercisable by the  
2 tenant without negotiation with the landlord, or bringing or threatening to  
3 bring a failure to vacate charge or an action for possession of the premises  
4 because the tenant:

5 (1) Complained to a governmental agency responsible for the  
6 enforcement of a building or housing code or other law, alleging a violation  
7 applicable to the premises materially affecting the health and safety of the  
8 tenant;

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

11 (3) Complained to the landlord of noncompliance of the landlord  
12 with the rental agreement or § 18-17-503;

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

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

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

18 (1) A violation of this subchapter or of a building and housing  
19 code was caused by lack of reasonable care of the premises on behalf of the  
20 tenant, the tenant's family member, a licensee, or other person on the  
21 premises with the tenant's consent;

22 (2) The tenant's conduct described in subsection (a) of this  
23 section was in an unreasonable manner or at an unreasonable time or was  
24 repeated in a manner that is considered to be harassing to the landlord;

25 (3) The tenant is in default in the payment of rent;

26 (4) The tenant or a person on the premises with the tenant's  
27 consent engaged in conduct that threatened the health and safety of another  
28 tenant on the premises; or

29 (5) The landlord is seeking to recover for nonpayment of rent or  
30 possession of the premises based on a written notice to terminate the rental  
31 agreement given to the tenant before the tenant engaged in conduct described  
32 in subsection (a) of this section.

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

35  
36 18-17-507. Remedies for retaliation and bad faith action of tenant.

1        (a) If a tenant engages in conduct described in § 18-17-506(a) with no  
 2 factual or legal basis for the conduct, the landlord may recover actual  
 3 damages and the court may award the landlord reasonable attorney's fees and  
 4 costs.

5        (b) If a landlord's conduct is prohibited under § 18-17-506, the  
 6 tenant:

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

10                (2) May recover reasonable attorney's fees and costs.

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

14        (d) A tenant's exercise of a right under this section does not release  
 15 the landlord from liability under § 18-17-503.

16  
 17        SECTION 7. Arkansas Code 18-17-602, concerning consent to enter a  
 18 dwelling unit is amended to add an additional subsection to read as follows:

19        (c) A landlord may not abuse the right under this section to enter  
 20 into a tenant's dwelling unit.

21  
 22        SECTION 8. Arkansas Code 18-17-705 is amended to read as follows:

23        18-17-705. Landlord and tenant remedies for ~~refusal of~~ abuse of access  
 24 ~~to rental property.~~

25        (a)(1) If the tenant refuses to allow lawful access, the landlord may:  
 26                (A) ~~obtain~~ Obtain injunctive relief in district court  
 27 without posting bond to compel access; or

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

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

31        (b)(1) If the landlord abuses the right to enter a tenant's dwelling  
 32 unit, the tenant may:

33                (A) Obtain injunctive relief in district court without  
 34 posting bond to prevent further abuse of the right to enter the tenant's  
 35 dwelling unit; or

36                (B) Terminate the rental agreement.

1                   (2) In either case, the tenant may recover actual damages or  
2 reasonable attorney's fees.

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36