

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

As Engrossed: H3/9/21

A Bill

HOUSE BILL 1563

5 By: Representatives Gazaway, Brown, Hillman, Vaught, Clowney, M. Hodges, Scott
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
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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 (2) The rental agreement shall terminate as provided in the
2 notice unless the noncompliance is remediable by repairs or otherwise and the
3 tenant adequately remedies the noncompliance before the date specified in the
4 notice.

5 (b) If rent is unpaid when due and the tenant fails to pay rent within
6 ~~five (5)~~ three (3) days from the date due, the landlord may terminate the
7 rental agreement.

8
9 *SECTION 2. Arkansas Code § 18-17-706 is amended to read as follows:*
10 *18-17-706. Payment of rent into court.*

11 *In any action in which the landlord sues for possession and the tenant*
12 *raises defenses or counterclaims under this chapter or the rental agreement:*

13 (1)(A)(i) *The tenant shall pay the landlord all rent that*
14 *becomes due after the issuance of a written order requiring the tenant to*
15 *vacate or show cause as rent becomes due.*

16 (ii) *The landlord shall provide the tenant with a*
17 *written receipt for each payment except when the tenant pays by check.*

18 (B) *Rent shall not be abated for a condition caused by the*
19 *deliberate or negligent act or omission of the tenant, a member of his or her*
20 *family, or other person on the premises with his or her permission or who is*
21 *allowed access to the premises by the tenant; and*

22 (2) *The tenant shall pay the landlord all rent allegedly owed*
23 *before the issuance of the order, provided that in lieu of the payment the*
24 *tenant may be allowed to submit to the court a receipt or cancelled check, or*
25 *both, indicating that payment has been made to the landlord;*

26 ~~(3)(A) Should the tenant not appear and show cause within ten~~
27 ~~(10) days, the court shall issue a writ of possession under this subchapter.~~

28 ~~(B)(i) Should the tenant appear in response to the order~~
29 ~~and allege that rent due under subdivision (1) or (2) of this section has~~
30 ~~been paid, the court shall determine the issue.~~

31 ~~(ii) If the tenant has failed to comply with~~
32 ~~subdivision (1) or (2) of this section, the court shall issue a writ of~~
33 ~~possession and the landlord shall be placed in full possession of the~~
34 ~~premises by the sheriff; and~~

35 ~~(4)(A) If the amount of rent due is found at final adjudication~~
36 ~~to be less than alleged by the landlord, judgment shall be entered for the~~

1 ~~amount found due to the landlord.~~

2 ~~(B) If the court finds at final adjudication that no rent~~
3 ~~is due and no damages are due the landlord, judgment shall be entered for the~~
4 ~~tenant.~~

5
6 SECTION 3. Arkansas Code Title 18, Chapter 17, is amended to add an
7 additional subchapter to read as follows:

8
9 Subchapter 9
10 - Eviction Proceedings

11
12 18-17-901. Grounds for eviction - Applicability.

13 (a) A landlord or his or her agent may commence eviction proceedings
14 against a tenant in a circuit court or district court having jurisdiction
15 over the eviction proceeding, when:

16 (1) The tenant fails or refuses to pay the rent when due or when
17 demanded;

18 (2) The term of tenancy or occupancy has ended; or

19 (3) The terms or conditions of the rental agreement have been
20 violated.

21 (b) An eviction proceeding under this subchapter shall not limit the
22 right of either party to bring a separate action for relief based on other
23 claims arising from the tenancy.

24
25 18-17-902. Time requirements.

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

30 (1) Stipulation; or

31 (2) Motion for good cause shown.

32
33 18-17-903. Notice to tenant for nonpayment of rent.

34 (a) Before beginning an eviction proceeding under this subchapter for
35 the nonpayment of rent, a landlord, his or her agent, or attorney shall give
36 the tenant a written notice to pay rent within three (3) days or vacate the

1 residential rental property.

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

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

- 8 (1) Personal delivery;
- 9 (2) Regular or certified mail; or
- 10 (3) Commercial delivery service.

11
12 18-17-904. Complaint – Requirements generally.

13 (a) A complaint for eviction shall:

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

17 (2) Be filed in the county where the residential rental property
18 is located.

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

- 20 (1) A circuit court; or
- 21 (2) A district court if:

22 (A) Jurisdiction is established by the Supreme Court under
23 Arkansas Constitution, Amendment 80, § 7, and if the eviction cases are
24 assigned to district courts through the administrative plan under Supreme
25 Court Administrative Order No. 14; or

26 (B) The General Assembly passes this act by a two-thirds
27 (2/3) or greater vote to amend Supreme Court Administrative Order No. 18
28 under Arkansas Constitution Amendment 80 § 9.

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

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

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

34 (C) If for the nonpayment of rent:

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

1 (ii) Identify the date when rent was due and rent
2 was not paid; and

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

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

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

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

14 (2) The complaint shall be accompanied by a copy of the three-
15 day notice to pay rent or vacate the residential rental property made in
16 writing for the residential rental property or if the eviction is based on
17 other grounds a copy of the noncompliance or termination notice provided to
18 the tenant.

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

21
22 18-17-905. Court costs and attorney's fees.

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

24 (1) Initiated the enforcement of a right or a remedy under a
25 rental agreement or this subchapter and substantially prevailed on the right
26 or remedy asserted; or

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

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

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

36 (d) A court shall not award attorney's fees or court costs to a

1 landlord in an uncontested action for eviction when the tenant vacates at
2 least two (2) days prior to the date the hearing is to be held on the
3 complaint under § 18-17-906 and informs the court that he or she has vacated
4 the premises.

5
6 18-17-906. Hearing – Service.

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

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

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

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

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

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

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

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

25
26 SUMMONS AND NOTICE OF EVICTION HEARING

27 Your landlord has filed a complaint for your eviction.

28 A hearing on the eviction complaint is scheduled for _____, 20__ in
29 (location).

30 At the hearing, you will be given the opportunity to respond to the
31 landlord's complaint. If you wish to remain in the property, you must prove
32 that, in the case of nonpayment of rent, either 1) you paid the rent due or
33 2) you have a legal defense excusing you from paying rent. If the eviction
34 has been filed based on grounds other than the nonpayment of rent, you must
35 prove either 1) that you did not breach the rental agreement, 2) that you
36 have cured the breach within fourteen (14) days, or 3) that the term of your

1 rental agreement has not ended. You have the right to have an attorney
2 represent you in the hearing.
3 If you do not appear at the hearing, or if the landlord proves that you have
4 not paid rent, that you have breached the rental agreement without curing the
5 breach within fourteen (14) days, or that your rental agreement has ended,
6 the Court will immediately order the sheriff to evict you and return
7 possession of the rental property to the landlord, and the Court will order
8 you to pay costs. If the Court finds you did not act in good faith or
9 willfully violated your rental agreement, the Court may order you to pay the
10 landlord's attorney's fees, if any. If you move out at least two (2) days
11 prior to the date the hearing is to be held on the complaint under Arkansas
12 Code § 18-17-906 and notify the Court that you have vacated the premises, the
13 Court will not order you to pay court costs or attorney's fees.
14 Be warned that intentionally causing destruction to the premises may not only
15 make you liable for damages but also is a criminal act and may subject you to
16 prosecution.

17
18 18-17-907. Hearing – Written objection or answer not required.

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

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

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

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

26 (3) Raise defenses to excuse nonpayment.

27 (c) A tenant's failure to appear at the hearing with no prior notice
28 to the court will result in a judgment for the landlord.

29
30 18-17-908. Continuances.

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

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

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

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

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

8
9 18-17-909. Effect of judgment for landlord.

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

13
14 18-17-910. Effect of judgment for tenant.

15 If judgment is for the tenant, the tenant may remain in possession of
16 the residential rental property, under the terms of the rental agreement,
17 until:

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

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

22
23 SECTION 4. Arkansas Code § 18-17-102, concerning the purposes and
24 rules of construction of the Arkansas Residential Landlord-Tenant Act of
25 2007, is amended to add an additional subsection to read as follows:

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

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

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

31
32 SECTION 5. Arkansas Code Title 18, Chapter 17, Subchapter 4, is
33 amended to add an additional section to read as follows:

34 18-17-402. Prohibited terms and conditions of rental agreement.

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

36 (1) Unless permitted by this chapter, waive or forego a right or

1 remedy under this chapter or under § 18-16-301 et seq.;

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

4 (3) Perform a duty imposed on the landlord by § 18-17-502; or

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

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

10
11 SECTION 6. Arkansas Code Title 18, Chapter 17, Subchapter 5, is
12 amended to add additional sections to read as follows:

13
14 18-17-502. 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 who is the owner of more than one (1) dwelling unit or
20 who has a partial legal or equitable ownership interest, directly or
21 indirectly, whether through multiple legal entities or otherwise, in more
22 than one (1) dwelling unit shall ensure the premises:

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

26 (2) Have plumbing, heating facilities, ventilation, and if
27 supplied air conditioning that are maintained in good working order;

28 (3) Have hot and cold running water;

29 (4) Have electricity with wiring and equipment that are
30 maintained in good working order;

31 (5) Have reasonable measures in place to control an infestation
32 of rodents, insects, and vermin that materially affects the health and safety
33 of the occupants;

34 (6) Are maintained in a condition as to prevent the accumulation
35 of moisture and the growth of harmful mold, which if left untreated could
36 materially affect the health and safety of the occupants;

1 (7)(A) Have a working smoke alarm or smoke detector.

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

5 (8)(A) Have a working carbon monoxide alarm if the dwelling unit
6 contains a carbon monoxide source or is connected to a carbon monoxide source
7 by a door, ductwork, or a ventilation shaft.

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

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

14 (10) Have working locks or other security devices on all
15 exterior doors.

16 (c) A landlord is not in noncompliance with this section if the rental
17 agreement requires that the tenant pay for any utility service and the tenant
18 fails to pay for the utility service.

19
20 18-17-503. Noncompliance by the landlord.

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

26 (b) Except as provided in this chapter, if there is a noncompliance by
27 the landlord under § 18-17-502 that materially affects the health and safety
28 of the tenant, the tenant may deliver a written notice to the landlord
29 specifying the acts and omissions constituting the noncompliance and if the
30 noncompliance is not remedied within fourteen (14) days from the date of
31 delivery of the written notice, the tenant may:

32 (1) Terminate the rental agreement, by giving the landlord
33 written notice of the tenant's intent to terminate the rental agreement and
34 any remainder of the term of the rental agreement by a specified date that is
35 not later than thirty (30) days after the delivery date of the written
36 notice; or

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

3 (A) Recover any restitution to which the tenant is
4 entitled due to the landlord's noncompliance;

5 (B) Obtain injunctive relief for the landlord's
6 noncompliance; or

7 (C) Cause repairs to be made to the premises in a
8 workmanlike manner by a licensed and insured contractor, and after submitting
9 to the landlord an itemized statement and receipt, deduct from his or her
10 rent the actual and reasonable cost of the repairs, not to exceed one (1)
11 month's periodic rent in any twelve-month period, unless the landlord and
12 tenant agree in writing to a larger deduction.

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

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

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

22 (2) Inclement weather;

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

24 (4) The availability of a repair technician needed to remedy the
25 noncompliance.

26 (e) Except as provided in this chapter, the tenant may recover
27 reasonable attorney's fees and costs for a noncompliance by the landlord with
28 § 18-16-502 that has materially affected the health and safety of the tenant.

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

36 (g) If the rental agreement is terminated under this section, the

1 landlord shall return any security deposit and prepaid rent to which the
2 tenant is entitled under § 18-16-301 et seq.

3
4 18-17-504. Landlord noncompliance as defense for nonpayment of rent or
5 failure to vacate – Escrow account.

6 (a)(1) If a landlord fails to comply with § 18-17-502 so as to
7 materially affect the health and safety of the tenant and the tenant has
8 complied with § 18-17-503, the tenant may counterclaim against the landlord
9 based on possession of the premises or nonpayment of rent on the grounds of
10 material noncompliance under § 18-17-502 and counterclaim for any amount the
11 tenant may recover under this chapter.

12 (2) A tenant prosecuted in a failure to vacate action may
13 produce evidence of expenses incurred by the landlord's noncompliance with §
14 18-17-502 as proof that nonpayment of rent was not willful and that the
15 elements of the criminal offense were not proven by the landlord.

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

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

21 (3) If rent has been paid into an escrow account under this
22 section, the court shall order the immediate release of any rent owed to the
23 landlord and any damages owed to the tenant.

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

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

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

34
35 18-17-505. Retaliation prohibited.

36 (a) Except as provided in this section, a landlord may not retaliate

1 against a tenant by increasing rent or fees, decreasing services, terminating
2 a periodic tenancy, refusing to renew a tenancy for a fixed term under a
3 rental agreement containing a renewal option that is exercisable by the
4 tenant without negotiation with the landlord, or bringing or threatening to
5 bring a failure to vacate charge or an action for possession of the premises
6 because the tenant:

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

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

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

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

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

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

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

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

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

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

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

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

1
2 18-17-506. Remedies for retaliation and bad faith action of tenant.

3 (a) If a tenant engages in conduct described in § 18-17-505(a)(1)-(4)
4 with no factual or legal basis for the conduct, the landlord may recover
5 actual damages and the court may award the landlord reasonable attorney's
6 fees and costs.

7 (b) If a landlord's conduct is prohibited under § 18-17-505, the
8 tenant:

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

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

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

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

18
19 *SECTION 6. Arkansas Code Title 18, Chapter 17, Subchapter 9, is*
20 *repealed.*

21
22 *Subchapter 9*

23 *—Eviction Proceedings*

24
25 ~~*18-17-901. Grounds for eviction of tenant.*~~

26 ~~*(a) A landlord or his or her agent may commence eviction proceedings*~~
27 ~~*against a tenant in a district court having jurisdiction over the eviction*~~
28 ~~*proceeding, when:*~~

29 ~~*(1) The tenant fails or refuses to pay the rent when due or when*~~
30 ~~*demand;*~~

31 ~~*(2) The term of tenancy or occupancy has ended; or*~~

32 ~~*(3) The terms or conditions of the rental agreement have been*~~
33 ~~*violated.*~~

34 ~~*(b) For residential rental agreements, nonpayment of rent within five*~~
35 ~~*(5) days of the date due constitutes legal notice to the tenant that the*~~
36 ~~*landlord has the right to begin eviction proceedings under this chapter.*~~

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~~18-17-902. Eviction proceeding.~~

~~(a)(1)(A) When grounds exist for eviction of a tenant under this subchapter, a landlord or his or her agent may commence an action for eviction by filing with a district court having jurisdiction a complaint and supporting affidavit of eviction that specifies the grounds for the eviction.~~

~~(B) The supporting affidavit shall be signed by a person with personal knowledge of the grounds for eviction.~~

~~(2) The fee for filing an action under this chapter by a complaint with supporting affidavit of eviction shall be as provided in § 16-17-705.~~

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

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

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

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

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

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

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

~~If the tenant appears and contests eviction, the court shall hear and~~

1 ~~determine the case as any other civil case.~~

2

3 ~~18-17-906. Designation of parties in eviction.~~

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

6

7 ~~18-17-907. Effect of judgment for plaintiff.~~

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

11

12 ~~18-17-908. Effect of judgment for defendant.~~

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

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

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

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

20

21 ~~18-17-909. Appeal.~~

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

24

25 ~~18-17-910. Bond required to stay eviction on appeal.~~

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

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

32

33 ~~18-17-911. Accrual of rent after institution of proceedings.~~

34 ~~(a)(1) After the commencement of eviction proceedings by the issuance~~
35 ~~of an order to vacate or to show cause as provided in § 18-17-902, the rent~~
36 ~~for the use and occupancy of the premises involved shall continue to accrue~~

1 ~~so long as the tenant remains in possession of the premises at the rate as~~
2 ~~prevailed immediately before the issuance of the order to vacate or show~~
3 ~~cause.~~

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

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

12
13 ~~18-17-912. Commercial leases.~~

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

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

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

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

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

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

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

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

36 ~~(3) If the amount of rent due is determined at final~~

1 ~~adjudication to be less than the amount alleged by the landlord, judgment~~
2 ~~shall be entered for the tenant if the court determines that the tenant has~~
3 ~~complied fully with the provisions of § 18-17-911, this section, and the~~
4 ~~lease agreement.~~

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

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

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

11 ~~(ii)(a) If payments are to be made through the~~
12 ~~district clerk's office, a fee of three percent (3%) of the rental payment~~
13 ~~shall be added to the amount paid through the district clerk's office.~~

14 ~~(b) The fee of three percent (3%) shall be~~
15 ~~retained by the district clerk's office to defray the costs of collection.~~

16 ~~(c) If the tenant fails to make a payment as provided in § 18-17-911~~
17 ~~and this section, the tenant's failure to comply entitles the landlord to~~
18 ~~execution of the judgment for possession, and upon application of the~~
19 ~~landlord, the district court shall issue a writ of possession and the~~
20 ~~landlord shall be placed in full possession of the premises by the sheriff or~~
21 ~~his or her deputy.~~

22
23 ~~18-17-913. Execution of writ of possession.~~

24 ~~In executing a writ of possession, the sheriff shall proceed in~~
25 ~~accordance with the provisions of § 18-60-310.~~

26
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28
29 /s/Gazaway
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