

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**

# A Bill

**HOUSE BILL**

4 **By: Representatives Townsend, Argue, Wilkins, Brown, Walker, McGee, J.J. Roberts,**  
5 **Brownlee, Smith, J.L. Wilson, Schexnayder, and Teague**

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## **For An Act To Be Entitled**

9 "AN ACT TO AMEND ARKANSAS CODE TITLE 18 BY ADDING A NEW  
10 CHAPTER TO BE KNOWN AS THE 'ARKANSAS RESIDENTIAL LANDLORD  
11 AND TENANT ACT'; AND FOR OTHER PURPOSES."

12

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14

15 SECTION 1. Arkansas Code Title 18 is amended to add a new chapter to  
16 read as follows:

17

18 " CHAPTER 17  
19 SUBCHAPTER 1. - SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT  
20 MATTER OF THE CHAPTER.

21

22 18-17-101. Short Title. This chapter shall be known and may be cited  
23 as the 'Arkansas Residential Landlord and Tenant Act'.

24

25 18-17-102. Purposes; Rules of Construction. (a) This chapter shall be  
26 liberally construed and applied to promote its underlying purposes and  
27 policies.

28 (b) Underlying purposes and policies of this chapter are:

29 (1) To simplify, clarify, modernize, and revise the law governing  
30 the rental of dwelling units and the rights and obligations of landlords and  
31 tenants; and

32 (2) To encourage landlords and tenants to maintain and improve  
33 the quality of housing.

34

35 18-17-103. Supplementary Principles of Law Applicable. Unless

1 displaced by the provisions of this chapter, the principles of law and equity,  
2 including the law relating to capacity to contract, mutuality of obligations,  
3 principal and agent, real property, public health, safety and fire prevention,  
4 estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or  
5 other validating or invalidating cause supplement its provisions.

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7 18-17-104. Construction Against Implicit Repeal. This chapter is  
8 intended as a unified coverage of its subject matter, no part of it is to be  
9 construed as impliedly repealed by subsequent legislation if that construction  
10 can reasonably be avoided.

11

12 18-17-105. Administration of Remedies; Enforcement. (a) The remedies  
13 provided by this chapter shall be so administered that an aggrieved party may  
14 recover appropriate damages. The aggrieved party has a duty to mitigate  
15 damages.

16 (b) Any right or obligation declared by this chapter is enforceable by  
17 action unless the provision declaring it specifies a different and limited  
18 effect.

19

20 18-17-106. Settlement of Disputed Claim or Right. A claim or right  
21 arising under this chapter or on a rental agreement, if disputed in good  
22 faith, may be settled by agreement.

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24 SUBCHAPTER 2. - SCOPE AND JURISDICTION

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26 18-17-201. Territorial Application. This chapter applies to,  
27 regulates, and determines rights, obligations, and remedies under a rental  
28 agreement, wherever made, for a dwelling unit located within this state.

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30 18-17-202. Exclusions from Application of Chapter. Unless created to  
31 avoid the application of this chapter, the following arrangements are not  
32 governed by this chapter:

- 33 (1) Residence at an institution, public or private, if incidental to  
34 detention or the provision of medical, geriatric, educational, counseling,  
35 religious, or similar service;

1 (2) Occupancy under a contract of sale of a dwelling unit or the  
2 property of which it is a part, if the occupant is the purchaser or a person  
3 who succeeds to his or her interest;

4 (3) Occupancy by a member of a fraternal or social organization in the  
5 portion of a structure operated for the benefit of the organization;

6 (4) Transient occupancy in a hotel, or motel;

7 (5) Occupancy by an employee of a landlord whose right of occupancy is  
8 conditional upon employment in and about the premises;

9 (6) Occupancy by an owner of a condominium unit or a holder of a  
10 proprietary lease in a cooperative;

11 (7) Occupancy under a rental agreement covering premises used by the  
12 occupant primarily for agricultural purposes.

13

14 SUBCHAPTER 3. - GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION:  
15 NOTICE.

16

17 18-17-301. General Definitions. Subject to additional definitions  
18 contained in subsequent subchapters of this chapter which apply to specific  
19 subchapters or part thereof, and unless the context otherwise requires, in  
20 this chapter:

21 (1) 'Action' includes recoupment, counterclaim, set-off, suit in  
22 equity, and any other proceeding in which rights are determined, including an  
23 action for possession;

24 (2) 'Building and Housing Codes' include any law, ordinance, or  
25 governmental regulation concerning fitness for habitation, or the  
26 construction, maintenance, operation, occupancy, use, or appearance of any  
27 premises or dwelling unit;

28 (3) 'Dwelling Unit' means a structure or the part of a structure that  
29 is used as a home, residence, or sleeping place by one (1) person who  
30 maintains a household or by two (2) or more persons who maintain a common  
31 household;

32 (4) 'Good Faith' means honesty in fact in the conduct of the  
33 transaction concerned;

34 (5) 'Landlord' means the owner, lessor, or sublessor of the dwelling  
35 unit or the building of which it is a part, and it also means a manager of the

1 premises who fails to disclose as required by Section 18-17-502;

2 (6) 'Organization' includes a corporation, government, governmental  
3 subdivision or agency, business trust, estate, trust, partnership or  
4 association, two (2) or more persons having a joint or common interest, and  
5 any other legal or commercial entity;

6 (7) 'Owner' means one (1) or more persons, jointly or severally, in  
7 whom is vested:

8 (i) all or part of the legal title to property, or

9 (ii) all or part of the beneficial ownership and a right to  
10 present use and enjoyment of the premises. The term includes a mortgagee in  
11 possession;

12 (8) 'Person' includes an individual or organization;

13 (9) 'Premises' means a dwelling unit and the structure of which it is  
14 a part and facilities and appurtenances therein and grounds, areas, and  
15 facilities held out for the use of tenants generally or whose use is promised  
16 to the tenant;

17 (10) 'Rent' means all payments to be made to the landlord or for the  
18 benefit of the landlord under the rental agreement;

19 (11) 'Rental Agreement' means all agreements, written or oral, and  
20 valid rules and regulations adopted under Section 18-17-602 embodying the  
21 terms and conditions concerning the use and occupancy of a dwelling unit and  
22 premises;

23 (12) 'Roomer' means a person occupying a dwelling unit that does not  
24 include a toilet and either a bath tub or a shower and a refrigerator, stove,  
25 and kitchen sink, all provided by the landlord, and where one (1) or more of  
26 these facilities are used in common by occupants in the structure;

27 (13) 'Single Family Residence' means a structure maintained and used as  
28 a single dwelling unit. Notwithstanding that a dwelling unit shares one (1)  
29 or more walls with another dwelling unit, it is a single family residence if  
30 it has direct access to a street or thoroughfare and shares neither heating  
31 facilities, hot water equipment, nor any other essential facility or service  
32 with any other dwelling unit;

33 (14) 'Tenant' means a person entitled under a rental agreement to  
34 occupy a dwelling unit to the exclusion of others.

35

1           18-17-302. Obligation of Good Faith. Every duty under this chapter and  
2 every act which shall be performed as a condition precedent to the exercise of  
3 a right or remedy under this chapter imposes an obligation of good faith in  
4 its performance or enforcement.

5

6           18-17-303. Unconscionability. (a) If the court, as a matter of law,  
7 finds:

8                   (1) A rental agreement or any provision thereof was  
9 unconscionable when made, the court may refuse to enforce the agreement,  
10 enforce the remainder of the agreement without the unconscionable provision,  
11 or limit the application of any unconscionable provision to avoid an  
12 unconscionable result; or

13                   (2) A settlement in which a party waives or agrees to forego a  
14 claim or right under this chapter or under a rental agreement was  
15 unconscionable when made, the court may refuse to enforce the settlement,  
16 enforce the remainder of the settlement without the unconscionable provision,  
17 or limit the application of any unconscionable provision to avoid an  
18 unconscionable result.

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

23

24           18-17-304. Notice. (a) A person has notice of a fact if:

25                   (1) He or she has actual knowledge of it,

26                   (2) He or she has received a notice or notification of it, or

27                   (3) From all the facts and circumstances known to him or her at  
28 the time in question he has reason to know that it exists. A person 'knows'  
29 or 'has knowledge' of a fact if he or she has actual knowledge of it.

30           (b) A person 'notifies' or 'gives' a notice or notification to  
31 another person by taking steps reasonably calculated to inform the other in  
32 ordinary course whether or not the other actually comes to know of it. A  
33 person 'receives' a notice or notification when:

34                   (1) It comes to his or her attention; or

35                   (2) In the case of the landlord, it is delivered at the place of

1 business of the landlord through which the rental agreement was made or at any  
2 place held out by him or her as the place for receipt of the communication; or

3 (3) In the case of the tenant, it is delivered in hand to the  
4 tenant or mailed by registered or certified mail to him or her at the place  
5 held out by him or her as the place for receipt of the communication, or in  
6 the absence of such designation, to his or her last known place of residence.

7 (c) 'Notice', knowledge, or a notice or notification received by an  
8 organization is effective for a particular transaction from the time it is  
9 brought to the attention of the individual conducting that transaction, and in  
10 any event from the time it would have been brought to his attention if the  
11 organization had exercised reasonable diligence.

12

13 SUBCHAPTER 4. - GENERAL PROVISIONS

14

15 18-17-401. Terms and Conditions of Rental Agreement. (a) A landlord  
16 and a tenant may include in a rental agreement terms and conditions not  
17 prohibited by this chapter or other rule of law, including rent, term of the  
18 agreement, and other provisions governing the rights and obligations of the  
19 parties.

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

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

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

31

32 18-17-402. Effect of Unsigned or Undelivered Rental Agreement.

33 (a) If the landlord does not sign and deliver a written rental  
34 agreement signed and delivered to him by the tenant, acceptance of rent  
35 without reservation by the landlord gives the rental agreement the same effect

1 as if it had been signed and delivered by the landlord.

2 (b) If the tenant does not sign and deliver a written rental agreement  
3 signed and delivered to him or her by the landlord, acceptance of possession  
4 and payment of rent without reservation gives the rental agreement the same  
5 effect as if it had been signed and delivered by the tenant.

6 (c) If a rental agreement given effect by the operation of this section  
7 provides for a term longer than one (1) year, it is effective for only one (1)  
8 year.

9

10 18-17-403. Prohibited Provisions in Rental Agreements.

11 (a) A rental agreement shall not provide that the tenant:

12 (1) Agrees to waive or forego rights or remedies under this  
13 chapter;

14 (2) Authorizes any person to confess judgment on a claim arising  
15 out of the rental agreement;

16 (3) Agrees to pay the landlord's attorney's fees; or

17 (4) Agrees to the exculpation or limitation of any liability of  
18 the landlord arising under law or to indemnify the landlord for that liability  
19 or the costs connected therewith.

20 (b) A provision prohibited by subsection (a) included in a rental  
21 agreement is unenforceable. If a landlord deliberately uses a rental  
22 agreement containing provisions known by him or her to be prohibited, the  
23 tenant may recover in addition to his or her actual damages an amount up to  
24 three (3) months periodic rent and reasonable attorney's fees.

25

26 18-17-404. Separation of Rents and Obligations to Maintain Property  
27 Forbidden. A rental agreement, assignment, conveyance, trust deed, or  
28 security instrument shall not permit the receipt of rent free of the  
29 obligation to comply with Section 18-17-504(a).

30

31 SUBCHAPTER 5. - LANDLORD OBLIGATIONS

32

33 18-17-501. Security Deposits; Prepaid Rent. (a) A landlord shall not  
34 demand or receive security, however denominated, in an amount or value in  
35 excess of two (2) months periodic rent.

1           (b) Upon termination of the tenancy property or money held by the  
2 landlord as security may be applied to the payment of accrued rent and the  
3 amount of damages which the landlord has suffered by reason of the tenant's  
4 noncompliance with Section 18-17-601 all as itemized by the landlord in a  
5 written notice delivered to the tenant together with the amount due thirty  
6 (30) days after termination of the tenancy and delivery of possession and  
7 demand by the tenant.

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

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

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           18-17-502. Disclosure. (a) A landlord or any person authorized to  
20 enter into a rental agreement on his behalf shall disclose to the tenant in  
21 writing at or before the commencement of the tenancy the name and address of:

- 22                   (1) The person authorized to manage the premises; and
- 23                   (2) An owner of the premises or a person authorized to act for  
24 and on behalf of the owner for the purpose of service of process and receiving  
25 and receipting for notices and demands.

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

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

- 31                   (1) Service of process and receiving and receipting for notices  
32 and demands; and
- 33                   (2) Performing the obligations of the landlord under this chapter  
34 and under the rental agreement and expending or making available for the  
35 purpose all rent collected from the premises.

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18-17-503. 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 18-17-504. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in Section 18-17-901(c).

18-17-504. 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 or her;

(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 November 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) 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).

(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) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in

1 good faith and not for the purpose of evading the obligations of the landlord.

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

5 (1) The agreement of the parties is entered into in good faith  
6 and not for the purpose of evading the obligations of the landlord and is set  
7 forth in a separate writing signed by the parties and supported by adequate  
8 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 shall not treat performance of the separate agreement  
14 described in subsection (d) as a condition to any obligation or performance of  
15 any rental agreement.

16

17 18-17-505. Limitation of Liability. (a) Unless otherwise agreed, a  
18 landlord who conveys premises that include a dwelling unit subject to a rental  
19 agreement in a good faith sale to a bona fide purchaser is relieved of  
20 liability under the rental agreement and this chapter as to events occurring  
21 after written notice to the tenant of the conveyance. However, he remains  
22 liable to the tenant for all security recoverable by the tenant under  
23 18-17-501 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  
26 chapter as to events occurring after written notice to the tenant of the  
27 termination of his or her management.

28

29 SUBCHAPTER 6. - TENANT OBLIGATIONS

30

31 18-17-601. Tenant to Maintain Dwelling Unit. A tenant shall:

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

35 (2) Keep that part of the premises that he or she occupies and uses as

1 clean and safe as the condition of the premises permit;

2 (3) Dispose from his dwelling unit all ashes, garbage, rubbish, and  
3 other waste in a clean and safe manner;

4 (4) Keep all plumbing fixtures in the dwelling unit or used by the  
5 tenant as clean as their condition permits;

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

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

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

14

15 18-17-602. Rules and Regulations. (a) A landlord, from time to time,  
16 may adopt a rule or regulation, however described, concerning the tenant's use  
17 and occupancy of the premises. 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 or she  
27 shall or shall 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 or she enters into  
31 the 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

1 18-17-603. Access. (a) A tenant shall not unreasonably withhold  
2 consent to the landlord to enter into the dwelling unit in order to inspect  
3 the premises, make necessary or agreed repairs, decorations, alterations, or  
4 improvements, supply necessary or agreed services, or exhibit the dwelling  
5 unit to prospective or actual purchasers, mortgagees, tenants, workmen, or  
6 contractors.

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

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

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

- 14 (1) pursuant to court order;
- 15 (2) as permitted by Sections 18-17-802 and 18-17-803(b); or
- 16 (3) unless the tenant has abandoned or surrendered the premises.

17

18 18-17-604. Tenant to Use and Occupy. Unless otherwise agreed, a tenant  
19 shall occupy his or her dwelling unit only as a dwelling unit. The rental  
20 agreement may require that the tenant notify the landlord of any anticipated  
21 extended absence from the premises in excess of seven (7) days no later than  
22 the first day of the extended absence.

23

24 SUBCHAPTER 7. - TENANT REMEDIES

25

26 18-17-701. Noncompliance by the Landlord - In General. (a) Except as  
27 provided in this chapter, if there is a material noncompliance by the landlord  
28 with the rental agreement or a noncompliance with Section 18-17-504 materially  
29 affecting health and safety, the tenant may deliver a written notice to the  
30 landlord specifying the acts and omissions constituting the breach and that  
31 the rental agreement will terminate upon a date not less than thirty (30) days  
32 after receipt of the notice if the breach is not remedied in fourteen (14)  
33 days, and the rental agreement shall terminate as provided in the notice  
34 subject to the following:

- 35 (1) If the breach is remediable by repairs, the payment of

1 damages or otherwise and the landlord adequately remedies the breach before  
2 the date specified in the notice, the rental agreement shall not terminate by  
3 reason of the breach.

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

9 (3) The tenant shall not terminate for a condition caused by the  
10 deliberate or negligent act or omission of the tenant, a member of his family,  
11 or other person on the premises with his or her consent.

12 (b) Except as provided in this chapter, the tenant may recover actual  
13 damages and obtain injunctive relief for any noncompliance by the landlord  
14 with the rental agreement or Section 18-17-504. If the landlord's  
15 noncompliance is willful the tenant may recover reasonable attorney's fees.

16 (c) The remedy provided in subsection (b) is in addition to any right  
17 of the tenant arising under Section 18-17-701(a).

18 (d) If the rental agreement is terminated, the landlord shall return  
19 all security recoverable by the tenant under Section 18-17-501 and all prepaid  
20 rent.

21

22 18-17-702. Failure to Deliver Possession. (a) If the landlord fails to  
23 deliver possession of the dwelling unit to the tenant as provided in Section  
24 18-17-503, rent abates until possession is delivered and the tenant may:

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

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

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

1

2           18-17-703. Self-Help for Minor Defects. (a) If the landlord fails to  
3 comply with the rental agreement or Section 18-17-504, and the reasonable cost  
4 of compliance is less than one hundred dollars (\$100), or an amount equal to  
5 one-half (1/2) the periodic rent, whichever amount is greater, the tenant may  
6 recover damages for the breach under Section 18-17-701(b) or shall notify the  
7 landlord of his or her intention to correct the condition at the landlord's  
8 expense. If the landlord fails to comply within fourteen (14) days after  
9 being notified by the tenant in writing or as promptly as conditions require  
10 in case of emergency, the tenant may cause the work to be done in a  
11 workmanlike manner and, after submitting to the landlord an itemized  
12 statement, deduct from his or her rent the actual and reasonable cost or the  
13 fair and reasonable value of the work, not exceeding the amount specified in  
14 this subsection.

15           (b) A tenant shall not repair at the landlord's expense if the  
16 condition was caused by the deliberate or negligent act or omission of the  
17 tenant, a member of his or her family, or other person on the premises with  
18 his consent.

19

20           18-17-704. Wrongful Failure to Supply Heat, Water, Hot Water, or  
21 Essential Services. (a) If contrary to the rental agreement or Section  
22 18-17-504 the landlord willfully or negligently fails to supply heat, running  
23 water, hot water, electric, gas, or other essential service, the tenant may  
24 give written notice to the landlord specifying the breach and may:

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

29                   (2) Recover damages based upon the diminution in the fair rental value  
30 of the dwelling unit; or

31                   (3) Procure reasonable substitute housing during the period of the  
32 landlord's noncompliance, in which case the tenant is excused from paying rent  
33 for the period of the landlord's noncompliance.

34           (b) In addition to the remedy provided in paragraph (3) of subsection  
35 (a) the tenant may recover the actual and reasonable cost or fair and

1 reasonable value of the substitute housing not in excess of an amount equal to  
2 the periodic rent, and in any case under subsection (a) reasonable attorney's  
3 fees.

4 (c) If the tenant proceeds under this section, he or she shall not  
5 proceed under Section 18-17-701 or Section 18-17-703 as to that breach.

6 (d) Rights of the tenant under this section do not arise until he or  
7 she has given notice to the landlord or if the condition was caused by the  
8 deliberate or negligent act or omission of the tenant, a family member, or  
9 other person on the premises with the tenant's consent.

10

11 18-17-705. Landlord's Noncompliance as Defense to Action for Possession  
12 or Rent. (a) In an action for possession based upon nonpayment of the rent  
13 or in an action for rent when the tenant is in possession, the tenant may  
14 counterclaim for any amount he or she may recover under the rental agreement  
15 or this chapter. In that event the court from time to time may order the  
16 tenant to pay into court all or part of the rent accrued and thereafter  
17 accruing, and shall determine the amount due to each party. The party to whom  
18 a net amount is owed shall be paid first from the money paid into court, and  
19 the balance by the other party. If no rent remains due after application of  
20 this section, judgment shall be entered for the tenant in the action for  
21 possession. If the defense or counterclaim by the tenant is without merit and  
22 is not raised in good faith, the landlord may recover reasonable attorney's  
23 fees.

24 (b) In an action for rent when the tenant is not in possession, he or  
25 she may counterclaim as provided in subsection (a) but is not required to pay  
26 any rent into court.

27

28 18-17-706. Fire or Casualty Damage. (a) If the dwelling unit or  
29 premises are damaged or destroyed by fire or casualty to an extent that  
30 enjoyment of the dwelling unit is substantially impaired, the tenant may:

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

35 (2) If continued occupancy is lawful, vacate any part of the

1 dwelling unit rendered unusable by the fire or casualty, in which case the  
2 tenant's liability for rent is reduced in proportion to the diminution of the  
3 fair rental value of the dwelling unit.

4 (b) If the rental agreement is terminated the landlord shall return all  
5 security recoverable under Section 18-17-501 and all prepaid rent. Accounting  
6 for rent in the event of termination or apportionment shall be made as of the  
7 date of the fire or casualty.

8

9 18-17-707. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion,  
10 or Diminution of Service. If a landlord unlawfully removes or excludes the  
11 tenant from the premises or willfully diminishes services to the tenant by  
12 interrupting or causing the interruption of heat, running water, hot water,  
13 electric, gas, or other essential service, the tenant may recover possession  
14 or terminate the rental agreement and, in either case, recover an amount not  
15 more than three (3) months' periodic rent or threefold the actual damages  
16 sustained by him, whichever is greater, and reasonable attorney's fees. If  
17 the rental agreement is terminated the landlord shall return all security  
18 recoverable under Section 18-17-501 and all prepaid rent.

19

20 SUBCHAPTER 8. - LANDLORD REMEDIES

21

22 18-17-801. Noncompliance with Rental Agreement; Failure to Pay Rent.

23 (a) Except as provided in this chapter, if there is a material  
24 noncompliance by the tenant with the rental agreement or a noncompliance with  
25 Section 18-17-601 materially affecting health and safety, the landlord may  
26 deliver a written notice to the tenant specifying the acts and omissions  
27 constituting the breach and that the rental agreement will terminate upon a  
28 date not less than thirty (30) days after receipt of the notice. If the  
29 breach is not remedied in fourteen (14) days, the rental agreement shall  
30 terminate as provided in the notice subject to the following. If the breach  
31 is remediable by repairs or the payment of damages or otherwise and the tenant  
32 adequately remedies the breach before the date specified in the notice, the  
33 rental agreement shall not terminate. If substantially the same act or  
34 omission which constituted a prior noncompliance of which notice was given  
35 recurs within six (6) months, the landlord may terminate the rental agreement

1 upon at least fourteen (14) days' written notice specifying the breach and the  
2 date of termination of the rental agreement.

3 (b) If rent is unpaid when due and the tenant fails to pay rent within  
4 fourteen (14) days after written notice by the landlord of nonpayment and his  
5 or her intention to terminate the rental agreement if the rent is not paid  
6 within that period, the landlord may terminate the rental agreement.

7 (c) Except as provided in this chapter, the landlord may recover actual  
8 damages and obtain injunctive relief for noncompliance by the tenant with the  
9 rental agreement or Section 18-17-601. If the tenant's noncompliance is  
10 willful the landlord may recover reasonable attorney's fees.

11  
12 18-17-802. Failure to Maintain. If there is noncompliance by the  
13 tenant with Section 18-17-601 materially affecting health and safety that can  
14 be remedied by repair, replacement of a damaged item, or cleaning, and the  
15 tenant fails to comply as promptly as conditions require in case of emergency  
16 or within fourteen (14) days after written notice by the landlord specifying  
17 the breach and requesting that the tenant remedy it within that period of  
18 time, the landlord may enter the dwelling unit and cause the work to be done  
19 in a workmanlike manner and submit the itemized bill for the actual and  
20 reasonable cost or the fair and reasonable value thereof as rent on the next  
21 date periodic rent is due, or if the rental agreement has terminated, for  
22 immediate payment.

23  
24 18-17-803. Remedies for Absence, Nonuse and Abandonment. (a) If the  
25 rental agreement requires the tenant to give notice to the landlord of an  
26 anticipated extended absence in excess of seven (7) days pursuant to Section  
27 18-17-604 and the tenant willfully fails to do so, the landlord may recover  
28 actual damages from the tenant.

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

31 (c) If the tenant abandons the dwelling unit, the landlord shall make  
32 reasonable efforts to rent it at a fair rental. If the landlord rents the  
33 dwelling unit for a term beginning before the expiration of the rental  
34 agreement, it terminates as of the date of the new tenancy. If the landlord  
35 fails to use reasonable efforts to rent the dwelling unit at a fair rental or

1 if the landlord accepts the abandonment as a surrender, the rental agreement  
2 is deemed to be terminated by the landlord as of the date the landlord has  
3 notice of the abandonment. If the tenancy is from month-to-month or  
4 week-to-week, the term of the rental agreement for this purpose is deemed to  
5 be a month or a week, as the case may be.

6

7 18-17-804. Waiver of Landlord's Right to Terminate. Acceptance of rent  
8 with knowledge of a default by the tenant or acceptance of performance by him  
9 that varies from the terms of the rental agreement constitutes a waiver of the  
10 landlord's right to terminate the rental agreement for that breach, unless  
11 otherwise agreed after the breach has occurred.

12

13 18-17-805. Landlord Liens; Distress for Rent. (a) A lien or security  
14 interest on behalf of the landlord in the tenant's household goods is not  
15 enforceable unless perfected before the effective date of this chapter.

16 (b) Distraint for rent is abolished.

17

18 18-17-806. Remedy after Termination. If the rental agreement is  
19 terminated, the landlord has a claim for possession and for rent and a  
20 separate claim for actual damages for breach of the rental agreement and  
21 reasonable attorney's fees as provided in Section 18-17-801(c).

22

23 18-17-807. Recovery of Possession Limited. A landlord shall not  
24 recover or take possession of the dwelling unit by action or otherwise,  
25 including willful diminution of services to the tenant by interrupting or  
26 causing the interruption of heat, running water, hot water, electric, gas, or  
27 other essential service to the tenant, except in case of abandonment,  
28 surrender, or as permitted in this chapter.

29

30 SUBCHAPTER 9. - PERIODIC TENANCY; HOLDOVER; ABUSE OF ACCESS

31

32 18-17-901. Periodic Tenancy; Holdover Remedies. (a) The landlord or  
33 the tenant may terminate a week-to-week tenancy by a written notice given to  
34 the other at least ten (10) days before the termination date specified in the  
35 notice.

1 (b) The landlord or the tenant may terminate a month-to-month tenancy  
2 by a written notice given to the other at least thirty (30) days before the  
3 periodic rental date specified in the notice.

4 (c) If the tenant remains in possession without the landlord's consent  
5 after expiration of the term of the rental agreement or its termination, the  
6 landlord may bring an action for possession and if the tenant's holdover is  
7 willful and not in good faith the landlord may also recover an amount not more  
8 than three (3) month's periodic rent or threefold the actual damages sustained  
9 by him, whichever is greater, and reasonable attorney's fees. If the landlord  
10 consents to the tenant's continued occupancy, Section 18-17-401(d) applies.

11

12 18-17-902. Landlord and Tenant Remedies for Abuse of Access. (a) If  
13 the tenant refuses to allow lawful access, the landlord may obtain injunctive  
14 relief to compel access, or terminate the rental agreement. In either case  
15 the landlord may recover actual damages and reasonable attorney's fees.

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

23

24 SUBCHAPTER 10. - RETALIATORY CONDUCT

25

26 18-17-1001. Retaliatory Conduct Prohibited. (a) Except as provided in  
27 this section, a landlord shall not retaliate by increasing rent or decreasing  
28 services or by bringing or threatening to bring an action for possession  
29 after:

30 (1) The tenant has complained to a governmental agency charged  
31 with responsibility for enforcement of a building or housing code of a  
32 violation applicable to the premises materially affecting health and safety;  
33 or

34 (2) The tenant has complained to the landlord of a violation  
35 under Section 18-17-504; or

1 (3) The tenant has organized or become a member of a tenant's  
2 union or similar organization.

3 (b) If the landlord acts in violation of subsection (a), the tenant is  
4 entitled to the remedies provided in 18-17-707 and has a defense in any  
5 retaliatory action against him for possession. In an action by or against the  
6 tenant, evidence of a complaint within one (1) year before the alleged act of  
7 retaliation creates presumption that the landlord's conduct was in  
8 retaliation. The presumption does not arise if the tenant made the complaint  
9 after notice of a proposed rent increase or diminution of services.

10 'Presumption' means that the trier of fact shall find the existence of the  
11 fact presumed unless and until evidence is introduced which would support a  
12 finding of its nonexistence.

13 (c) Notwithstanding subsections (a) and (b), a landlord may bring an  
14 action for possession if:

15 (1) The violation of the applicable building or housing code was  
16 caused primarily by lack of reasonable care by the tenant, a family member, or  
17 other person on the premises with the tenant's consent; or

18 (2) The tenant is in default in rent; or

19 (3) Compliance with the applicable building or housing code  
20 requires alteration, remodeling, or demolition which would effectively deprive  
21 the tenant of use of the dwelling unit.

22 (d) The maintenance of an action under subsection (c) does not release  
23 the landlord from liability under 18-17-701(b)."

24

25 SECTION 2. This act applies to rental agreements entered into or  
26 extended or renewed on and after the date this act becomes effective.

27

28 SECTION 3. Repealer. (a) The following sections of the Arkansas Code  
29 are repealed:

30 (1) 18-16-101. Failure to pay rent, refusal to vacate upon notice;

31 (2) 18-16-102. Lessee unlawfully collecting from subtenant;

32 (3) 18-16-107. Failure to quit after notice of intention;

33 (4) 18-16-108. Property left on premises after termination of lease;

34 and

35 (5) 18-16-301 - 18-16-306. Security deposits.

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SECTION 4. Savings Clause. Transactions entered into before the effective date of this act, and not extended or renewed on and after that date, and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act as though the repeal or amendment had not occurred.

SECTION 5. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. Emergency Clause. It is found and determined by the General Assembly of the state of Arkansas that the laws of this state concerning the rights and liabilities of residential landlords and tenants are in need of revision to simplify, clarify and modernize the laws; and this act is necessary to provide adequate protection to both landlords and tenants. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

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