

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Givens**

A Bill

HOUSE BILL 1851

For An Act To Be Entitled

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

11

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

13

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

16

17 " CHAPTER 17

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

20

21 18-17-101. Short Title. This chapter shall be known and may be cited
22 as the 'Arkansas Residential Rental Property Act'.

23

24 18-17-102. Purposes; Rules of Construction. (a) This chapter shall be
25 liberally construed and applied to promote its underlying purposes and
26 policies.

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

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

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

33

34 18-17-103. Supplementary Principles of Law Applicable. Unless
35 displaced by the provisions of this chapter, the principles of law and equity,

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

5

6 18-17-104. Construction Against Implicit Repeal. This chapter is
7 intended as a unified coverage of its subject matter, no part of it is to be
8 construed as impliedly repealed by subsequent legislation if that construction
9 can reasonably be avoided.

10

11 18-17-105. Administration of Remedies; Enforcement. (a) The remedies
12 provided by this chapter shall be so administered that an aggrieved party may
13 recover appropriate damages. The aggrieved party has a duty to mitigate
14 damages.

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

18

19 18-17-106. Settlement of Disputed Claim or Right. A claim or right
20 arising under this chapter or on a rental agreement, if disputed in good
21 faith, may be settled by agreement.

22

23 SUBCHAPTER 2. - SCOPE AND JURISDICTION

24

25 18-17-201. Territorial Application. This chapter applies to,
26 regulates, and determines rights, obligations, and remedies under a rental
27 agreement, wherever made, for a dwelling unit located within this state.

28

29 18-17-202. Exclusions from Application of Chapter. Unless created to
30 avoid the application of this chapter, the following arrangements are not
31 governed by this chapter:

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

35 (2) Occupancy under a contract of sale of a dwelling unit or the
36 property of which it is a part, if the occupant is the purchaser or a person

1 who succeeds to his or her interest;

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

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

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

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

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

11

12 SUBCHAPTER 3. - GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION:
13 NOTICE.

14

15 18-17-301. General Definitions. Subject to additional definitions
16 contained in subsequent subchapters of this chapter which apply to specific
17 subchapters or part thereof, and unless the context otherwise requires, in
18 this chapter:

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

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

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

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

32 (5) 'Landlord' means the owner, lessor, or sublessor of the dwelling
33 unit or the building of which it is a part, and it also means a manager of the
34 premises who fails to disclose as required by Section 18-17-502;

35 (6) 'Organization' includes a corporation, government, governmental
36 subdivision or agency, business trust, estate, trust, partnership or

1 association, two (2) or more persons having a joint or common interest, and
2 any other legal or commercial entity;

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

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

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

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

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

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

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

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

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

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

32

33 18-17-302. Obligation of Good Faith. Every duty under this chapter and
34 every act which shall be performed as a condition precedent to the exercise of
35 a right or remedy under this chapter imposes an obligation of good faith in
36 its performance or enforcement.

1

2 18-17-303. Unconscionability. (a) If the court, as a matter of law,
3 finds:

4 (1) A rental agreement or any provision thereof was
5 unconscionable when made, the court may refuse to enforce the agreement,
6 enforce the remainder of the agreement without the unconscionable provision,
7 or limit the application of any unconscionable provision to avoid an
8 unconscionable result; or

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

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

19

20 18-17-304. Notice. (a) A person has notice of a fact if:

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

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

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

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

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

31 (2) In the case of the landlord, it is delivered at the place of
32 business of the landlord through which the rental agreement was made or at any
33 place held out by him or her as the place for receipt of the communication; or

34 (3) In the case of the tenant, it is delivered in hand to the
35 tenant or mailed by registered or certified mail to him or her at the place
36 held out by him or her as the place for receipt of the communication, or in

1 the absence of such designation, to his or her last known place of residence.

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

7

8 SUBCHAPTER 4. - GENERAL PROVISIONS

9

10 18-17-401. Terms and Conditions of Rental Agreement. (a) A landlord
11 and a tenant may include in a rental agreement terms and conditions not
12 prohibited by rule of law, including rent, term of the agreement, and other
13 provisions governing the rights and obligations of the parties.

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

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

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

25

26 18-17-402. Effect of Unsigned or Undelivered Rental Agreement.

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

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

35 (c) If a rental agreement given effect by the operation of this section
36 provides for a term longer than one (1) year, it is effective for *the term*

1 stated.

2

3 18-17-403. Prohibited Provisions in Rental Agreements.

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

5 (1) Agrees to waive or forego rights or remedies under this
6 chapter;

7 (2) Agrees to pay the landlord's attorney's fees; or

8 (3) Agrees to the exculpation or limitation of any liability of
9 the landlord arising under law or to indemnify the landlord for that liability
10 or the costs connected therewith.

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

16

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

21

22 18-17-405. Procedure for Enforcement. If either party files an action
23 in any court to enforce any rights granted under this act, the court shall
24 grant an accelerated hearing on the merits of the complaint within ten (10)
25 calendar days.

26

27 18-17-406. Rent Escrowed. In the event the court determines at the
28 first hearing the tenant has a right to a remedy the court shall require the
29 tenant to pay into the registry of the court a sum equal to all rent due and
30 periodically thereafter until the landlord corrects the problem complained of
31 by the tenant.

32 18-17-407. If the court determines a tenant has failed to pay rent
33 without justification, the court shall order the tenant to vacate the premises
34 within five (5) calendar days.

35

SUBCHAPTER 5. - LANDLORD OBLIGATIONS

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

(b) Upon termination of the tenancy property or money held by the landlord as security may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with Section 18-17-601 all as itemized by the landlord in a written notice delivered to the tenant together with the amount due ten (10) days after termination of the tenancy and delivery of possession and demand by the tenant.

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

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

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

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

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

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

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

(c) A person who fails to comply with subsection (a) becomes an agent

1 of each person who is a landlord for:

2 (1) Service of process and receiving and receipting for notices
3 and demands; and

4 (2) Performing the obligations of the landlord under this chapter
5 and under the rental agreement and expending or making available for the
6 purpose all rent collected from the premises.

7
8 18-17-503. Landlord to Deliver Possession of Dwelling Unit. At the
9 commencement of the term a landlord shall deliver possession of the premises
10 to the tenant in compliance with the rental agreement and Section 18-17-504.
11 The landlord may bring an action for possession against any person wrongfully
12 in possession and may recover the damages provided in Section 18-17-901(c).

13
14 18-17-504. Landlord to Maintain Premises. (a) A landlord shall:

15 (1) Comply with the requirements of applicable building and
16 housing codes materially affecting health and safety;

17 (2) Make all repairs and do whatever is necessary to put and keep
18 the premises in a fit and habitable condition;

19 (3) Keep all common areas of the premises in a clean and safe
20 condition;

21 (4) Maintain in good and safe working order and condition all
22 electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and
23 other facilities and appliances, including elevators, supplied or required to
24 be supplied by him or her;

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

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

34 (b) If the duty imposed by paragraph (1) of subsection (a) is greater
35 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 good faith and not for the purpose of evading the obligations of the landlord.

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

(1) The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties;

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

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

(e) The landlord shall not treat performance of the separate agreement described in subsection (d) as a condition to any obligation or performance of any rental agreement.

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

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

SUBCHAPTER 6. - TENANT OBLIGATIONS

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

- (1) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (2) Keep that part of the premises that he or she occupies and uses as clean and safe as the condition of the premises permit;
- (3) Dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators in the premises;
- (6) Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so; and
- (7) Conduct himself and require other persons on the premises with his or her consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.

19

18-17-602. Rules and Regulations. (a) A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

- (1) Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;
- (2) It is reasonably related to the purpose of which it is adopted;
- (3) It applies to all tenants in the premises in a fair manner;
- (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he or she shall or shall not do to comply;
- (5) It is not for the purpose of evading the obligations of the landlord; and
- (6) The tenant has notice of it at the time he or she enters into

1 the rental agreement, or when it is adopted.

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

5

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

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

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

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

19 (1) pursuant to court order;

20 (2) as permitted by Sections 18-17-802 and 18-17-803(b); or

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

22 (e) A landlord has right of access to perform regular maintenance, such
23 as pest control, to be accomplished on a routine *basis, if the parties agreed*
24 in writing prior to occupancy by tenant, and the access is required of all
25 units *in a complex on a certain day.*

26

27 18-17-604. Tenant to Use and Occupy. Unless otherwise agreed, a tenant
28 shall occupy his or her dwelling unit only as a dwelling unit. The rental
29 agreement may require that the tenant notify the landlord of any anticipated
30 extended absence from the premises in excess of seven (7) days no later than
31 the first day of the extended absence.

32

33 SUBCHAPTER 7. - TENANT REMEDIES

34

35 18-17-701. Noncompliance by the Landlord - In General. (a) Except as

1 provided in this chapter, if there is a material noncompliance by the landlord
2 with the rental agreement or a noncompliance with Section 18-17-504 materially
3 affecting health and safety, the tenant may deliver a written notice to the
4 landlord specifying the acts and omissions constituting the breach and that
5 the rental agreement will terminate upon a date not less than thirty (30) days
6 after receipt of the notice if the breach is not remedied in five (5) days,
7 and the rental agreement shall terminate as provided in the notice subject to
8 the following:

9 (1) If the breach is remediable by repairs, the payment of
10 damages or otherwise and the landlord adequately remedies the breach before
11 the date specified in the notice, the rental agreement shall not terminate by
12 reason of the breach.

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

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

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

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

27 (d) If the rental agreement is terminated, the landlord shall return
28 all security recoverable by the tenant under *the written contract of lease or*
29 Section 18-17-501 and all prepaid rent.

30

31 18-17-702. Failure to Deliver Possession. (a) If the landlord fails to
32 deliver possession of the dwelling unit to the tenant as provided in Section
33 18-17-503, rent abates until possession is delivered and the tenant may:

34 (1) Terminate the rental agreement upon at least five (5) days'
35 written notice to the landlord and upon termination the landlord shall return

1 all prepaid rent and security; or

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

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

10

11 18-17-703. Accelerated Hearing Mandated. Any cause of action accruing
12 under this Chapter shall be filed in a court of competent jurisdiction, and
13 the court shall conduct a hearing on the complaint within ten (10) calendar
14 days after it is filed with the court.

15

16 18-17-704. Wrongful Failure to Supply Heat, Water, Hot Water, or
17 Essential Services. (a) If contrary to the rental agreement or Section
18 18-17-504 the landlord willfully or negligently fails to supply heat, running
19 water, hot water, electric, gas, or other essential service, the tenant may
20 give written notice to the landlord specifying the breach and may:

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

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

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

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

35 (c) If the tenant proceeds under this section, he or she shall not

1 proceed under Section 18-17-701 or Section 18-17-703 as to that breach.

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

6
7 18-17-705. Landlord's Noncompliance as Defense to Action for Possession
8 or Rent. (a) In an action for possession based upon nonpayment of the rent
9 or in an action for rent when the tenant is in possession, the tenant may
10 counterclaim for any amount he or she may recover under the rental agreement
11 or this chapter. In that event the court from time to time may order the
12 tenant to pay into court all or part of the rent accrued and thereafter
13 accruing, and shall determine the amount due to each party. The party to whom
14 a net amount is owed shall be paid first from the money paid into court, and
15 the balance by the other party. If no rent remains due after application of
16 this section, judgment shall be entered for the tenant in the action for
17 possession. If the tenant is unsuccessful in his defense or counterclaim, the
18 landlord may recover reasonable attorney's fees.

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

22
23 18-17-706. Fire or Casualty Damage. (a) If the dwelling unit or
24 premises are damaged or destroyed by fire or casualty to an extent that
25 enjoyment of the dwelling unit is substantially impaired, the tenant may:

26 (1) Immediately vacate the premises and notify the landlord in
27 writing within five (5) days thereafter of his intention to terminate the
28 rental agreement, in which case the rental agreement terminates as of the date
29 of vacating; or

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

34 (b) If the rental agreement is terminated the landlord shall return all
35 security recoverable under Section 18-17-501 and all prepaid rent. Accounting

1 for rent in the event of termination or apportionment shall be made as of the
2 date of the fire or casualty.

3

4 18-17-707. Tenant's Remedies for Landlord's Unlawful Ouster, Exclusion,
5 or Diminution of Service. If a landlord unlawfully removes or excludes the
6 tenant from the premises or willfully diminishes services to the tenant by
7 interrupting or causing the interruption of heat, running water, hot water,
8 electric, gas, or other essential service, the tenant may recover possession
9 or terminate the rental agreement and, in either case, recover an amount not
10 more than three (3) months' periodic rent or threefold the actual damages
11 sustained by him, whichever is greater, and reasonable attorney's fees. If
12 the rental agreement is terminated the landlord shall return all security
13 recoverable under Section 18-17-501 and all prepaid rent.

14

15 SUBCHAPTER 8. - LANDLORD REMEDIES

16

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

18 (a) Except as provided in this chapter, if there is a material
19 noncompliance by the tenant with the rental agreement or a noncompliance with
20 Section 18-17-601 materially affecting health and safety, the landlord may
21 deliver a written notice to the tenant specifying the acts and omissions
22 constituting the breach and that the rental agreement will terminate upon a
23 date not less than thirty (30) days after receipt of the notice. If the
24 breach is not remedied in five (5) days, the rental agreement shall terminate
25 as provided in the notice subject to the following. If the breach is
26 remediable by repairs or the payment of damages or otherwise and the tenant
27 adequately remedies the breach before the date specified in the notice, the
28 rental agreement shall not terminate. If substantially the same act or
29 omission which constituted a prior noncompliance of which notice was given
30 recurs within six (6) months, the landlord may terminate the rental agreement
31 upon at least five (5) days' written notice specifying the breach and the date
32 of termination of the rental agreement.

33 (b) If rent is unpaid when due and the tenant fails to pay rent within
34 five (5) days after written notice by the landlord of nonpayment and his or
35 her intention to terminate the rental agreement if the rent is not paid within

1 that period, the landlord may terminate the rental agreement.

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

6
7 18-17-802. Failure to Maintain. If there is noncompliance by the
8 tenant with Section 18-17-601 materially affecting health and safety that can
9 be remedied by repair, replacement of a damaged item, or cleaning, and the
10 tenant fails to comply as promptly as conditions require in case of emergency
11 or within five (5) days after written notice by the landlord specifying the
12 breach and requesting that the tenant remedy it within that period of time,
13 the landlord may enter the dwelling unit and cause the work to be done in a
14 workmanlike manner and submit the itemized bill for the actual and reasonable
15 cost or the fair and reasonable value thereof as rent on the next date
16 periodic rent is due, or if the rental agreement has terminated, for immediate
17 payment.

18
19 18-17-803. Remedies for Absence, Nonuse and Abandonment. (a) If the
20 rental agreement requires the tenant to give notice to the landlord of an
21 anticipated extended absence in excess of seven (7) days pursuant to Section
22 18-17-604 and the tenant willfully fails to do so, the landlord may recover
23 actual damages from the tenant.

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

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

1

2 18-17-804. Waiver of Landlord's Right to Terminate. Acceptance of rent
3 with knowledge of a default by the tenant or acceptance of performance by him
4 that varies from the terms of the rental agreement constitutes a waiver of the
5 landlord's right to terminate the rental agreement for that breach, unless
6 otherwise agreed after the breach has occurred.

7

8 18-17-805. Landlord Liens; Distress for Rent. (a) A lien or security
9 interest on behalf of the landlord in the tenant's household goods or *personal*
10 *effects* is not enforceable unless perfected in a time and manner provided by
11 law.

12 (b) Distraint for rent is abolished.

13

14 18-17-806. Remedy after Termination. If the rental agreement is
15 terminated, the landlord has a claim for possession and for rent and a
16 separate claim for actual damages for breach of the rental agreement and
17 reasonable attorney's fees as provided in Section 18-17-801(c).

18

19 18-17-807. *Landlord Self-Help Denied*. A landlord shall not recover or
20 take possession of the dwelling unit by action or otherwise, including willful
21 diminution of services to the tenant by interrupting or causing the
22 interruption of heat, running water, hot water, electric, gas, or other
23 essential service to the tenant, except in case of abandonment, surrender, or
24 as permitted in this chapter.

25

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

27

28 18-17-901. Periodic Tenancy; Holdover Remedies. (a) The landlord or
29 the tenant may terminate a week-to-week tenancy by a written notice given to
30 the other at least five (5) days before the termination date specified in the
31 notice.

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

35 (c) If the tenant remains in possession without the landlord's consent

1 after expiration of the term of the rental agreement or its termination, the
2 landlord may bring an action for possession and if the tenant's holdover is
3 willful and not in good faith the landlord may also recover an amount not more
4 than three (3) month's periodic rent or threefold the actual damages sustained
5 by him, whichever is greater, and reasonable attorney's fees. If the landlord
6 consents to the tenant's continued occupancy, Section 18-17-401(d) applies.

7

8 18-17-902. Landlord and Tenant Remedies for Abuse of Access. (a) If
9 the tenant refuses to allow lawful access, the landlord may obtain injunctive
10 relief to compel access, or terminate the rental agreement. In either case
11 the landlord may recover actual damages and reasonable attorney's fees.

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

19

20 SUBCHAPTER 10. - RETALIATORY CONDUCT

21

22 18-17-1001. Retaliatory Conduct Prohibited. (a) Except as provided in
23 this section, a landlord shall not retaliate by increasing rent or decreasing
24 services or by bringing or threatening to bring an action for possession
25 after:

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

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

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

34 (b) If the landlord acts in violation of subsection (a), the tenant is
35 entitled to the remedies provided in 18-17-707 and has a defense in any

1 retaliatory action against him for possession.

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

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

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

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

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

13 (e) *Nothing herein shall prohibit a landlord from increasing the rate*
14 *of rent at the end of any contract period if done in good faith."*

15

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

18

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

21 (1) 18-16-101. Failure to pay rent, refusal to vacate upon notice;

22 (2) 18-16-102. Lessee unlawfully collecting from subtenant; and

23 (3) 18-16-301 - 18-16-306. Security deposits.

24

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

31

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

