

.As Engrossed: 3/1/91

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

A Bill

SENATE BILL 426

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 LANDLORD
10 AND TENANT 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 Landlord and Tenant 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8 construed as impliedly repealed by subsequent legislation if that construction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 unless the provision declaring it specifies a different and limited
17 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 (8) *Any non-residential rental property.*

12

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

15

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

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

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

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

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

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

36 (6) *'Multiple Unit Dwelling' means any building or portion thereof used*

1 for providing three or more separate dwelling units which may share means of
2 egress or other essential facilities;

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

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

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

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

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

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

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

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

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

28 (14) 'Single Family Residence' means any dwelling unit which is not part
29 of a multiple unit dwelling;

30 (15) '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

1 its performance or enforcement.

2

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

5 (1) Any provision of a rental agreement was unconscionable when
6 made, the court may enforce the remainder of the agreement without the
7 unconscionable provision, or limit the application of any unconscionable
8 provision to avoid an 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 in writing at
32 the place of business of the landlord through which the rental agreement was
33 made, or mailed by first class, registered or certified mail to the landlord
34 at the place of business of the landlord or at any place held out by him or
35 her as the place for receipt of the communication; or

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

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

11

12 SUBCHAPTER 4. - GENERAL PROVISIONS

13

14 18-17-401. Terms and Conditions of Rental Agreement. (a) A landlord
15 and a tenant may include in a rental agreement terms and conditions not
16 prohibited by this chapter or other rule of law, including rent, term of the
17 agreement, and other provisions governing the rights and obligations of the
18 parties.

19 (b) In absence of agreement, the tenant *in possession of rental*
20 *property with the landlord's consent* shall pay as rent the fair rental value
21 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 *solely* by the operation of this
7 section provides for a term longer than one (1) year, it is effective for only
8 one (1) 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 *regardless of*
17 *outcome of a legal proceeding*; or

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

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

26

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

31

32 SUBCHAPTER 5. - LANDLORD OBLIGATIONS

33

34 18-17-501. Security Deposits; Prepaid Rent. (a) A landlord shall not
35 demand or receive security, however denominated, in an amount or value in

1 excess of two (2) months periodic rent. *This subsection does not prohibit*
2 *additional reasonable deposits for pets or for dwelling unit modifications*
3 *undertaken by the tenant.*

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

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

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

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

21

22 18-17-502. Disclosure. (a) A landlord or any person authorized to
23 enter into a rental agreement on his behalf shall disclose to the tenant in
24 writing at or before the commencement of the tenancy the name and address of:

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

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

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

- 34 (1) Service of process and receiving and receipting for notices
- 35 and demands; and

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

4
5 18-17-503. Landlord to Deliver Possession of Dwelling Unit. At the
6 commencement of the term a landlord shall deliver possession of the premises
7 to the tenant in compliance with the rental agreement and Section 18-17-504.
8 The landlord may bring an action for possession against any person wrongfully
9 in possession and may recover the damages provided in Section 18-17-901(c).

10
11 18-17-504. Landlord to Maintain Premises. (a) A landlord shall:

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

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

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

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

22 (5) Provide adequate means for the removal of ashes, garbage,
23 rubbish, and other waste incidental to the occupancy of the dwelling unit and
24 arrange for their removal; and

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

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

35 (c) The landlord and tenant of a single family residence may agree in

1 writing that the tenant perform the landlord's duties specified in paragraphs
2 (5) and (6) of subsection (a) and also specified repairs, maintenance tasks,
3 alterations, and remodeling, but only if the transaction is entered into in
4 good faith.

5 (d) The landlord and tenant of any multiple unit dwelling may agree
6 that the tenant is to perform specified repairs, maintenance tasks,
7 alterations, or remodeling as specified in subsections (a)(5) and (6), only
8 if:

9 (1) the agreement of the parties is entered into in good faith
10 and is set forth in a separate writing signed by the parties;

11 (2) the work is not necessary to cure non-compliance with
12 subsection (a)(1) of this section; and

13 (3) the agreement does not diminish or effect the obligation of
14 the landlord to other tenants in the premises.

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

18

19 18-17-505. Limitation of Liability. (a) Unless otherwise agreed, a
20 landlord who conveys premises that include a dwelling unit subject to a rental
21 agreement in a good faith sale to a bona fide purchaser is relieved of
22 liability under the rental agreement and this chapter as to events occurring
23 after written notice to the tenant of the conveyance. However, the landlord
24 remains liable to the tenant for all security recoverable by the tenant under
25 18-17-501 and all prepaid rent.

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

30

31 SUBCHAPTER 6. - TENANT OBLIGATIONS

32

33 18-17-601. Tenant to Maintain Dwelling Unit. A tenant shall:

34 (1) Comply with all obligations primarily imposed upon tenants by
35 applicable provisions of building and housing codes materially affecting

1 health and safety;

2 (2) Keep that part of the premises that he or she occupies and uses as
3 clean and safe as the condition of the premises permit;

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

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

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

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

13 (7) Conduct himself and require other persons on the premises with his
14 or her consent to conduct themselves in a manner that will not disturb his
15 neighbors' peaceful enjoyment of the premises. *A tenant's conviction during*
16 *occupancy for a criminal offense involving manufacture, sale trafficking of a*
17 *controlled substance at or near the premises shall be presumed to disturb the*
18 *neighbors' peaceful enjoyment of the premises.*

19

20 18-17-602. Rules and Regulations. (a) A landlord, from time to time,
21 may adopt a rule or regulation, however described, concerning the tenant's use
22 and occupancy of the premises. It is enforceable against the tenant only if:

23 (1) Its purpose is to promote the convenience, safety, or welfare
24 of the tenants in the premises, *reasonably promote the aesthetic appearance of*
25 *the premises*, preserve the landlord's property from abusive use, or make a
26 fair distribution of services and facilities held out for the tenants
27 generally;

28 (2) It is reasonably related to the purpose of which it is
29 adopted;

30 (3) It applies to all tenants in the premises in a fair manner;

31 (4) It is sufficiently explicit in its prohibition, direction, or
32 limitation of the tenant's conduct to fairly inform him of what he or she
33 shall or shall not do to comply;

34 (5) It is not for the purpose of evading the obligations of the
35 landlord; and

1 (6) The tenant has notice of it at the time he or she enters into
2 the rental agreement, or when it is adopted.

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

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

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

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

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

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

23
24 18-17-604. Tenant to Use and Occupy. Unless otherwise agreed, a tenant
25 shall occupy his or her dwelling unit only as a dwelling unit. The rental
26 agreement may require that the tenant notify the landlord of any anticipated
27 extended absence from the premises in excess of seven (7) days no later than
28 the first day of the extended absence.

29
30 SUBCHAPTER 7. - TENANT REMEDIES

31
32 18-17-701. Noncompliance by the Landlord - In General. (a) Except as
33 provided in this chapter, if there is a material noncompliance by the landlord
34 with the rental agreement or a noncompliance with Section 18-17-504 materially
35 affecting health and safety, the tenant may deliver a written notice to the

1 landlord specifying the acts and omissions constituting the breach and that
2 the rental agreement will terminate upon a date not less than thirty (30) days
3 after receipt of the notice if the breach is not remedied in fourteen (14)
4 days, and the rental agreement shall terminate as provided in the notice
5 subject to the following:

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

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

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

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

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

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

27

28 18-17-702. Failure to Deliver Possession. (a) If the landlord fails to
29 deliver possession of the dwelling unit to the tenant as provided in Section
30 18-17-503, rent abates until possession is delivered and the tenant may:

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

34 (2) Demand performance of the rental agreement by the landlord
35 and, if the tenant elects, obtain possession of the dwelling unit against the

1 landlord or any person wrongfully in possession and recover the actual damages
 2 sustained by him.

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

7

8 18-17-703. Self-Help for *Specific* Minor Defects. (a) If the landlord
 9 fails to comply with the rental agreement or Section 18-17-504, and the
 10 reasonable cost of compliance is less than one hundred fifty dollars (\$150) or
 11 an amount not to exceed the amount of the security deposit, whichever amount
 12 is greater, the tenant may recover damages for the breach under Section
 13 18-17-701(b) or shall notify the landlord of his or her intention to correct
 14 the condition at the landlord's expense. If the landlord fails to comply or
 15 show good faith effort to comply within fourteen (14) days after being
 16 notified by the tenant in writing or as promptly as conditions require in case
 17 of emergency, the tenant may cause the work to be done in a workmanlike manner
 18 and, after submitting to the landlord an itemized statement, deduct from his
 19 or her rent the actual and reasonable cost or the fair and reasonable value of
 20 the work, not exceeding the amount specified in this subsection in any given
 21 month.

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

26

27 18-17-704. Wrongful Failure to Supply Heat, Water, Hot Water, or
 28 Essential Services. (a) If contrary to the rental agreement or Section
 29 18-17-504 the landlord willfully or negligently fails to supply heat, running
 30 water, hot water, electric, gas, or other essential service, the tenant may
 31 give written notice to the landlord specifying the breach and may:

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

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

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

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

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

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

17

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

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

34

35 18-17-706. Fire or Casualty Damage. (a) If the dwelling unit or

1 premises are damaged or destroyed by fire or casualty to an extent that
2 enjoyment of the dwelling unit is substantially impaired, the tenant may:

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

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

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

15

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

26

27 SUBCHAPTER 8. - LANDLORD REMEDIES

28

29 18-17-801. Noncompliance with Rental Agreement; Failure to Pay Rent.

30 (a) Except as provided in this chapter, if there is a material
31 noncompliance by the tenant with the rental agreement *other than nonpayment of*
32 *grants* or a noncompliance with Section 18-17-601 materially affecting health
33 and safety, the landlord may deliver a written notice to the tenant specifying
34 the acts and omissions constituting the breach and that the rental agreement
35 will terminate upon a date not less than thirty (30) days after receipt of the

1 notice. If the breach is not remedied in fourteen (14) days, the rental
2 agreement shall terminate as provided in the notice subject to the following.
3 If the breach is remediable by repairs or the payment of damages or otherwise
4 and the tenant adequately remedies the breach before the date specified in the
5 notice, the rental agreement shall not terminate. If substantially the same
6 act or omission which constituted a prior noncompliance of which notice was
7 given recurs within six (6) months, the landlord may terminate the rental
8 agreement upon at least fourteen (14) days' written notice specifying the
9 breach and the date of termination of the rental agreement. *As used in this*
10 *subsection, material noncompliance means one or more substantial violations of*
11 *the lease or repeated minor violations of the lease which disturb peaceful*
12 *enjoyment of neighbors, or adversely affect the health and safety of any*
13 *person, or which disrupt the right to quiet enjoyment of any other tenant, any*
14 *repeated minor violations of the lease which have an adverse financial effect*
15 *on the premises at large.*

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

20 (c) Except as provided in this chapter, the landlord may recover actual
21 damages and obtain injunctive relief for noncompliance by the tenant with the
22 rental agreement or section 18-17-601. *In addition, the landlord may recover*
23 *reasonable attorney's fees.*

24 18-17-802. Failure to Maintain. If there is noncompliance by the
25 tenant with Section 18-17-601 materially affecting health and safety that can
26 be remedied by repair, replacement of a damaged item, or cleaning, and the
27 tenant fails to comply as promptly as conditions require in case of emergency
28 or within fourteen (14) days after written notice by the landlord specifying
29 the breach and requesting that the tenant remedy it within that period of
30 time, the landlord may enter the dwelling unit and cause the work to be done
31 in a workmanlike manner and submit the itemized bill for the actual and
32 reasonable cost or the fair and reasonable value thereof as rent on the next
33 date periodic rent is due, or if the rental agreement has terminated, for
34 immediate payment.

35

1 18-17-803. Remedies for Absence, Nonuse and Abandonment. (a) If the
2 rental agreement requires the tenant to give notice to the landlord of an
3 anticipated extended absence in excess of seven (7) days pursuant to Section
4 18-17-604 and the tenant willfully fails to do so, the landlord may recover
5 actual damages from the tenant.

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

8 (c) If the tenant abandons the dwelling unit, the landlord shall make
9 reasonable efforts to rent it at a fair rental. If the landlord rents the
10 dwelling unit for a term beginning before the expiration of the rental
11 agreement, it terminates as of the date of the new tenancy. If the landlord
12 fails to use reasonable efforts to rent the dwelling unit at a fair rental or
13 if the landlord accepts the abandonment as a surrender, the rental agreement
14 is deemed to be terminated by the landlord as of the date the landlord has
15 notice of the abandonment. If the tenancy is from month-to-month or
16 week-to-week, the term of the rental agreement for this purpose is deemed to
17 be a month or a week, as the case may be. *As used in the subsection, the term*
18 *"abandonment" means an absolute relinquishment or vacating of the dwelling*
19 *unit by the tenant with the intention of not returning.*

20 (d) *When a dwelling unit has been abandoned; or when the rental*
21 *agreement has come to an end and the tenant has removed a substantial portion*
22 *of his or her property; or when the tenant has vacated and has voluntarily and*
23 *permanently terminated his or her utilities; and the tenant has left personal*
24 *property with a fair market value of five hundred dollars (\$500) or less in*
25 *the dwelling unit or on the premises, the landlord may enter the dwelling*
26 *unit, and dispose of the property. Where property is disposed of by the*
27 *landlord pursuant to this section and the property value was actually in*
28 *excess of five hundred dollars (\$500), the landlord is not liable unless the*
29 *landlord was deliberate or grossly negligent.*

30 (e)(1) *When a dwelling unit has been abandoned or the rental agreement*
31 *has come to an end and the tenant has left personal property in the dwelling*
32 *unit or on the premises in cases not covered by subsection (d) above, the*
33 *landlord may notify the tenant that such property must be removed within the*
34 *dates set forth in such notice, but not less than twenty (20) days after*
35 *personal delivery, mailing or posting said notice on the premises. If the*

1 property is not removed with the time specified in such notice, the landlord
2 may sell the property at a public or private sale in any manner which, under
3 the circumstances, is reasonably likely to obtain a fair price, taking into
4 account the age and condition of the property, and may retain the proceeds of
5 the sale as actual damages. If upon a sale the fair price for the proceeds
6 exceeds the actual damages sustained by the landlord, the tenant may recover
7 from the landlord any surplus provided the tenant notifies the landlord within
8 six (6) months of the sale. If six (6) months expires following the sale and
9 the tenant has not notified the landlord of any intention to recover a surplus
10 from the sale, all proceeds of the sale may then be retained by the landlord
11 as liquidated damages.

12 (2) After notice has been provided under subsection (e)(1) and
13 until the term of the tenancy has expired, the landlord shall store all goods,
14 chattels and personal property of the tenant in a place of safe keeping and
15 shall exercise reasonable care of the property, but shall not be responsible
16 to the tenant for any loss not caused by the landlord's deliberate or grossly
17 negligent act. The landlord may elect to store the goods, chattels and
18 personal property on the previously leased premises, in which event the
19 storage cost may not exceed the fair rental value of the premises. If the
20 tenant's property is removed to a commercial storage company, the storage cost
21 may include the actual charge for such storage and costs of removal from the
22 premises to the place of storage. After the landlord's notice under
23 subsection (e)(1), if the tenant gives timely notice of his or her intention
24 to remove the personal property from the premises and does not do so within
25 the time specified in the landlord's notice or within fifteen (15) days of the
26 personal delivery or mailing of the tenant's written response, whichever is
27 later, it shall be conclusively presumed that the tenant has abandoned such
28 property. In the event the tenant removes the property after notice, the
29 landlord shall be entitled to the costs of storage for the period the property
30 has remained in the landlord's safe keeping.

31

32 18-17-804. Waiver of Landlord's Right to Terminate. Acceptance of rent
33 with knowledge of a default by the tenant or acceptance of performance by him
34 that varies from the terms of the rental agreement constitutes a waiver of the
35 landlord's right to terminate the rental agreement for that breach, unless

1 otherwise agreed after the breach has occurred.

2

3 18-17-805. Landlord Liens; Distress for Rent. (a) A lien or security
4 interest on behalf of the landlord in the tenant's household goods is not
5 enforceable unless perfected before the effective date of this chapter.

6 (b) Distraint for rent is abolished.

7

8 18-17-806. Remedy after Termination. If the rental agreement is
9 terminated, the landlord has a claim for possession and for rent and a
10 separate claim for actual damages for breach of the rental agreement and
11 reasonable attorney's fees as provided in Section 18-17-801(c).

12

13 18-17-807. Recovery of Possession Limited. A landlord shall not
14 recover or take possession of the dwelling unit by action or otherwise,
15 including willful diminution of services to the tenant by interrupting or
16 causing the interruption of heat, running water, hot water, electric, gas, or
17 other essential service to the tenant, except in case of abandonment,
18 surrender, or as permitted in this chapter.

19

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

21

22 18-17-901. Periodic Tenancy; Holdover Remedies. (a) The landlord or
23 the tenant may terminate a week-to-week tenancy by a written notice given to
24 the other at least ten (10) days before the termination date specified in the
25 notice.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

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

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

SUBCHAPTER 10. - RETALIATORY CONDUCT

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

- (1) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety;
- or
- (2) The tenant has complained to the landlord of a violation under Section 18-17-504; or
- (3) The tenant has organized or become a member of a tenant's union or similar organization.

(b) If the landlord acts in violation of subsection (a), the tenant is entitled to the remedies provided in 18-17-707 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within *ninety (90) days* before the alleged act of retaliation creates presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services.

'Presumption' means that the trier of fact shall find the existence of the

1 fact presumed unless and until evidence is introduced which would support a
 2 finding of its nonexistence.

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

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

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

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

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

14
 15 SECTION 2. Arkansas Code Annotate §18-60-307(d) is amended to read as
 16 follows:

17 "(d) (1) If a hearing is required to be held on the demand of the
 18 plaintiff for an immediate writ of possession, the plaintiff shall there
 19 present evidence sufficient to make a prima facie case of entitlement to
 20 possession of the property described in the complaint. The defendant or
 21 defendants shall be entitled to present evidence in rebuttal thereof. If the
 22 court decides upon all the evidence that the plaintiff is likely to succeed on
 23 the merits at a full hearing and if the plaintiff provides adequate security
 24 as determined by the court, then the court shall order the clerk forthwith to
 25 issue a writ of possession and the sheriff to place the plaintiff in
 26 possession of the property described in the complaint, subject to the
 27 provisions of subsection (e) below. No such action by the court shall be
 28 final adjudication of the parties' rights in the action.

29 (2) A plaintiff demanding an immediate writ of possession shall
 30 be entitled to receive an expedited hearing before the court within twenty-one
 31 (21) days of the filing of the objections by the defendant or defendants."

32
 33 SECTION 3. Arkansas Code Annotated §18-60-307(e) is amended to read as
 34 follows:

35 "(e) If the defendant desires to retain possession of the property, the

1 court shall allow the retention upon the defendant providing, within five (5)
2 days of issuance of the writ of possession, adequate security as determined by
3 the court. Adequate security may include payment of rent into the registry of
4 the court as it accrues pending a trial."

5

6 SECTION 4. Arkansas Code Annotated §18-60-308 is amended to read as
7 follows:

8 "18-60-308. Trials - Title to Premises not Adjudicated.

9 (a) The court shall schedule a trial for all actions involving forcible
10 entry and detainer or unlawful detainer within one hundred twenty (120) days
11 of the filing of the defendant's first responsive pleading unless the court,
12 for good cause, specifically approves a longer period.

13 (b) In trials under the provisions of this subchapter the title to the
14 premises in question shall not be adjudicated upon or given in evidence,
15 except to show the right to the possession and the extent thereof."

16

17 SECTION 5. This act applies to rental agreements entered into or
18 extended or renewed on and after the date this act becomes effective.

19

20 SECTION 6. Repealer. (a) The following sections of the Arkansas Code
21 are repealed:

- 22 (1) 18-16-101. Failure to pay rent, refusal to vacate upon notice;
- 23 (2) 18-16-102. Lessee unlawfully collecting from subtenant;
- 24 (3) 18-16-107. Failure to quit after notice of intention;
- 25 (4) 18-16-108. Property left on premises after termination of lease;

26 and

- 27 (5) 18-16-301 - 18-16-306. Security deposits.

28

29 SECTION 7. Savings Clause. Transactions entered into before the
30 effective date of this act, and not extended or renewed on and after that
31 date, and the rights, duties, and interests flowing from them remain valid and
32 may be terminated, completed, consummated, or enforced as required or
33 permitted by any statute or other law amended or repealed by this act as
34 though the repeal or amendment had not occurred.

35

1 SECTION 8. Severability. If any provision of this act or the
2 application thereof to any person or circumstance is held invalid, the
3 invalidity does not affect other provisions or application of this act which
4 can be given effect without the invalid provision or application, and to this
5 end the provisions of the act are severable.

6
7 SECTION 9. All provisions of this act of a general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.

10
11 SECTION 10. Emergency Clause. It is found and determined by the
12 General Assembly of the state of Arkansas that the laws of this state
13 concerning the rights and liabilities of residential landlords and tenants are
14 in need of revision to simplify, clarify and modernize the laws; and this act
15 is necessary to provide adequate protection to both landlords and tenants.
16 Therefore, an emergency is hereby declared to exist and this act being
17 necessary for the preservation of the public peace, health and safety shall be
18 in full force and effect from and after its passage and approval.

19
20 /s/Lewellen