

Stricken language would be deleted from and underlined language would be added to the Arkansas Constitution.

1 State of Arkansas
2 94th General Assembly
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SJR 12

4
5 By: Senator G. Leding
6 By: Representative J. Richardson

SENATE JOINT RESOLUTION

9 AN AMENDMENT TO THE ARKANSAS CONSTITUTION TO CREATE
10 AN IMPLIED WARRANTY OF HABITABILITY FOR ARKANSAS
11 TENANTS AND PROVIDE PROTECTIONS TO ARKANSAS TENANTS.

Subtitle

15 A CONSTITUTIONAL AMENDMENT TO CREATE AN
16 IMPLIED WARRANTY OF HABITABILITY AND
17 PROVIDE PROTECTIONS TO ARKANSAS TENANTS.

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19
20 BE IT RESOLVED BY THE SENATE OF THE NINETY-FOURTH GENERAL ASSEMBLY OF THE
21 STATE OF ARKANSAS, AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
22 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

23
24 THAT the following is proposed as an amendment to the Constitution of
25 the State of Arkansas, and upon being submitted to the electors of the state
26 for approval or rejection at the next general election for Representatives
27 and Senators, if a majority of the electors voting thereon at the election
28 adopt the amendment, the amendment shall become a part of the Constitution of
29 the State of Arkansas, to wit:

30
31 SECTION 1. The Arkansas Constitution is amended to add an additional
32 amendment to read as follows:

33 § 1. Finding and intent of amendment.

34 It is declared that:

35 (1) Arkansas is the only state in the country where the
36 nonpayment of rent and failure to vacate is a crime;



1 (2) Arkansas is the only state in the country without an implied
2 warranty of habitability;

3 (3) Arkansas has not clearly codified the holding of Gorman v.
4 Ratliff, 289 Ark. 332, 712 S.W.2d 888, denying a landlord the right to use
5 self-help to evict a tenant without a court order;

6 (4) Arkansans have fewer rights than tenants in any other state;

7 (5) The right to a safe and habitable home for oneself and one's
8 family is a core and fundamental right and the people of the State of
9 Arkansas should be given the right to have their voices heard on this issue;
10 and

11 (6) Over ninety percent (90%) of Arkansans support the enactment
12 of an implied warranty of habitability.

13
14 § 2. Failure to pay rent and refusal to vacate not criminal offense.

15 The failure to pay rent when due shall not operate to forfeit the
16 remainder of the lease term by operation of law, and subsequent failure to
17 vacate after being given notice is not a criminal offense.

18
19 § 3. Prohibited terms and conditions of rental agreement.

20 (a)(1) A rental agreement shall not require a tenant to waive or forgo
21 a right or remedy established by this amendment.

22 (2) A provision in a rental agreement prohibited by this
23 amendment shall be unenforceable and void.

24 (b) If a landlord seeks to enforce a provision prohibited by this
25 amendment or accepts a tenant's voluntary compliance with a provision
26 prohibited by this amendment, a court may award the tenant an amount not to
27 exceed one (1) month's rent.

28
29 § 4. Landlord disclosure.

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

32 (1) Any condition of the premises that the landlord knows or
33 should know on a reasonable inspection of the premises that would constitute
34 a noncompliance under § 5 of this amendment and would materially interfere
35 with the health and safety of the tenant or an immediate family member of the
36 tenant;

1 (2) Whether, to the knowledge of the landlord, a foreclosure
2 action or nonjudicial foreclosure proceeding has been commenced against the
3 premises;

4 (3) Any rules affecting the tenant’s use and enjoyment of the
5 premises, whether adopted by the landlord or another authorized person;

6 (4) The name of the landlord;

7 (5) The name of and contact information for any person
8 authorized to manage the premises;

9 (6) The name of and contact information for any person
10 authorized to receive a notice or demand for the owner of the premises; and

11 (7) The address to which or method by which the tenant must
12 deliver rent.

13 (b) A landlord shall update the information disclosed under subsection
14 (a) of this section as necessary.

15
16 § 5. Landlord duty to maintain habitable premises.

17 (a) In any residential rental agreement, the landlord has a
18 nonwaivable duty to provide and maintain, throughout the period of the
19 tenancy, premises that:

20 (1) Are safe, clean, and fit for human habitation; and

21 (2) Comply with the requirements of applicable building,
22 housing, and health regulations.

23 (b) A landlord shall at all times during the tenancy maintain the
24 premises in a habitable condition.

25 (c) Premises meet the habitable condition requirement of this
26 amendment if:

27 (1) The dwelling unit has effective waterproofing and weather
28 protection of a roof and exterior walls, including windows and a door;

29 (2) The dwelling unit has plumbing facilities that conform to
30 applicable law and are maintained in good working order;

31 (3) The dwelling unit has a water supply approved under
32 applicable law that is:

33 (A) Under the control of the tenant or landlord and is
34 capable of producing hot and cold running water;

35 (B) Furnished with appropriate fixtures;

36 (C) Connected to a sewage disposal system approved under

1 applicable law; and

2 (D) Maintained so as to provide safe drinking water and to
3 be in good working order to the extent that the water supply can be
4 controlled by the landlord;

5 (4) The dwelling unit has adequate heating facilities that
6 conform to applicable law and are maintained in good working order;

7 (5) The dwelling unit has electrical lighting with wiring and
8 electrical equipment that conform to applicable law and are maintained in
9 good working order;

10 (6) The buildings, grounds, and appurtenances on the premises at
11 the time of the commencement of the rental agreement are:

12 (A) Safe for normal and reasonably foreseeable uses; and

13 (B) Clean, sanitary, and free from all accumulations of
14 debris, filth, rubbish, and garbage, and rodents and vermin;

15 (7) All areas under the control of the landlord are kept:

16 (A) Safe for normal and reasonably foreseeable uses; and

17 (B) Clean, sanitary, and free from all accumulations of
18 debris, filth, rubbish, and garbage, and rodents and vermin;

19 (8) The dwelling unit has an adequate number of appropriate
20 receptacles for garbage and rubbish that are in clean condition and good
21 repair at the time of the commencement of the rental agreement, and the
22 landlord provides and maintains appropriate serviceable receptacles for
23 garbage and rubbish thereafter and arranges for their removal;

24 (9) The dwelling unit has floors, walls, ceilings, stairways,
25 and railings maintained in good repair;

26 (10) The premises have proper ventilation, air conditioning, and
27 other facilities and appliances, including without limitation elevators,
28 maintained in good repair if supplied or required to be supplied by the
29 landlord;

30 (11) The premises have a working smoke alarm or smoke detector,
31 with working batteries if solely battery-operated, provided during the
32 duration of the tenancy;

33 (12)(A) The premises have a working carbon monoxide alarm, with
34 working batteries if solely battery-operated, provided for during the
35 duration of the tenancy.

36 (B) Subdivision (c)(12)(A) of this section applies only if

1 a dwelling unit contains a carbon monoxide source or is located within a
 2 premises that contains a carbon monoxide source and the dwelling unit is
 3 connected to the room in which the carbon monoxide source is located by a
 4 door, duct work, or a ventilation shaft; and

5 (13) The premises have:

6 (A) Working locks for all dwelling unit entrance doors and
 7 keys for those locks that require keys; and

8 (B) Working latches for all windows by which access may be
 9 had to the dwelling unit portion of the premises.

10
 11 § 6. Landlord noncompliance and tenant remedies.

12 (a) If the landlord fails to comply with the landlord's obligations
 13 under § 5 of this amendment and, after receiving actual notice of the
 14 noncompliance from the tenant, a governmental entity, or a qualified
 15 independent inspector, the landlord fails to repair the noncompliance within
 16 a reasonable time, the tenant may:

17 (1) Withhold the payment of rent for the period of the
 18 noncompliance;

19 (2) Obtain injunctive relief;

20 (3) Recover damages, costs, and reasonable attorney's fees;

21 (4) Make workmanlike repairs to the premises and deduct the
 22 actual and reasonable cost of the repairs from the rent, not to exceed the
 23 amount of three (3) month's rent during a twelve-month period; or

24 (5) Terminate the rental agreement on reasonable notice of the
 25 termination to the landlord.

26 (b) The tenant remedies under this section are not available if the
 27 condition of the premises was caused by a negligent or deliberate act or
 28 omission of the tenant or a person on the premises with the tenant's consent.

29
 30 § 7. Landlord's noncompliance as defense to action for possession.

31 (a) In an action for possession of the premises based upon nonpayment
 32 of rent by the tenant or in an action for rent in which the tenant is in
 33 possession of the premises, the tenant may counterclaim for any amount that
 34 he or she may recover under the rental agreement.

35 (b)(1) Except as provided in subsection (e) of this section, if the
 36 tenant filed a counterclaim under subsection (a) of this section, the court

1 may order the tenant to pay into the court registry all or part of the
 2 accrued rent due by the tenant and thereafter accruing and shall determine
 3 the amount due to each party.

4 (2) The party to whom a net amount is owed shall be paid first
 5 from the money paid into the court registry, and the balance by the other
 6 party.

7 (c) If no rent remains due by the tenant after application of this
 8 section and a judgment is made in favor of the tenant, the judgment shall be
 9 entered for the tenant in the action for possession.

10 (d) If the defense or counterclaim by the tenant is without merit and
 11 is not raised in good faith, the court may order that the landlord may
 12 recover reasonable attorney's fees.

13 (e) In an action for rent in which the tenant is not in possession of
 14 the premises and does not owe any past due rent payments, the tenant may
 15 counterclaim as provided in subsection (a) of this section, but the tenant is
 16 not required to pay any rent into the court registry.

17
 18 § 8. Retaliatory conduct by landlord prohibited.

19 (a) A landlord may not retaliate against a tenant by taking an action
 20 described in subsection (b) of this section if the tenant:

21 (1) In good faith exercises or attempts to exercise against a
 22 landlord a right or remedy granted to the tenant by the rental agreement,
 23 municipal ordinance, a federal rule or regulation, or a state statute;

24 (2) Gives the landlord a notice to repair the premises or
 25 exercises a remedy under this amendment;

26 (3) Complains to a governmental entity responsible for enforcing
 27 building or housing codes, a public utility, or a civic or nonprofit agency,
 28 and the tenant:

29 (A) Claims a building or housing code violation or utility
 30 problem; and

31 (B) Believes in good faith that the complaint is valid and
 32 that the violation or problem occurred; or

33 (4) Establishes, attempts to establish, or participates in a
 34 tenant organization formed to address tenant housing issues.

35 (b) A landlord may not retaliate against a tenant by:

36 (1) Filing an eviction proceeding;

1 tenancy; or

2 (4) To exhibit the dwelling unit to prospective or actual
 3 purchasers, mortgagees, tenants, workers, or contractors.

4 (c) A landlord may only enter a dwelling unit without consent or
 5 notice when the landlord has a reasonable belief that there is an imminent:

6 (1) Danger to any person in the dwelling unit; or

7 (2) Threat of property damage to the dwelling unit.

8
 9 § 11. Penalties for abuse or abuse of access to rental property.

10 (a) If a tenant unreasonably refuses to allow the landlord access to
 11 the dwelling unit, the landlord may recover actual damages or one (1) month's
 12 rent, whichever is greater, and reasonable attorney's fees and costs, and
 13 the:

14 (1) Court may compel the tenant to grant the landlord access to
 15 the dwelling unit; or

16 (2) Landlord may terminate the rental agreement by giving the
 17 tenant notice in a court order stating that if the tenant fails to grant the
 18 landlord access to the dwelling unit not later than fourteen (14) days after
 19 the notice, the rental agreement will terminate on the expiration of the
 20 fourteen-day period or on a later specified date.

21 (b) If a landlord unlawfully enters into a tenant's dwelling unit,
 22 lawfully enters but in an unreasonable manner, or makes repeated demands to
 23 enter into the dwelling unit that are otherwise lawful but have the effect of
 24 harassing the tenant, the tenant may recover actual damages or one (1)
 25 month's rent, whichever is greater, and reasonable attorney's fees and costs,
 26 and the tenant may:

27 (1) Seek injunctive relief to prevent the recurrence of the
 28 conduct; or

29 (2) Terminate the rental agreement by giving the landlord notice
 30 in a court record that the rental agreement will terminate immediately or on
 31 a later specified date that is not later than thirty (30) days after notice
 32 is given.

33
 34 § 12. Payment of rent and rent increases.

35 (a) Rent is payable without demand or notice at the time and place
 36 agreed upon by the parties.

