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A Bill

HOUSE BILL 2135

By: Representatives Sabin, Leding

For An Act To Be Entitled

AN ACT TO CLARIFY THE OBLIGATIONS OF RESIDENTIAL LANDLORDS AND RESIDENTIAL TENANTS; TO REQUIRE MINIMUM HABITABILITY STANDARDS FOR TENANTS OF RESIDENTIAL REAL PROPERTY; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE OBLIGATIONS OF RESIDENTIAL LANDLORDS AND RESIDENTIAL TENANTS; AND TO REQUIRE MINIMUM HABITABILITY STANDARDS FOR TENANTS OF RESIDENTIAL REAL PROPERTY.

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

SECTION 1. Arkansas Code Title 18, Chapter 17, Subchapter 5, is amended to add additional sections to read as follows:

18-17-502. Landlord to maintain premises.

(a) Except when prevented by an act of God, the failure of public utility services, or other force majeure events, a landlord shall:

(1) Comply with the requirements of applicable building and housing codes that materially affect health and safety;

(2) Ensure that the premises and all common areas are safe and fit for the use intended by the parties;

(3) Provide and maintain:

(A) A roof that does not leak;

(B) A reasonably safe structure, including walls, floors, stairs, and railings;

(C) An operable and lockable entry door providing



unobstructed entry and exit;

(D) An operable and lockable door or window leading directly to the exterior of the unit from every sleeping room;

(E) Access to running water and reasonable amounts of hot water to the dwelling unit, including potable drinking water, with plumbing that does not leak and conforms to applicable building and housing codes in existence at the time of installation, unless the dwelling unit is so constructed that hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection;

(F) Access to a waste disposal system approved under applicable law with plumbing in compliance with applicable building and housing codes in existence at the time of installation, unless the dwelling unit is so constructed so that hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection;

(G) Access to electricity approved under applicable law with wiring in compliance with applicable building and housing codes in existence at the time of installation;

(H) A source of heating in compliance with applicable building and housing codes in existence at the time of installation, unless the dwelling unit is so constructed that the heat is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection;

(I)(i) Except in the case of a single family residence, a reasonable number of appropriate exterior receptacles for garbage and rubbish.

(ii) Except in the case of a single family residence, the landlord shall arrange for removal of the garbage and rubbish if the removal of garbage and rubbish is provided by a government authority; and

(J) Air conditioning, if the landlord agrees to provide air conditioning; and

(4) Ensure that on the date that the tenant takes possession of the premises:

(A) A functioning smoke alarm that is battery powered, electrically powered, or both is located on the premises; and

(B) On and after July 1, 2017, a functioning carbon monoxide detector is located on the premises if the unit has a fossil fuel burning heater or appliance, a fireplace, or an attached garage.

(b) If the duty imposed by subdivision (a)(1) of this section is greater than another duty imposed by this section, the landlord shall comply with subdivision (a)(1) of this section.

(c) A landlord and tenant shall not agree that the tenant perform specified repairs, maintenance, alteration, or remodeling unless:

(1) The agreement is in writing and for valuable consideration; and

(2) The landlord and tenant agree that the tenant is qualified to perform the repairs, maintenance, alteration, or remodeling.

(d) This section does not:

(1) Excuse a tenant from paying rent or prevent a landlord from exercising any remedy upon the tenant's material noncompliance with the rental agreement; or

(2) Provide a tenant a right to offset rent as a remedy for a landlord's failure to comply with this section.

18-17-503. Initial condition of dwelling unit – Promised repairs.

(a) At the beginning of the tenancy, the tenant shall be:

(1) Permitted to inspect the premises; and

(2) Provided by the landlord at the time of the inspection a writing with which to note:

(A) Any defects in the items listed in § 18-17-502; and

(B) Any maintenance, repair, or improvement the landlord has agreed to provide that is not stated in the rental agreement.

(b) A landlord is presumed to be in compliance with § 18-17-502 and to have no obligation to provide maintenance, repairs, or improvements not specified in the rental agreement if the tenant:

(1) Signs the writing without noting any additional defects in the items listed in § 18-17-502 or the promised maintenance, repair, or improvement; or

(2) Fails to return the writing to the landlord within two (2) business days of delivery.

(c) If a landlord and tenant are unable to agree on the contents of

the writing set forth in this section:

- (1) The rental agreement shall be deemed to be terminated; and
- (2) The landlord and tenant shall have no further obligation to each other.

18-17-504. Repairs.

(a) A landlord shall provide each tenant with current contact information of the person authorized to accept repair requests and make repairs.

(b) Except as provided in § 18-17-502(c) and subsection (e) of this section, the landlord is responsible for:

- (1) All repairs to the property; and
- (2) Selecting and meeting with repair technicians on the premises as needed.

(c)(1) Except as provided in subdivision (c)(2) of this section, a landlord shall have fourteen (14) days to perform or contract to perform a repair after receipt of notice of a repair request under § 18-17-303.

(2) If an emergency exists or the condition materially affects the health and safety of the tenant, the landlord shall initiate the repair within twenty-four (24) hours.

(3)(A) The repair period may be extended due to factors such as weather, insurance claim processing, and availability of repair technicians.

(B) The landlord shall make reasonable temporary repairs during the extension to mitigate the severity of the condition.

(d) A landlord shall:

- (1) Cause all repairs to be performed:
 - (A) In a workmanlike fashion and in compliance with all building and housing codes in force at the time of the repair; and
 - (B) During normal business hours unless dictated otherwise by circumstances beyond the landlord's control, including without limitation an emergency or the unavailability of a repair technician; and
- (2) Make a reasonable effort to notify the tenant of repair schedules.

(e) A landlord is not liable for repairs to conditions caused by the negligent or wrongful act or omission of:

- (1) The tenant;

(2) A member of the tenant's family;
(3) Another occupant of the premises; or
(4) Any person other than the landlord or the landlord's agent on the premises with the consent of the tenant, including without limitation a person employed directly by the tenant to make repairs to the premises without the knowledge and consent of the landlord.

18-17-505. Noncompliance by the landlord – General.

(a)(1) If noncompliance with this subchapter by the landlord materially affects the health or safety of the tenant, the tenant may deliver notice of the noncompliance to the landlord by certified mail or any other method provided by the rental agreement and shall specify the acts and omissions constituting the noncompliance.

(2) The notice shall also state that the rental agreement shall terminate on a date not less than thirty (30) days after receipt or attempted delivery of the notice if:

(A) The breach is not remedied within fourteen (14) days;
and

(B) The tenant has not sued for injunctive relief.

(b) The rental agreement shall terminate as provided in the notice unless:

(1) The breach is remedial by repairs or otherwise and the landlord adequately remedies the breach before the date specified in the notice;

(2) The tenant files suit for injunctive relief after the fourteenth day but before the thirtieth day after receipt or attempted delivery of the notice; or

(3) The breach was caused by the deliberate or negligent act or omission of:

(A) The tenant;

(B) A member of the tenant's family;

(C) Another occupant of the premises; or

(D) Any person other than the landlord or the landlord's agent on the premises with the consent of the tenant, including without limitation a person employed directly by the tenant to make repairs to the premises without the knowledge and consent of the landlord.

(c) To entitle the tenant to injunctive relief, the tenant shall show to the satisfaction of the court that:

(1) Before the commencement of the action the landlord was:

(A) Provided notice by the tenant of a condition that does not comply with this subchapter; or

(B) Notified of the condition by a violation or condemnation notice from an appropriate state or municipal agency;

(2)(A) The landlord has failed or refused to remedy the condition after having a reasonable opportunity to do so.

(B)(i) Thirty (30) days from receipt of the notification by the landlord is presumed to be a reasonable opportunity to remedy the condition.

(ii) Subdivision (c)(2)(B)(i) of this section does not limit the right of the landlord to prove that a longer period to remedy the condition is reasonable; and

(3) The tenant has timely paid to the landlord the amount of rent required under the rental agreement and continues to pay the rent due either into the court registry or to the landlord under the supervision of the court.

(d) Injunctive relief shall not be granted under subsection (c) of this section if the landlord establishes to the satisfaction of the court:

(1) That the condition alleged by the tenant:

(A) Does not in fact exist;

(B) Has been removed or remedied; or

(C) Was caused by the deliberate or negligent act or omission of:

(i) The tenant;

(ii) A member of the tenant's family;

(iii) Another occupant of the premises; or

(iv) Any person other than the landlord or the landlord's agent on the premises with the consent of the tenant, including without limitation a person employed directly by the tenant to make repairs to the premises without the knowledge and consent of the landlord; or

(2) That the tenant has unreasonably refused the landlord entry to the premises for the purpose of correcting the condition.

(e) The remedies provided by this section are in addition to any right of the tenant arising under other Arkansas law.

(f)(1) Remedies provided by this section are not available if the tenant is in default for failure to pay rent or in material breach of the rental agreement.

(2) If the tenant fails to pay rent as due, the repair request shall be considered void and the landlord may exercise the landlord's remedies for noncompliance.

(g) If the rental agreement is terminated, the landlord shall return in the time and manner required by applicable law:

(1) All security recoverable by the tenant under § 18-17-501; and

(2) All prepaid rent for a period after the date the rental agreement is terminated under this section.

(h)(1) This subchapter shall not be construed to expand a landlord's tort liability.

(2) A landlord's tort liability shall remain subject to the limits set by § 18-16-110.

18-17-506. Prohibited conduct.

(a) Except as provided in this section, a landlord may not increase rent, decrease services, or bring or threaten to bring a failure to vacate charge or an action for possession because the tenant:

(1) Has complained to the landlord of a violation under this subchapter within the past ninety (90) days; or

(2) Has made use of remedies provided under this subchapter within the past ninety (90) days.

(b)(1) Notwithstanding subsection (a) of this section, a landlord may bring an action for possession if:

(A) A violation of this subchapter or an applicable building and housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's household, or a person other than the landlord or the landlord's agent on the premises with the tenant's consent;

(B) The tenant is in:

(i) Default in the payment of rent; or

(ii) Material breach of the lease; or

(C) Compliance with the applicable building and housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit.

(2) The maintenance of an action for possession by the landlord does not release the landlord from liability under this subchapter.

(c)(1) A rental agreement shall not require a tenant to waive or forego a right or remedy under this subchapter except as allowed under § 18-17-502(c).

(2) A provision in a rental agreement that violates subdivision (c)(1) of this section is unenforceable.

SECTION 2. Arkansas Code § 18-17-602 is amended to read as follows:
18-17-602. Access.

(a) A tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or ~~agreed~~ agreed-upon repairs, decorations, alterations, or improvements, supply necessary or ~~agreed~~ agreed-upon services, investigate possible rule or lease violations, ~~investigate possible criminal activity~~, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

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

(c) A landlord shall not abuse the right of access or use it to harass the tenant.

(d) Except in case of an emergency, pursuant to court order, when the tenant has abandoned or surrendered the premises, when it is impractical to give notice, or upon mutual agreement between the landlord and tenant, the landlord shall give the tenant at least twenty-four (24) hours' notice of his or her intent to enter the premises and may enter only at reasonable times.

(e) A tenant shall not change locks on the dwelling unit without the permission of the landlord.

SECTION 3. Arkansas Code § 18-17-705 is amended to read as follows:
18-17-705. Landlord remedies for refusal of access to rental property.

(a)(1) If the tenant refuses to allow lawful access, the landlord may:
(A) obtain Obtain injunctive relief ~~in district court~~

~~without posting bond to compel access; or~~

~~(B) terminate~~ Terminate the rental agreement.

~~(b)(2)~~ In either case under subdivision (a)(1) of this section the landlord may recover actual damages and reasonable attorney's fees.

(b)(1) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for an otherwise lawful entry that has the effect of unreasonably harassing the tenant, the tenant may:

(A) Obtain injunctive relief to prevent the recurrence of the conduct; or

(B) Terminate the rental agreement.

(2) In either case, under subdivision (b)(1) of this section the tenant may recover actual damages of not less than an amount equal to one (1) month's rent and reasonable attorney's fees.

SECTION 4. Arkansas Code Title 18, Chapter 17, Subchapter 8, is amended to add an additional section to read as follows:

18-17-803. Administration of remedies – Enforcement.

(a)(1) The remedies provided by this chapter shall be so administered that the aggrieved party may recover lawful damages.

(2) The aggrieved party has an obligation and duty to mitigate damages.

(b) A right or obligation declared by this chapter is enforceable by legal action unless the provision declaring the right or obligation specifies a different and limited effect.