

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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A Bill

HOUSE BILL 1410

By: Representative Gazaway

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 § 18-17-102, concerning the purposes and rules of construction of the Arkansas Residential Landlord-Tenant Act of 2007, is amended to add an additional subsection to read as follows:

(c) This chapter applies to the residential landlord and tenant relationship only and does not create any duties or causes of action in tort or limit the applicability of § 18-16-110.

SECTION 2. 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 circumstances outside a landlord's control, including without limitation acts of God and force majeure, the landlord shall:

(1) Comply with the requirements of applicable building,



housing, fire, and health codes;

(2) Ensure that the premises are safe and fit for the use consistent with the rental agreement;

(3) Provide and maintain in good working order:

(A) Effective waterproofing and weather protection of the roof and exterior walls, including without limitation windows and doors;

(B) A reasonably sound structure, including without limitation structurally sound walls, floors, ceilings, stairs, and railings;

(C) Locks on all exterior doors and on windows that can be opened and closed;

(D) A water supply approved under applicable law that is capable of providing hot and cold running water and that provides safe drinking water;

(E) Plumbing and adequate ventilation and heating systems that conform to the law applicable at the time of installation;

(F) Access to electricity with wiring and equipment that conform to the law applicable at the time of installation;

(G) Except in the case of a single family residence, an adequate number of exterior trash receptacles if the landlord is obligated to provide trash removal by law or under a rental agreement;

(H) Air conditioning that conforms to the law applicable at the time of installation, if the landlord has agreed to provide air conditioning;

(I) A smoke alarm, with working batteries if solely battery-operated, provided when the tenant first takes possession of the premises; and

(J) A carbon monoxide detector, with working batteries if solely battery-operated, provided when the tenant first takes possession of the premises, if the dwelling unit contains a carbon monoxide source.

(b) A landlord is in compliance with this section if the rental agreement requires that the tenant pay for any utility service and the tenant fails to pay for the service.

(c) 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.

(d) A landlord and tenant may agree that the tenant may perform

specified repairs, maintenance, alteration, or remodeling only if:

(1) The repair agreement is in a writing, including electronic communication via email or text message, other than the rental agreement; and

(2) The tenant's failure to meet the terms and conditions of the repair agreement does not excuse the landlord's obligations under the rental agreement or this act.

(e) The rights of a tenant under this section do not apply if the condition of the premises was caused by a willful or negligent act or omission by the tenant or by a person other than the landlord or person acting on behalf of the landlord.

18-17-503. Repairs.

(a) A landlord shall provide the tenant with the following information and keep the information current:

(1) The name, business address, telephone number, and email address of the person authorized to manage the premises; and

(2) The name of the person authorized to act on behalf of the landlord for the purpose of receiving service of process, notices, and demands.

(b) Failure to comply with subsection (a) of this section renders any person who collects rent on a regular basis the agent of the landlord for the purposes of receiving and receipting notices and demands.

(c) Except as provided in § 18-17-502(d), the landlord is responsible for all repairs to the premises.

(d) A landlord shall cause repairs to be performed in compliance with the building and housing codes and laws in effect at the time of the repair.

(e) A landlord is not liable for a repair to the premises if the defect was caused by a willful or negligent act or omission by the tenant or a person other than the landlord or person acting on behalf of the landlord.

18-17-504. Notice and opportunity to remedy.

(a) Except as provided in § 18-17-505, if a landlord materially fails to comply with the rental agreement, § 18-17-502, or § 18-17-503 so that the tenant's health and safety are materially affected or the use of the premises is materially affected, the tenant has the remedies available under § 18-17-505 if the tenant gives the landlord:

(1) Notice in writing, including by electronic communication via email or text message, or by any method provided for in the rental agreement, of an act or omission constituting the noncompliance of the landlord; and

(2) An opportunity to remedy the noncompliance of the landlord no later than fourteen (14) days after the receipt of notice.

(b)(1) The fourteen-day period of time allowed for the remedying of the noncompliance under subdivision (a)(2) of this section may be extended due to circumstances outside the landlord's control such as inclement weather, the duration of insurance claim processing, and availability of repair technicians.

(2) The landlord shall make reasonable temporary repairs during the time period of the extension to mitigate the severity of the noncompliance.

18-17-505. Noncompliance by landlord.

(a) Except as otherwise provided in § 18-17-503, if a landlord's material noncompliance with the rental agreement or § 18-17-502 materially interferes with the health and safety of the tenant or materially interferes with the use of the premises, and the noncompliance is not remedied during the period specified in § 18-17-504, the tenant may:

(1) Terminate the rental agreement as provided in § 18-17-506;

or

(2) Continue the rental agreement and obtain injunctive or other equitable relief provided that the tenant pays rent due into the registry of the court or into an escrow account while litigation is pending.

(b) A tenant is not entitled to a remedy under this section if the:

(1) Landlord's noncompliance was caused by an act or omission of the tenant or a person on the premises with the tenant's consent; or

(2) Tenant prevented the landlord from having access to the dwelling unit to remedy the act or omission described in the notice under § 18-17-504.

(c)(1) A tenant is not entitled to injunctive relief under this section if the landlord's noncompliance was caused by circumstances outside the landlord's control and repair would cause the landlord undue financial hardship.

(2) In such a case, the tenant is entitled to the remedies of

termination of the rental agreement, the return of any amount of security deposit and prepaid rent to which the tenant is entitled, reimbursement for any repairs made or mitigation by the tenant to remedy effects of noncompliance by the landlord, equitable relief, and costs and attorney's fees.

(d) A landlord who relets noncompliant premises as defined by § 18-17-502(a) and who subsequently becomes a defendant under this section may not use the defense of undue hardship, and if the landlord is found to not be in compliance, the new tenant is entitled to remedies, including equitable relief and damages, as well as costs and attorney's fees.

18-17-506. Limitations on remedies – Termination.

(a) If a landlord's noncompliance with a rental agreement of § 18-17-502 materially interferes with the tenant's health and safety or use of the premises and the noncompliance is not remedied within the period specified in § 18-17-504, the tenant may terminate the rental agreement by giving the landlord notice in a record of the tenant's intent to terminate the rental agreement on a specified date, which must be at least fourteen (14) days after the expiration of the period of time allowed under § 18-17-504 for the remedy of noncompliance.

(b) If a rental agreement is terminated under this section, the landlord shall return to the tenant the amount of the security deposit and any unearned rent to which the tenant is entitled under § 18-16-301 et seq.

18-17-507. Prohibited conduct.

(a) Except as provided in this section, a landlord may not retaliate against a tenant by discriminatorily increasing rent or fees, decreasing services, terminating a periodic tenancy, refusing to renew a tenancy for a fixed term under a rental agreement containing a renewal option that is exercisable by the tenant without negotiation with the landlord, or bringing or threatening to bring a failure to vacate charge or an action for possession of the premises because the tenant:

(1) Complained to a governmental agency responsible for the enforcement of a building or housing code or other law, alleging a violation applicable to the premises materially affecting the health and safety of the tenant;

(2) Complained to a governmental agency responsible for the enforcement of laws prohibiting discrimination in rental housing;

(3) Complained to the landlord of noncompliance of the landlord with the rental agreement or § 18-17-502;

(4) Organized or became a member of a tenant's union or similar organization; or

(5) Has made use of the remedies provided under this subchapter.

(b)(1) Notwithstanding subsection (a) of this section, a landlord may bring an action in unlawful detainer or eviction if:

(A) A violation of this subchapter or of building and housing codes was caused by lack of reasonable care of the premises on behalf of the tenant, a family member, a co-tenant, or an invitee;

(B) The tenant's conduct described in subsection (a) of this section was in an unreasonable manner or at an unreasonable time or was repeated in a manner that is considered to be harassing to the landlord;

(C) The tenant is in default in the payment of rent;

(D) The tenant or a person on the premises with the tenant's consent engaged in conduct that threatened the health and safety of another tenant on the premises;

(E) The landlord is seeking a judgment in unlawful detainer or eviction based on a notice to terminate the rental agreement given to the tenant before the tenant engaged in conduct described in subsection (a) of this section; or

(F) Compliance with a building, housing, fire, or health code or other law requires repair, alteration, remodeling, or demolition that deprives the tenant of the use and enjoyment of the premises.

(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(d).

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

18-17-508. Remedies.

(a) If a tenant engages in conduct described in § 18-17-507(a) with no factual or legal basis for the conduct, the landlord may recover actual

damages and the court may award the landlord up to three (3) times the periodic rent specified under the rental agreement.

(b) If a landlord's purpose for using retaliatory measures against the tenant is for conduct described in § 18-17-507(a), the tenant

(1) Has a defense against an action for possession of the premises, may recover possession, or may terminate the rental agreement; and

(2) May recover three (3) times the periodic rent or three (3) times the actual damages, whichever is greater.

(c) If a tenant terminates a rental agreement under subsection (b) of this section, the landlord shall return to the tenant the amount of the security deposit and any unearned rent to which the tenant is entitled under § 18-17-301 et seq.

(d) A tenant's exercise of a right under this section does not release the landlord from liability under § 18-17-502.

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~~ a 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~~ rental agreement 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 the consent of the tenant in the case of an emergency.

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

(d) With the exception of an emergency or while under court order, when the tenant has abandoned or surrendered possession of 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~~ may change locks on the dwelling unit without the permission of the landlord if the lock is changed in a professional

manner and a new key is given to the landlord and to any other tenant who is a party to the lease.

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~~ a tenant refuses to allow lawful access to a dwelling unit by a landlord, 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~~ a prevailing 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 in connection with an otherwise lawful entry that has the effect of 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, a prevailing tenant may recover actual damages and reasonable attorney's fees.

/s/Gazaway