

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

State of Arkansas As Engrossed: S3/29/21 S4/8/21 H4/20/21 H4/22/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 594

By: Senator J. Dismang

By: Representative Hawks

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS RESIDENTIAL LANDLORD-TENANT ACT OF 2007; TO AMEND THE LAW CONCERNING A CAUSE OF ACTION FOR UNLAWFUL DETAINER AND FORCIBLE ENTRY AND DETAINER; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS RESIDENTIAL LANDLORD-TENANT ACT OF 2007; AND TO AMEND THE LAW CONCERNING A CAUSE OF ACTION FOR UNLAWFUL DETAINER AND FORCIBLE ENTRY AND DETAINER.

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 an additional section to read as follows:

18-17-502. Implied residential quality standards.

(a) For all lease agreements or rental agreements entered into or renewed after November 1, 2021, and exclusive of a lease to purchase or a lease with a purchase right and except when temporarily prevented by an act of God, the failure of, or caused by, public utility service, or other force majeure events to include without limitation any epidemic or pandemic that causes work stoppages, labor or material shortages, or required social distancing that impact the ability to maintain or repair a premises, there shall be implied in all leases and rental agreements for residential purposes a requirement that a dwelling unit or single-family residence have, both at



the time possession is delivered to the tenant or tenants named in the lease or rental agreement and throughout the term of the lease or rental agreement:

- (1) An available source of hot and cold running water;
- (2) An available source of electricity;
- (3) A source of potable drinking water;
- (4) A sanitary sewer system and plumbing that conform to applicable building and housing codes in existence at the time of installation;
- (5) A functioning roof and building envelope; and
- (6) A functioning heating and air conditioning system to the extent the heating and air conditioning system served the premises at the time the landlord and the tenant entered into the lease or rental agreement.

(b) Unless the tenant agrees in writing to accept responsibility to renovate, remodel, or complete the renovation, remodeling, or construction of the dwelling unit or single-family residence, the provisions of subsection (a) of this section shall supersede any contrary provision of an oral or written lease or rental agreement.

(c) A landlord shall be deemed to be in compliance with the requirements of subsection (a) of this section:

(1) If the landlord supplies the tenant, at the time possession is available to the tenant, a written form with which to list any defects listed in (a) of this section and the tenant:

(A) Signs the form without noting a defect of any item listed in subsection (a) of this section and takes possession of the premises; or

(B) Fails to return the form to the landlord within two (2) business days; or

(2) As to defects which arise after possession by the tenant, if the tenant delivers written notice to the landlord but the noncompliance:

(A) Could not be remedied because the tenant refused the landlord entry to the premises for the purpose of correcting the defect; or

(B) 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 or visitor on the premises; or

(iv) Any person other than the landlord or the landlord's agent.

(d)(1) If a dwelling unit or single-family residence does not comply with subsection (a) of this section, the tenant is entitled to deliver written notice of the noncompliance to the landlord by certified mail or any other method provided by the lease or rental agreement and shall specify the acts and omissions constituting noncompliance.

(2)(A) If the payment of rent is current, noncompliance is not excused under subsection (c) of this section, and the landlord does not remedy the noncompliance within thirty (30) calendar days after receiving the notice required by subdivision (d)(1) of this section, the tenant's sole remedy shall be to terminate the lease or rental agreement without penalty and receive a refund of any security deposit recoverable under § 18-16-301 et seq.

(B) However, if the implied quality standards were met as required by subsections (a)-(c) of this section, the landlord may apply the tenant's security deposit to the payment of any damage to the premises as provided in § 18-16-301 et seq. in addition to any other remedy provided by applicable law.

(3)(A) Nothing in this chapter shall be construed to excuse a tenant from paying rent.

(B) A tenant shall not offset or withhold rent from the landlord for any alleged or actual violation of the implied quality standards listed in subsection (a) of this section.

(e)(1) Nothing in this chapter, or in a lease or rental agreement shall prohibit a tenant from making a correct installation at his or her expense of a battery powered or plug-in smoke or carbon monoxide detector.

(2) If a battery powered or plug-in smoke or carbon monoxide detector is installed, the tenant shall be solely responsible for:

(A) Determining if the detector is operational;

(B) Maintaining the device in working order; and

(C) Any damage or repairs to the premises caused by the installation or removal of the detector.

(f) Nothing in this chapter shall be construed to:

(1) Limit a landlord's exercise of any remedy provided at law or equity upon a tenant's default under a lease or rental agreement; or

(2) Expand a landlord's tort liability beyond the limits set by § 18-16-110.

(g) Except as otherwise provided by this chapter, a landlord or tenant shall not agree in a lease or rental agreement to waive or forego any of the rights, duties, or remedies available under this chapter.

(h) This section does not relieve the landlord from having to comply with any stricter applicable housing standard of a local government with jurisdiction.

SECTION 2. Arkansas Code § 18-60-307 is amended to read as follows:

18-60-307. Proceedings in court.

(a) When any person to whom any cause of action shall accrue under this subchapter shall file in the office of the clerk of the court a complaint signed by him or her, his or her agent or attorney, specifying the lands, tenements, or other possessions so forcibly entered and detained, or ~~so~~ unlawfully detained over, and by whom and when done, and shall also file the affidavit of himself or herself or some other credible person for him or her, stating that the plaintiff is lawfully entitled to the possession of the lands, tenements, or other possessions mentioned in the complaint and that the defendant forcibly entered upon and detained them or unlawfully detains them, after lawful demand therefor made in the manner described in this subchapter, the clerk of the court shall thereupon issue a summons upon the complaint. The summons shall be in customary form directed to the sheriff of the county, or process server, in which the cause of action is filed, with direction for service thereof on the named defendants. In addition, he or she shall issue and direct the sheriff or process server to serve upon the named defendants a notice in the following form:

“NOTICE OF INTENTION TO ISSUE WRIT OF POSSESSION You are hereby notified that the attached complaint in the above styled cause claims that you have been guilty of [forcible entry and detainer] [unlawful detainer] (the inapplicable phrase shall be deleted from the notice) and seeks to have a writ of possession directing the sheriff to deliver possession of the lands, tenements, or other possessions described in the complaint delivered to the plaintiff. If, within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, you have not filed in the office of

the clerk of ~~this~~ the court a written objection to the claims made against you by the plaintiff for possession of the property described in the complaint, then the plaintiff shall be entitled to a writ of possession that shall forthwith issue from this office directed to the sheriff of this county and ordering him or her to remove you from possession of the property described in the complaint and to place the plaintiff in possession thereof. If you should file with the clerk of the court a written objection to the complaint of the plaintiff and the allegations for immediate possession of the property described in the complaint within five (5) days, excluding Sundays and legal holidays, from the date of service of this notice, a hearing will be scheduled by the court to determine whether or not the writ of possession should issue as sought by the plaintiff. ~~If you continue to possess the property described in the complaint, you are required to deposit into the registry of the court a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court during the pendency of these proceedings in accordance with your written or verbal rental agreement. Your failure to tender the rent due without justification is grounds for the court to grant the writ of possession.~~

Clerk of Circuit/District Court”

(b) If, within five (5) days, excluding Sundays and legal holidays, following service of this summons, complaint, and notice seeking a writ of possession against the defendants named therein, the defendant or defendants have not filed a written objection to the claim for possession made by the plaintiff in his or her complaint, the clerk of the court shall immediately *issue a writ of possession directed to the sheriff* commanding him or her to cause the possession of the property described in the complaint to be delivered to the plaintiff without delay, which the sheriff shall thereupon execute in the manner described in § 18-60-310.

(c)~~(1)~~ If a written objection to the claim of the plaintiff for a writ of possession shall be filed by the defendant or defendants within five (5) days from the date of service of the notice, summons, and complaint as provided for in this section, the plaintiff shall obtain a date for the hearing of the plaintiff's demand for possession of the property described in the complaint at any time thereafter when the matter may be heard by the court and shall give notice of the date, time, and place of the hearing by certified mail, postage prepaid, either to the defendant or to his or her or

their counsel of record.

~~(2) If the defendant continues to possess the property described in the plaintiff's complaint during the pendency of the proceedings under this subchapter, the defendant is required to deposit into the registry of the court at the time of filing the written objection a sum equal to the amount of rent due on the property and continue paying rent into the registry of the court in accordance with the written or verbal rental agreement.~~

~~(3) The failure of the defendant to deposit into the registry of the court the rent due or any rent subsequently due during the pendency of the proceeding under this subchapter without justification is grounds for the court to grant the writ of possession.~~

(d)(1)(A) If a hearing is required to be held on the demand of the plaintiff for an immediate writ of possession, the plaintiff shall ~~there~~ present evidence sufficient to make a prima facie case of entitlement to possession of the property described in the complaint. The defendant or defendants shall be entitled to present evidence in rebuttal thereof.

(B)(i) If the court decides upon all the evidence that the *plaintiff is likely to succeed on the merits at a full hearing* ~~and if the plaintiff provides adequate security as determined by the court~~, then the court shall order the clerk forthwith to issue a writ of possession to the sheriff to place the plaintiff in possession of the property described in the complaint, subject to the provisions of subsection (e) of this section.

(ii) No such action by the court shall be final adjudication of the parties' rights in the action.

(2) A plaintiff demanding an immediate writ of possession who is a housing authority and who claims in its complaint that the defendant or defendants are being asked to surrender possession as a result of the defendant or defendants having been convicted of a criminal violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., shall be entitled to receive an expedited hearing before the court within ten (10) days of the filing of the objection by the defendant or defendants.

(e) *If the defendant desires to retain possession of the property, the court ~~shall~~ may upon motion and good cause shown allow the retention upon the defendant's providing of the premises only if the defendant provides, within five (5) days of issuance of the writ of possession, adequate security as determined by the court in any event not less than the amount of any*

delinquent rent and rent to accrue while the defendant is allowed to retain possession of the premises.

/s/J. Dismang