

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

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SJR 11

By: Senator G. Leding
By: Representative Richardson

SENATE JOINT RESOLUTION

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

Subtitle

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

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

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

SECTION 1. The Arkansas Constitution is amended to read as follows:

§ 1. Finding and intent of amendment.

It is declared that:

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



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

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

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

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

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

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

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

§ 3. Prohibited terms and conditions of rental agreement.

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

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

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

§ 4. Landlord disclosure.

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

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

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

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

(4) The name of the landlord;

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

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

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

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

§ 5. Landlord duty to maintain habitable premises.

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

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

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

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

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

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

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

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

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

(B) Furnished with appropriate fixtures;

(C) Connected to a sewage disposal system approved under

applicable law; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) The premises have:

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

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

§ 6. Landlord noncompliance and tenant remedies.

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

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

(2) Obtain injunctive relief;

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

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

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

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

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

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

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

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

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

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

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

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

§ 8. Retaliatory conduct by landlord prohibited.

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

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

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

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

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

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

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

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

(1) Filing an eviction proceeding;

(2) Depriving the tenant of the use of the premises, except for reasons authorized by law;

(3) Decreasing landlord services relating to the tenancy or the tenant;

(4) Increasing the tenant's rent or terminating the tenant's rental agreement; or

(5) Engaging in conduct that materially interferes with the tenant's rights under the tenant's rental agreement.

§ 9. Tenant remedies for retaliation.

(a)(1) If a landlord retaliates against the tenant under § 8 of this amendment, the tenant may recover from the landlord a civil penalty of three (3) months' rent plus five hundred dollars (\$500), actual damages, court costs, moving costs, actual expenses, civil penalties, or declaratory or injunctive relief, less any rent owed or other sums for which the tenant is liable to the landlord.

(2) A tenant may recover reasonable attorney's fees in an action for recovery of property damage caused to the tenant's property by the landlord.

(b) If the tenant's rent payment to the landlord is subsidized in whole or in part by a governmental entity, the civil penalty granted under this section shall reflect the fair market rent of the dwelling unit plus five hundred dollars (\$500).

§ 10. Access to dwelling unit.

(a)(1) Except as provided in this section, a landlord shall not enter a dwelling unit without the tenant's consent.

(2) A tenant shall not unreasonably withhold consent for the landlord to enter the dwelling unit.

(b) A landlord may enter the dwelling unit for the following purposes between the hours of 9:00 a.m. and 9:00 p.m. on at least forty-eight (48) hours' notice to the tenant:

(1) When it is necessary that the landlord inspect the premises;

(2) To make necessary or agreed-upon repairs, alterations, or improvements to the premises;

(3) To supply agreed-upon landlord services relating to the

tenancy; or

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

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

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

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

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

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

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

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

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

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

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

§ 12. Payment of rent and rent increases.

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

(b) An increase in rent shall take effect on the first day of the rental period following no less than sixty (60) days' actual notice to the tenant.

§ 13. Illegal evictions and penalties.

(a) A landlord shall not:

(1) Change the locks on a dwelling unit without giving the tenant new keys, except through the proper judicial process;

(2) Interrupt or cause the interruption of heat, running water, hot water, electric, gas, or other essential utility services to the tenant, except for temporary interruption for emergency repairs; or

(3) Deny a tenant access to and possession of the tenant's personal property, except through the proper judicial process.

(b) In the case of the lease of a site for a manufactured home, no landlord may remove the home from the leased site, except through the proper judicial process.

(c) If a landlord violates this section, the tenant may:

(1) Recover possession of the premises and an amount equal to three (3) months' rent; or

(2) Terminate the rental agreement and recover the tenant's security deposit, all prepaid rent, and three (3) months' rent.

SECTION 2. EFFECTIVE DATE. This amendment shall be effective on and after January 1, 2023.

SECTION 3. BALLOT TITLE AND POPULAR NAME. When this proposed amendment is submitted to the electors of this state on the general election ballot:

(1) The title of this joint resolution shall be the ballot title; and

(2) The popular name shall be "An Amendment to the Arkansas Constitution to Create an Implied Warranty of Habitability and to Provide Protections for Arkansas Tenants".