

# TRAPPED & DANGER

Arkansas's Housing Crisis & Need for an Implied Warranty of Habitability



# EXECUTIVE SUMMARY

**DANGEROUS** and substandard housing affects a significant number of renters across Arkansas. One-third of Arkansans rent a home or apartment, yet have little protection against dangerous and unhealthy conditions. Shockingly, Arkansas's renters have almost no way to get bad-actor landlords to fix their homes when something goes wrong.

Arkansas is the only state that does not require residential landlords to maintain safe and healthy premises. In all other states, landlords have some legal duty to repair and maintain a healthy and safe rental unit, even if that promise is not explicitly detailed in the lease.

This impacts Arkansans profoundly. Renters are stuck in housing with mold so bad it is making them and their children sick. They are stuck in housing where the heat and air conditioning don't work. Arkansans are trapped in housing without drinking water, and without working bathroom facilities. Renters can't force a landlord to fix dangerous problems, but the landlord can sue them if they withhold rent or try to break their lease and move.

Most Arkansas landlords are responsible and do what is right regardless of the law, but unfortunately many Arkansans rent from less reputable landlords who only do the legal minimum. Sadly, Arkansas's legal minimum is the most dangerous and unhealthy in the country.

Advocates are again asking Arkansas lawmakers to protect our citizens and pass an implied warranty of habitability. This report details what that kind of law does, why it's needed, and compares the backward and unfair state of Arkansas's law with surrounding states who all protect their citizens more than Arkansas does.

Arkansas renters deserve safe and habitable housing.

# KEY FINDINGS & POLICY RECOMMENDATIONS

## KEY FINDINGS

- One-third of Arkansans are residential renters, accounting for 34% of Arkansas's housing, or about 450,000 rental units.
- Arkansas is the only state that does not require residential landlords to maintain a safe and habitable dwelling for tenants. In all other states, landlords have some legal duty to repair and maintain a healthy and sound rental unit.
- Many families are bound by lease to homes with leaky roofs, dangerous common areas, mold or pest contamination; faulty plumbing, sewage, or electrical wiring, or broken heating or air conditioning.
- Arkansas's renters can't force landlords to fix dangerous problems, but landlords can sue renters if they withhold payment of rent or break their lease and move.

## POLICY RECOMMENDATIONS

- Arkansas's landlord-tenant laws need to be reviewed and updated. Policymakers should enact an implied warranty of habitability to protect renters from unsafe housing conditions.
- Protections should provide for:
  - ◆ fit and safe common areas
  - ◆ a weatherproof structure
  - ◆ structurally sound premises
  - ◆ working locks
  - ◆ drinkable, cold and hot running water
  - ◆ plumbing, heating, and if agreed to, air conditioning
  - ◆ electricity, trash removal
  - ◆ working smoke alarms & carbon monoxide detectors
- Renters should also be protected from landlords who fail to make repairs in a timely manner.
- Repairs by landlords should comply with current housing codes and laws.
- Retaliatory actions by landlords against tenants should be prohibited by law.

# Arkansas's Need for an Implied Warranty of Habitability

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## WHAT'S AN IMPLIED WARRANTY OF HABITABILITY?

The duty of a landlord to provide a minimum standard of safe housing is called the implied warranty of habitability. “Implied” means the law places it in every residential lease, even if the landlord has not included such a promise in writing. “Warranty” means it’s a promise the law will enforce. And “habitability” means just that: premises that are fit, sanitary and safe for occupation.

## THE IMPACT OF NOT HAVING AN IMPLIED WARRANTY OF HABITABILITY

Electrical problems, toxic mold, and pest infestation are a few examples of defects that could make a rental unit uninhabitable. But under current law, Arkansans are stuck in those housing conditions when their landlords refuse to act responsibly.

It’s a public health issue. A 2017 report<sup>1</sup> found that individuals seen for respiratory conditions at the University of Arkansas for Medical Sciences in Little Rock were almost three times more likely to live in mold-infested property not in compliance with housing codes.

## THE HUMAN COSTS OF BAD HOUSING LAWS

Imagine paying rent for a house or apartment where the furnace breaks in January but the landlord won’t repair it. In Arkansas, if the landlord has not promised to repair, you are still legally obligated to keep paying rent.

Imagine the impact that has on anyone, but especially on families caring for young children,

or on the elderly. Imagine the impact of an air conditioner breaking in July. Arkansans who rent are being forced to keep paying rent even when:

- Their home is infested with bedbugs, rats, fleas or cockroaches.
- The electricity doesn’t work.
- House floods when it rains from leaks.
- Raw sewage backs into their house because the plumbing doesn’t work.
- They are afraid that the ceiling, or floor might cave in.

These are not inconveniences, they are dangers to health and safety. Renters are having their personal property damaged by the negligence of landlords, but can’t recover any losses.

Renters are getting sick, or watching their loved ones get sick from unsafe housing, but they are often powerless to make the landlord fix anything and they are still liable for paying their rent on time.

## BAD HOUSING LAWS HURT GOOD LANDLORDS & THE ECONOMY

Most landlords are ethical and responsible. But with a full one-third of Arkansans renting from landlords, the few bad apples have an impact on a large number of people. As bad apples cut corners, responsible landlords find it harder to compete. Bad apples also jeopardize the neighborhoods where their properties are located by creating hazardous premises and driving down surrounding property values. The whole community is impacted when landlords fail to maintain minimum standards of safety. We need strong, uniform standards that protect renters and create a level playing field for

landlords.

The lack of an implied warranty of habitability could also be considered a negative by an employer considering relocating its business to Arkansas. Why would an employer concerned about living conditions for its employees locate in a state with no tenant rights? Lack of an implied warranty of habitability has also been cited as a reason for an increase in the number of out-of-state landlords, who are attracted to buying and renting Arkansas properties because of the lack of standards and ability to make higher profits while doing minimal work to maintain a property.

## **WHY DON'T THEY JUST MOVE?**

Tenants currently do have one remedy dating back more than a century — the law of constructive eviction — which generally provides that if premises are entirely uninhabitable, and the landlord does not repair them, a tenant can declare the lease terminated and leave. Many folks assume that renters can just move if they have a landlord who is refusing to correct dangerous problems, but that is often not the case.

The constructive eviction remedy is unsatisfactory in several different ways. First, the tenant must vacate the premises permanently. Finding and moving to new rental housing is often expensive, time-consuming, and stressful. A tenant who moves out and terminates the lease will not be reimbursed for their security deposit and any prepaid rent unless they sue the landlord.

Second, moving out mid-lease, even when the property is uninhabitable, puts the renter in

legal jeopardy. The tenant who vacates and stops paying rent must gamble that the landlord won't sue, and if the landlord does, that a court will rule in favor of the landlord. The renter may need to hire a lawyer to protect their rights, and many renters cannot afford a lawyer. If the landlord sues the tenant after they move out and the landlord wins, now the tenant will be liable for two leases and possibly legal fees.

Third, moving means tenants have somewhere else to go. They may not — it may not be easy to find a new rental. Moving with children means the possibility of a new school, perhaps even during the school term, which is a hardship for children. Moving is expensive and time may need to be taken off of work.

Most often tenants don't want to move out — they simply want repairs made to make their homes safe. The implied warranty of habitability doesn't extend to small things, like a dishwasher that doesn't work. In most states, the tenant's right to sue or terminate the lease only arises if the landlord's failure to repair significantly affects the tenant's health and safety. And of course, it doesn't extend to defects caused by the tenant, their family, or guests.

## **ARKANSAS'S IMPLIED WARRANTY OF HABITABILITY**

In 1974, the Uniform Law Commission<sup>2</sup> adopted the Uniform Residential Landlord and Tenant Act (URLTA), codifying the doctrine of implied warranty of habitability as a national standard. At the time this was a relatively new concept that recognized the consumer-product aspect of

modern residential leases. In the following years, 20 states and the District of Columbia enacted the URLTA. Another eight states ratified an implied warranty of habitability based on URLTA, although they did not adopt the entire uniform law. Still another 21 states enacted their own statutory versions of the implied warranty of habitability or recognize it by case law. All of the 50 states— but one —protect their renters from dangerous and unfair conditions. Arkansas does not.

## **IMPLIED WARRANTY OF HABITABILITY PROTECTS HEALTH & SAFETY, NOT CONVENIENCES**

Advocates for fair landlord tenant laws that will create protections for Arkansas renters are interested in protecting the health and safety of renters, and the reform would not extend to conveniences.

## **WHAT DO THE CRITICS SAY?**

### **LET THE CITIES DO IT.**

In the past, some opponents of the implied warranty of habitability have stated that the answer to the problem is local housing codes. They say the tenant can report the landlord for a housing code violation, which will then force the landlord to fix it. Unfortunately, housing codes are not the answer. If they were, the other 49 states would not have adopted Implied Warranties of Habitability.

Why aren't they the answer? Not all towns have housing codes, and rural areas lack them as well. Even if a housing does exist, it may not be enforced. A tenant may report a violation, but the town may not have the inspectors

available to investigate or the political will to enforce the housing code.

Also, nothing in current Arkansas law prevents a landlord from retaliating against a tenant who reports faulty premises to code enforcement agencies. If a tenant on a month-to-month lease reports a housing code violation, the landlord can evict the tenant and force her to leave within 30 days.

### **IT'LL COST TOO MUCH.**

Another objection raised by opponents is that an implied warranty of habitability will make rents unaffordable. They argue that Arkansas has one of the lowest rent averages nationwide and assert that an implied warranty of habitability will make rents rise to become unaffordable.

This argument is nearly absurd on its face when one considers the cost and impact of unsafe housing. Still, there is little evidence that stronger housing laws have driven up costs in other states. Arkansas does have one of the lowest rent averages in the United States. Two websites, Apartment List, <https://www.apartmentlist.com/rentonomics/rental-data/>, and the National Low Income Housing Coalition, <https://nlihc.org/or> (published annually), rank states by rent amount. Arkansas ranks second to last on Apartment List (before South Dakota), and last on the National Low Income Housing Coalition site. States with rent slightly higher that sometimes rank lower than Arkansas are Kentucky, Oklahoma, and West Virginia. All of these states afford tenants

significantly more rights than does Arkansas.

## **IT DOESN'T HAVE TO BE LIKE THIS**

In other states, if a tenant notified their landlord of a serious problem and the landlord refused to make repairs, the tenant could terminate the lease and recover any prepaid rent and security deposit, or get a court to force the landlord to make the repairs. In fact, in most states, if the repairs are not costly, the tenant could pay for them and deduct the cost from the rent. If the judge decided that during the time the tenant lived in the defective premises they were worth significantly less than the rent amount or fair market value, the tenant could be awarded as damages the difference between the actual value of the premises and the rent amount, or fair market value. If the tenant was forced to relocate, moving costs might be included in the damages, as well.

## **THE IMPLIED WARRANTY OF HABITABILITY IN THE FIFTY STATES**

The following summaries and table cover selected significant aspects of the implied warranty of habitability that should be present in any Arkansas bill. Not all issues are summarized; for example, in all states, landlords have no duty to repair defects caused by tenants. In all states, landlords have multiple remedies against tenant defaults. Instead, the intent is to show how many states already recognize the most important of the tenants' rights that Arkansas tenants do not have and that such a bill should contain. Laws of nearby states are summarized in more detail.

**KANSAS** enacted the URLTA with modifications. Landlords and tenants must jointly inventory

the premises at the beginning of the lease term. Landlords must disclose the contact information for the manager of the premises and whoever receives service of process and notices and demands. Landlords must, unless prevented by conditions beyond their control, comply with requirements of building and housing codes materially affecting health and safety, exercise reasonable care in the maintenance of common areas; maintain in good and safe working order such systems as electrical, plumbing, heating and air conditioning; provide for waste removal, and supply running hot and cold water. Remedies of tenants include termination of the lease if the landlord does not begin repair in two weeks or repeatedly breaches the warranty; damages; injunctive relief; and the right to counterclaim for breach of the warranty if the landlord sues for nonpayment of rent. Certain actions taken against tenants who have complained to a government or the landlord or have joined a union are presumed to be retaliatory, although there are exceptions. A lease cannot require the tenant to waive these rights.

**KENTUCKY** enacted the URLTA with modifications. Landlords must disclose the contact information for the manager of the premises and whoever receives service of process and notices and demands. Landlords must comply with requirements of building and housing codes materially affecting health and safety, keep common areas clean and safe; maintain in good and safe working order such systems as electrical, plumbing, heating, and air conditioning, and supply running hot and cold water. Remedies of tenants include termination of the lease if

the landlord does not repair within two weeks or repeatedly breaches the warranty, damages, injunctive relief, the right to repair and deduct, with limits; the right to procure substitute housing, if essential services are not supplied, and the right to counterclaim for breach of the warranty if the landlord sues for nonpayment of rent. Certain actions taken against tenants who have complained to a government or the landlord or have joined a union are retaliatory, although there are exceptions. A lease cannot require the tenant to waive these rights. Kentucky initially required the Uniform Residential Landlord and Tenant Act to apply to two counties. This was struck down by the Kentucky Supreme Court, and after that, the legislature re-enacted the uniform law but made it optional for counties and municipalities. Four counties (including the two most populous counties) and 15 municipalities have enacted the legislation.

**LOUISIANA** has not enacted the URLTA; however, under Louisiana law, the landlord warrants premises to be suitable for intended purposes and free from any vices and defects whatsoever, both before and during the term of the lease. There can be no waiver of this warranty except under very limited circumstances. During the contract, the landlord is responsible for all repairs, unless the tenant caused the defect. The law allows the burden of making certain repairs to be shifted to the tenant. If the landlord breaches the obligation to repair, the tenant can make necessary repairs and deduct a reasonable price from the rent. Tenants may not withhold rent and remain on the premises but may bring an action to terminate the lease. A court may order rent

reduced. Louisiana does not protect tenants from retaliatory eviction.

**MISSISSIPPI** has enacted the URLTA with modifications. Landlords must comply with requirements of building and housing codes materially affecting health and safety; and maintain such systems as electrical, plumbing, heating and air conditioning in the same condition as at the beginning of the lease, save for wear and tear. Remedies of tenants include termination of the contract if the landlord does not begin repair in two weeks or repeatedly breaches the warranty; damages; injunctive relief; and the right to repair and deduct. A landlord cannot retaliate against a tenant who has submitted written notice of conditions needing repair. A lease cannot require the tenant to waive these rights.

**MISSOURI** has not enacted the URLTA, and it has repealed at least one URLTA-like statutory section (prohibiting retaliatory eviction). Its case law recognizes an implied warranty of habitability, measured by community standards, generally local housing and property maintenance codes. Tenants' remedies include termination of the lease, damages, the right to repair and deduct, and asserting a breach of the warranty as a defense to an action for nonpayment of rent. A violation must comprise dangerous or unsanitary conditions in the premises, which may include common areas, that materially affect the life, health, and safety of the tenant. Missouri law currently does not protect tenants from retaliatory eviction.

**OKLAHOMA** has enacted the URLTA with modifications. Landlords must maintain common

areas; make repairs and do whatever is necessary to keep the premises in a fit and habitable condition; maintain in good and safe working order such systems as electrical, plumbing, heating and air conditioning; provide for waste removal, and supply running hot and cold water. Remedies of tenants include termination of the lease if the landlord does not begin repair timely or repeatedly breaches the warranty; substitute housing, if the landlord willfully refuses to supply essential services; damages; injunctive relief; the right to repair and deduct; and asserting breach of the warranty as a defense to an action for nonpayment of rent. Provision is made for termination if the premises are destroyed by casualty or similar event. Oklahoma law currently does not protect tenants from retaliatory eviction.

**TENNESSEE** has enacted the URLTA with modifications, and it applies to all counties with populations that exceed 75,000 (currently 17 out of 95 counties). Landlords must comply with requirements of building and housing codes materially affecting health and safety, make all repairs and put and keep premises in a fit and habitable condition, keep common areas clean and safe and provide for waste removal in multi-family housing. The landlord must provide the tenant with contact information. Remedies of tenants include termination of the lease if the landlord does not begin repair in two weeks or repeatedly breaches the warranty; substitute housing, if the landlord willfully refuses to supply essential services; damages, injunctive relief, and the right to repair and deduct. Tennessee also allows punitive damages if the landlord unlawfully evicts the

tenant or willfully diminishes essential services. The rights of parties if the premises are destroyed by fire or casualty are addressed. Certain actions taken against tenants who have complained to the landlord or have sued the landlord are presumed to be retaliatory. A lease cannot require the tenant to waive these rights.

**TEXAS** has not enacted the URLTA. Landlords must make a diligent effort to repair a condition if the tenant is not delinquent on rent and the condition materially affects the physical health or safety of an ordinary tenant or as a result of failure to supply hot water. Landlords must provide specified window latches and door locks and smoke alarms. A tenant can sue to enforce these rights. A tenant may waive a few — but not all — rights, and the duty to repair is not waivable. The landlord must provide the tenant with current contact information. If the government revokes a landlord's certificate of occupancy, the tenant must receive the full security deposit, any prepaid rent, actual damages, including storage costs and moving fees, and any court costs and attorney's fees arising from a tenant's lawsuit against the landlord. Remedies of tenants for breach of the duty to repair include termination of the lease if the landlord does not begin repair by a designated date, actual damages, reduced rent, injunctive relief, a civil penalty against the landlord; and the right to repair and deduct if certain conditions are met. Every lease must inform tenants of these remedies. Certain actions taken against tenants who have complained to a government or the landlord or have joined a union are presumed to be retaliatory and are prohibited, and a lease

**THE FOLLOWING TABLE** lists some of the notable aspects of what an Arkansas bill should contain and compares them with the laws in other states, as well as noting how current law in Arkansas stacks up.

The first column notes whether an implied warranty of habitability exists in the state.

The second column concerns two aspects of the implied warranty of habitability: Whether it requires compliance with health and safety provisions of housing codes, and whether it requires fit and suitable common areas. A few states do not expressly require such compliance, but phrase the duty in other ways, such as the duty to supply suitable and safe premises.

The third column highlights two of the several types of tenant remedies: Whether tenants can repair and deduct (always within limits) and whether they can assert a breach of the Implied Warranty as a defense in action for nonpayment of rent.

The fourth column indicates whether landlords are prohibited from retaliating against tenants.

The table is intended to represent certain aspects of tenants' rights but does not cover their obligations. For example, in all states, landlords have no duty to repair defects caused by tenants. In all states, landlords have multiple remedies against tenant defaults. Arkansas has already codified tenants' obligations.

State	IWH	Compliance with housing codes or fit and habitable/safe and fit common areas	Tenant can repair and deduct, assert breach as counterclaim/defense	Landlord prohibition against retaliation
Alabama	Yes	Yes	No	Yes
Alaska	Yes	No/Yes	Yes	Yes
Arizona	Yes	Yes	Yes	Yes
Arkansas (current)	No	No	No	No
Arkansas (proposed)	Yes	Yes	Yes	Yes
California	Yes	Yes	Yes	Yes
Colorado	Yes	Yes	No/Yes	Yes
Connecticut	Yes	Yes	Yes	Yes
Delaware	Yes	Yes	Yes/Yes	Yes
Florida	Yes	Yes	No/Yes	Yes
Georgia	Yes	Yes/No	Yes/No	No
Hawaii	Yes	Yes	Yes/No	Yes
Idaho	Yes	Yes/No	No	Yes
Illinois	Yes	Yes/No	Yes	Yes
Indiana	Yes	Yes	No	Yes
Iowa	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	No/Yes	Yes
Kentucky	Yes	Yes	Yes	Yes
Louisiana	Yes	No	Yes/No	No
Maine	Yes	N	Yes	Yes
Maryland	Yes	Yes/No	No/Yes	Yes
Massachusetts	Yes	Yes/No	Yes	Yes
Michigan	Yes	Yes	No/Yes	Yes
Minnesota	Yes	Yes	No/No	Yes
Mississippi	Yes	Yes/No	Yes/No	Yes
Missouri	Yes	Yes/No	Yes	Yes
Montana	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes
Nevada	Yes	Yes	Yes	Yes

State	IWH	Compliance with housing codes or fit and habitable/safe and fit common areas	Tenant can repair and deduct, assert breach as counterclaim/defense	Landlord prohibition against retaliation
New Hampshire	Yes	No	No/Yes	Yes
New Jersey	Yes	Yes/No	Yes	Yes
New Mexico	Yes	Yes	No/Yes	Yes
New York	Yes	No	Yes	Yes
North Carolina	Yes	Yes	No	Yes
North Dakota	Yes	Yes	Yes	No
Ohio	Yes	Yes	No/Yes	Yes
Oklahoma	Yes	No/Yes	Yes/No	No
Oregon	Yes	No/Yes	Yes	Yes
Pennsylvania	Yes	No	Yes	Yes
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	Yes	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes/No	No
Tennessee	Yes	Yes	Yes/No	Yes
Texas	Yes	No	Yes/No	Yes
Utah	Yes	Yes/No	Yes	Yes
Vermont	Yes	Yes/No	Yes (case law)/Yes	Yes
Virginia	Yes	Yes	No/Yes	Yes
Washington	Yes	Yes	Yes	Yes
West Virginia	Yes	Yes	No/Yes	Yes
Wisconsin	Yes	Yes	No/Yes	Yes
Wyoming	Yes	No/Yes	No	No

cannot require the tenant to waive these rights.

## **NO TORT LIABILITY FOR BREACHING THE IMPLIED WARRANTY OF HABITABILITY**

The law of tort liability of landlords is far from uniform, and there is wide differentiation across the states. However, the general rule is that a landlord is not liable for personal injury or personal property damage caused by a non-negligent breach of the implied warranty of habitability.

“Tort liability” in this context means liability for a tenant’s personal injury or damage to personal property. For example, if water poured through a massive ceiling leak and ruined a tenant’s computer, a landlord would have to be liable in tort for the tenant to recover damages.

Similarly, if a tenant were injured by falling from a balcony because of a broken railing, tort liability would have to exist to recover damages from the landlord. The question of tort liability among the states is extremely complex. At common law, the general rule is that a landlord is not liable in tort for damage to the tenant’s (or guest’s) personal property or the tenant’s (or guest’s) personal injury. However, the common law recognizes numerous exceptions to the rule in other states, these among the most relevant:

- The landlord could be liable for negligently making or failure to repair if the landlord agreed to make the repair and the agreement was supported by consideration. Arkansas already recognizes this exception.
- The landlord could be liable for negligently making or failure to repair if the landlord assumes by conduct a duty to maintain or repair leased premises and fails to perform

the task. Arkansas already recognizes this exception.

- The landlord could be liable for a breach of an implied warranty involving an unreasonably dangerous condition known only to the landlord that the landlord failed to repair.
- The landlord could be responsible for a violation of the implied warranty of habitability involving a latent defect that the landlord did not warn the tenant about.

For over 40 years, legislators have introduced bills to enact an implied warranty of habitability in Arkansas, either in the form of the URLTA or as a separate bill. The Arkansas legislature has consistently refused to do so. In fact, in 2007, the Arkansas legislature finally enacted the URLTA, but only the portions that protect landlords were included, while all of the law that protected renters was deleted. This enactment made our already out-of-balance landlord-tenant laws even more out of balance.

In 2013 and 2015, the Landlords Association of Arkansas helped draft and supported an implied warranty of habitability; the bill was reintroduced in 2017 but in each session died in committee due to opposition by the Arkansas Realtors Association.

Since 2017, the Citizens First Congress has placed an implied warranty of habitability on its legislative agenda. In 2018, Arkansas Renters United was formed and is expanding around the state. Public support of the issue continues to grow as more people are made aware of Arkansas’s regressive landlord-tenant laws.

## WHAT AN IMPLIED WARRANTY OF HABITABILITY LAW SHOULD CONTAIN

Such a law should contain an easy-to-understand list of the landlord's obligations in the way of offering compliant premises at the beginning of the lease term. Landlords told the Arkansas Landlord-Tenant Study Commission they preferred a basic list of requirements. The requirements in any bill proposed in 2019 should track those of the 2015 bill. The law should also clearly exempt repairs for defects caused by tenants.

The law should require landlords to supply tenants with contact information for anyone they would conceivably need to contact. One frequent problem tenants have is the inability to reach someone to initiate the repair procedure. Once notified that a repair for a serious condition is needed, the landlord should have a reasonable amount of time during which to repair. If not, tenants' rights will be triggered.

Tenants should have remedies in addition to termination of the lease. Most tenants don't want to terminate their contract — that involves a fight over the security deposit and any prepaid rent, the expense, uncertainty, and stress of finding a new place to live, and other very stressful problems, such as switching children to a new school in the middle of the school year. Most tenants simply want repairs made.

Other remedies available to tenants include the ability to obtain an injunction to force the landlord to make repairs, damages if the actual value of the faulty premises is less than the rent being paid,

and the ability of the tenant to make repairs and deduct them from the rent if certain conditions are met. Termination, damages, and injunctive relief are available in all states. The "repair and deduct" remedy is available in 32 states.

Any proposed bill should embody the essence of an implied warranty of habitability. Also, such a law must have safeguards "at either end."

At the outset, tenants should not be required to waive any of their rights when signing a lease. In other words, the contract can't say something like "I waive any rights I may have at law to enforce an implied warranty of habitability."

If a tenant does complain about repairs, whether to the landlord or the government, the landlord should not be able to retaliate against the tenant. On the other hand, a landlord should be able to take one of the actions the statute labels as retaliatory if one of numerous conditions are present, such as a tenant who has not paid the rent or who continually makes bad faith complaints.

The law should set out the parameters of the landlord's right to enter. It should also contain remedies if the tenant unreasonably prevents the landlord from entering, but also remedies for the tenant if the landlord enters unreasonably, harassing the tenant. Current Arkansas law penalizes a tenant who denies landlord access but contains no penalties for a landlord who enters unreasonably.

An Arkansas bill should contain all of these provisions.

## PROPOSED ARKANSAS LEGISLATION

Any proposed legislation to be introduced in 2019 should include the following characteristics:

- A list of landlord obligations drafted by and in consultation with landlords, including complying with building, housing, fire, or health codes affecting health and safety, and providing the following: (1) fit and safe common areas accord with the purposes of the lease; (2) a weatherproof structure; (3) structurally safe premises; (4) exterior working locks; (5) drinkable, cold and hot running water; (6) plumbing; (7) heating; (8) (if agreed to) air conditioning; (9) electricity; (10) trash removal; and (11) a working smoke alarm and (if the gas could be present) a carbon monoxide detector. Landlords are responsible for both providing these minimal obligations and maintaining them during the term of the lease, unless they are damaged by the tenant or the tenant's family or guests, or unless there are intervening circumstances outside of the landlord's control.
- The landlord must provide each tenant with contact information for anyone the tenant might have cause to contact, such as the property manager or anyone authorized to receive a notice or service of process for the landlord.
- Repairs must comply with relevant codes and laws. Landlords are not obligated to repair conditions caused negligently or wrongfully by their tenants, family members or guests.
- If a landlord is not in compliance such that health and safety or use and enjoyment of the premises are materially affected, the tenant must give the landlord notice in writing, either by certified mail or a method stated in the lease, and the landlord will have 14 days after receipt of notice to remedy the defect. A bill should give the landlord a longer time to repair if there are factors such as weather, insurance claim processing, and the availability of repair technicians, beyond the control of the landlord.
- If the landlord fails to repair within the time period and there are no extenuating circumstances, and the defect materially interferes with health or safety or the use and enjoyment of the premises, the tenant can (1) terminate the lease; (2) recover damages for the loss in value to the leasehold (3) obtain a court order requiring the landlord to make repairs; or (4) in some cases, make repairs and deduct the cost. Again, these remedies are not available to the tenant who causes the problem.
- A bill should create no new duties or causes of action in tort against the landlord.
- A tenant can repair and deduct if the repair cost does not exceed one month's rent and the tenant meets other conditions. This remedy can't be used to cost more than one month's rent each year.
- If a lease terminates under any proposed statute, the tenant will receive any security deposit and unearned rent to which the tenant is entitled. Existing law already entitles a landlord to any unpaid rent or reimbursement for damage to the premises caused by the tenant.
- If the tenant is a defendant in action for nonpayment of rent, the tenant can use

breach of the implied warranty of habitability as a defense. In such cases, the tenant will pay rent into the court's registry or a court-ordered escrow account until the court orders otherwise.

- If a landlord takes action against a tenant who has complained to the government or the landlord about the need for repair, by measures such as raising the rent or evicting the tenant, such action is prohibited. There are many exceptions, however, such as if the tenant is harassing the landlord or has threatened other tenants or has not paid rent. A landlord who takes such action is liable for rent or damages, and the tenant may terminate the lease. On the other hand, if the tenant complains to or about the landlord with no basis in fact, the landlord may recover damages.
- A lease cannot require a tenant to give up any of the rights guaranteed by the proposed statute, with the exception that a tenant who is qualified can contract to make repairs, and a landlord and tenant can agree in writing that a tenant will make repairs (but the tenant's failure to do so does not relieve the landlord of liability).
- The proposed statute amends the landlord's current access rights and sets out remedies if the landlord violates the rights or the tenant unreasonably denies access.

# CONCLUSION

**ARKANSAS** is the only state without an implied warranty of habitability. Currently, Arkansas landlord-tenant law does not impose a duty on the landlord to either comply with building and housing code provisions that materially affect the health and safety of tenants or to keep common areas that are under the landlord's control safe and fit for their purposes. Thirty-seven states by statute expressly require the former, and 34 explicitly require the latter. Additional states impose these requirements through case law. If a landlord does not covenant in the lease to make repairs, Arkansas law does not allow tenants to make repairs and deduct them from the rent. Statutes of 33 states allow tenants this right. Thirty-five states allow tenants to assert a defense or counterclaim that the landlord has breached the implied warranty of habitability if the landlord sues for nonpayment of rent. Forty-three states protect tenants from retaliatory action by landlords if tenants enforce their right to seek repairs. Arkansas allows tenants none of these rights.

An implied warranty of habitability will improve the public health of Arkansas tenants, including those on Medicare and Medicaid. It will make Arkansas a more attractive place to potential employers. Consumer laws in Arkansas already guarantee safe food, safe products, and safe newly built houses; it only makes sense to balance the law between landlords and tenants, aligning Arkansas with other states to provide safe homes for renters.

# NOTES

1 Assessing the Health and Equity Impacts of Arkansas's Landlord-Tenant Laws, 2017, Arkansas Community Institute and Central Arkansas Re-Entry Coalition <https://indd.adobe.com/view/7ed83743-67b9-406f-b86c-4a12a315d39a>

2 , Balancing Act Countering High Health Care Costs to Promote Healthy Arkansas Families and Children, Sept. 2018, Children's Healthwatch <http://childrenshealthwatch.org/wp-content/uploads/CHW-Arkansas-brief-final-for-web-2.pdf>

3 The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical. Source: [uniformlaws.org/aboutulc](http://uniformlaws.org/aboutulc)

\* This report does not cover federal housing law. Tenants who live in federal public housing or Section 8 housing are subject to federal law and have more rights than tenants who do not.

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