

Act 1052: An Update to Landlord-Tenant Law in Arkansas



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The Arkansas Generally Assembly recently passed legislation affecting rights and duties of landlords and tenants in Arkansas. While Arkansas has been historically pro-landlord—and predominantly remains so—Act 1052 at least swings the pendulum.

Most notably, Act 1052 sets forth implied habitability standards for all lease or rental agreements (with a few exceptions) entered into or renewed after November 1, 2021. In addition to a landlord having to comply with any applicable stricter housing standard set forth by a local government, a dwelling unit or single-family residence must now have, at the time possession is delivered and throughout the term of the lease or rental agreement, the following:

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.

A landlord is deemed in compliance under the following circumstances:

1. if, at the time of possession, the landlord supplies the tenant a written form to list any defects and the tenant either signs the form without noting a defect *and* takes possession or fails to return the form within 2 business days; *or*
2. for defects that arise later, if the tenant delivers written notice but the noncompliance either could not be remedied because the tenant refused access to the landlord for purposes of correcting *or* was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, another occupant of or visitor on the premises, or any person other than the landlord or the landlord's agent.

If an issue of noncompliance arises (and rent is current and noncompliance is not excused) and the landlord does not remedy the noncompliance within 30 days after receiving notice from the tenant, the tenant may terminate the lease or rental agreement without penalty and receive a refund of his or her

security deposit. By the clear language of Act 1052, this is the tenant's sole remedy, however. Further, the burden is on the tenant to raise issues of noncompliance, and nothing excuses a tenant from paying rent or allows a tenant to otherwise offset the rent owed based upon any alleged violation of these implied quality standards.

The other noticeable change in Act 1052 relates to unlawful detainer actions. A part of this civil eviction process involves serving the tenant, along with a Summons and Complaint, a Notice of Intention to Issue Writ of Possession. A Writ of Possession, if awarded to a landlord, is ultimately executed by the sheriff in order to place the property back in the hands of the landlord. Whereas a tenant who had been served was previously required to deposit the amount of rent due and owing into the registry of the court and continue paying such rent if he or she intended to remain on the property, the Arkansas General Assembly decided that a tenant must now motion the court and establish good cause for remaining on the property, as well as provide security not less than the amount of rent owed plus rent to accrue while allowed to retain possession. Effectively, depositing rent alone is no longer sufficient; the tenant must instead establish grounds that entitle him or her to remain on the property and then also meet a threshold deposit amount.