

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3409

By: Bush

AS INTRODUCED

An Act relating to landlord and tenant; prohibiting landlords from retaliating against tenants in certain circumstances; defining forms of retaliation; providing a landlord may increase rent or decrease services under certain circumstances; providing remedy procedures for tenants; providing examples of nonretaliatory actions; providing that a landlord shall retain the right to recovery if done in good faith; providing when raising rent shall not be considered retaliatory; amending 41 O.S. 2021, Section 121, which relates to landlord's breach of a rental agreement; providing a tenant may bring an action to enforce an obligation of a landlord; providing guidelines on when a tenant can bring an action to enforce an obligation of a landlord; providing types of relief; providing when a landlord's liability for damages begins; modifying the amount a tenant may be reimbursed by the landlord for making repairs; prohibiting an action for possession based on nonpayment of rent with certain exceptions; requiring a landlord to certify upon delivery that the property meets the standard of habitability and that the landlord is responsible for maintaining that standard; modifying housing requirements that a landlord must provide; providing the court discretion to award damages; providing when tenant possesses rights; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 137 of Title 41, unless there is
3 created a duplication in numbering, reads as follows:

4 A. 1. Except as provided in this section or as otherwise
5 provided by law, a landlord may not retaliate against a tenant by
6 increasing rent, decreasing services, by bringing or threatening to
7 bring an action for possession, or by causing a termination of the
8 rental agreement after the landlord has knowledge that:

- 9 a. the tenant has made a complaint to a governmental
10 agency charged with the enforcement of building or
11 housing code violations related to health or safety,
- 12 b. the tenant has made a complaint to or filed an action
13 against the landlord for a violation of any provision
14 of Title 41 of the Oklahoma Statutes,
- 15 c. the tenant has given the landlord a notice to repair
16 or exercise a remedy under Title 41 of the Oklahoma
17 Statutes,
- 18 d. the tenant has organized or become a member of a
19 tenants' organization, or
- 20 e. the tenant has testified in a court proceeding against
21 the landlord.

22 2. However, the provisions of this section shall not be
23 construed to prevent the landlord from increasing rent to that which
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1 is charged for similar market rentals nor from decreasing services
2 that apply equally to all tenants.

3 B. If a landlord acts in violation of this section, the tenant
4 is entitled to the applicable remedies provided for in Title 41 of
5 the Oklahoma Statutes, including recovery of actual damages plus
6 reasonable attorney fees, and may assert such retaliation as a
7 defense in any action against the landlord for possession. Any
8 action taken by a landlord under subsection A of this section within
9 six (6) months of a protected action of the tenant shall be presumed
10 retaliatory, unless proven otherwise by the landlord. Six (6)
11 months after the protected action, the burden of proving retaliatory
12 intent shall be on the tenant.

13 C. Actions by a landlord shall not be considered retaliatory
14 if:

15 1. The tenant is in arrears with regard to his or her rental
16 agreement;

17 2. The tenant creates conditions within the unit which are
18 unsafe or destructive; or

19 3. An unforeseen action causes the landlord to comply with a
20 code which would deprive the tenant of the right to continue using
21 the unit.

22 D. The landlord shall retain the right to recovery of the
23 premises if that recovery was done in good faith, which actions
24 shall include:

1 1. The tenant using the unit for an illegal or illicit purpose
2 or otherwise creating a nuisance on the property;

3 2. The landlord recovering possession of the unit from the
4 tenant in order to use the unit as a primary residence for either
5 himself or his immediate family;

6 3. The landlord recovering possession of the unit for the
7 purposes of substantially altering, remodeling, or demolishing the
8 unit; or

9 4. When the unit is sold and the purchaser intends to use it as
10 a primary residence for either himself or a member of his or her
11 immediate family.

12 E. Increases in rent shall not be considered retaliation if:

13 1. Compliance with a health department or other agency
14 directive creates a financial burden on the landlord;

15 2. Rent is increased to ameliorate the burden of a substantial
16 increase in property taxes;

17 3. Substantial improvements to the unit that effects a tax
18 depreciation on the landlord's federal tax bill; or

19 4. Rent is increased, upon renewal of the lease, which is in
20 line with an increase in rents by other landlords in similar
21 situations or units.

22 SECTION 2. AMENDATORY 41 O.S. 2021, Section 121, is
23 amended to read as follows:

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1 Section 121. A. Except as otherwise provided in this act, if
2 there is a material noncompliance by the landlord with the terms of
3 the rental agreement or a noncompliance with any of the provisions
4 of Section ~~18~~ 118 of this ~~act~~ title which noncompliance materially
5 affects health or safety, the tenant may deliver to the landlord a
6 written notice specifying the acts and omissions constituting the
7 breach and that the rental agreement will terminate upon a date not
8 less than thirty (30) days after receipt of the notice if the breach
9 is not remedied within fourteen (14) days, and thereafter the ~~rental~~
10 ~~agreement shall so terminate as provided in the notice unless the~~
11 ~~landlord adequately remedies the breach within the time specified~~
12 tenant may bring an action to court to enforce an obligation of the
13 landlord.

14 1. A tenant may not bring an action under this title unless the
15 following conditions are met:

- 16 a. the tenant gives the landlord written notice of the
17 landlord's noncompliance with a provision of this
18 title,
- 19 b. the landlord has been given a reasonable amount of
20 time, not to exceed fourteen (14) days, to make
21 repairs or provide a remedy of the condition described
22 in the tenant's notice. The tenant may not prevent
23 the landlord from having access to the rental premises

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1 to make repairs or provide a remedy to the condition
2 described in the tenant's notice, and

3 c. the landlord fails or refuses to repair or remedy the
4 condition described in the tenant's notice.

5 2. If the tenant is the prevailing party in an action under
6 this section, the tenant may obtain any of the following, if
7 appropriate under the circumstances:

8 a. actual damages and consequential damages,

9 b. attorney fees and court costs,

10 c. injunctive relief, and

11 d. any other remedy appropriate under the circumstances.

12 3. The landlord's liability for damages begins when:

13 a. the landlord has notice or actual knowledge of
14 noncompliance, and

15 b. the landlord has:

16 (1) refused to remedy the noncompliance, or

17 (2) failed to remedy the noncompliance within a

18 reasonable amount of time, not to exceed fourteen

19 (14) days, following the actual knowledge.

20 B. Except as otherwise provided in this act, if there is a
21 material noncompliance by the landlord with any of the terms of the
22 rental agreement or any of the provisions of Section ~~18~~ 118 of this
23 ~~act~~ title which noncompliance materially affects health and the
24 breach is remediable by repairs, the reasonable cost of which is

1 less than ~~One Hundred Dollars (\$100.00)~~ Seven Hundred Fifty Dollars
2 (\$750.00), or one month's rent, whichever is less, the tenant may
3 notify the landlord in writing of his intention to correct the
4 condition at the landlord's expense after the expiration of fourteen
5 (14) days. If the landlord fails to comply within said fourteen
6 (14) days, or as promptly as conditions require in the case of an
7 emergency, the tenant may thereafter cause the work to be done in a
8 workmanlike manner and, after submitting to the landlord an itemized
9 statement, deduct from his rent the actual and reasonable cost or
10 the fair and reasonable value of the work, not exceeding the amount
11 specified in this subsection, in which event the rental agreement
12 shall not terminate by reason of that breach. Nothing in this
13 section shall be construed as relieving the tenant's obligation to
14 make rental payments, and the rental agreement shall not terminate
15 by reason of breach on behalf of the landlord.

16 No action for possession on behalf of the landlord based on
17 nonpayment of rent shall be maintained regarding the premises leased
18 or rented for purposes other than for vacation or recreation, if
19 such premises are in substantial violation of standards of
20 habitability outlined in subsection C of this section, provided
21 that:

22 1. The tenant proves by clear and convincing evidence that,
23 while not in arrears in rent, he or she provided written notice of
24 the violation to the person to whom he or she customarily pays rent;

1 2. The landlord failed to correct the violations within
2 fourteen (14) days of the receipt of such written notice or, in an
3 emergency, as promptly as conditions require;

4 3. The violations were not caused by the tenant, a member of
5 the tenant's family, or other persons on the premises with the
6 tenant's consent; and

7 4. Necessary repairs have not been prevented due to extreme
8 weather conditions or due to the failure of the tenant to allow the
9 landlord reasonable access to the premises.

10 C. The landlord shall certify upon delivery of the unit to the
11 tenant that the unit meets the standard of habitability, and shall
12 be responsible for maintaining that standard. The landlord shall
13 comply with all health and housing codes applicable to the rental
14 unit. Except as otherwise provided in this act, if, contrary to the
15 rental agreement or Section ~~18~~ 118 of this ~~act~~ title, the landlord
16 willfully or negligently fails to supply heat, air conditioning,
17 running water, hot water, electric, gas, functioning windows and
18 doors and all avenues of ingress and egress, and all exterior door
19 locks which are present in the unit, or other essential service, the
20 tenant may give written notice to the landlord specifying the breach
21 and thereafter may÷

22 ~~1. Upon written notice, immediately terminate the rental~~
23 ~~agreement; or~~

1 ~~2. Procure reasonable amounts of heat, hot water, running~~
2 ~~water, electric, gas or other essential service during the period of~~
3 ~~the landlord's noncompliance and deduct their actual and reasonable~~
4 ~~cost from the rent; or~~

5 ~~3. Recover damages based upon the diminution of the fair rental~~
6 ~~value of the dwelling unit; or~~

7 ~~4. Upon written notice, procure reasonable substitute housing~~
8 ~~during the period of the landlord's noncompliance, in which case the~~
9 ~~tenant is excused from paying rent for the period of the landlord's~~
10 ~~noncompliance~~ recover damages based upon the landlord's
11 noncompliance at the discretion of the court.

12 ~~D. Except as otherwise provided in this act, if there is a~~
13 ~~noncompliance by the landlord with the terms of the rental agreement~~
14 ~~or Section 18 of this act, which noncompliance renders the dwelling~~
15 ~~unit uninhabitable or poses an imminent threat to the health and~~
16 ~~safety of any occupant of the dwelling unit and which noncompliance~~
17 ~~is not remedied as promptly as conditions require, the tenant may~~
18 ~~immediately terminate the rental agreement upon written notice to~~
19 ~~the landlord which notice specifies the noncompliance.~~

20 ~~E.~~ All rights of the tenant under this section do not arise
21 until he or she has given written notice to the landlord or if the
22 condition complained of was caused by the deliberate or negligent
23 act or omission of the tenant, a member of his family, his or her

1 animal or pet, or other person or animal on the premises with his or
2 her consent.

3 SECTION 3. This act shall become effective November 1, 2022.

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