

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2109

By: Pae, **Schreiber**, and **Waldron**

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8 COMMITTEE SUBSTITUTE

9 An Act relating to landlord and tenant; prohibiting
10 landlords from retaliating against tenants in certain
11 circumstances; defining forms of retaliation;
12 providing that a landlord may increase rent or
13 decrease services under certain circumstances;
14 providing remedy procedures for tenants; providing
15 examples of nonretaliatory actions; providing that a
16 landlord shall retain the right to recovery if done
17 in good faith; providing when raising rent shall not
18 be considered retaliatory; amending 41 O.S. 2021,
19 Section 121, as amended by Section 1, Chapter 230,
20 O.S.L. 2022 (41 O.S. Supp. 2022, Section 121), which
21 relates to landlord's breach of a rental agreement;
22 providing a tenant may bring an action to enforce an
23 obligation of a landlord; providing guidelines on
24 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.

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

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

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

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

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1 2. However, the provisions of this section shall not be
2 construed to prevent the landlord from increasing rent nor from
3 decreasing services in a manner that applies equally to all tenants.

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

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

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

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

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

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

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

6 2. The landlord recovering possession of the unit from the
7 tenant in order to use the unit as a primary residence for either
8 the landlord or the landlord's immediate family;

9 3. The landlord recovering possession of the unit for the
10 purposes of substantially altering, remodeling, or demolishing the
11 unit; or

12 4. When the unit is sold and the purchaser intends to use it as
13 a primary residence for either the landlord or a member of the
14 landlord's immediate family.

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

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

18 2. Rent is increased to mitigate the burden of a substantial
19 increase in property taxes;

20 3. Substantial improvements to the unit that affects a tax
21 depreciation on the landlord's federal tax bill; or

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

1 SECTION 2. AMENDATORY 41 O.S. 2021, Section 121, as
2 amended by Section 1, Chapter 230, O.S.L. 2022 (41 O.S. Supp. 2022,
3 Section 121), is amended to read as follows:

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

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

19 a. the tenant gives the landlord written notice of the
20 landlord's noncompliance with a provision of this
21 title,

22 b. the landlord has been given a reasonable amount of
23 time, not to exceed fourteen (14) days, to make
24 repairs or provide a remedy of the condition described

1 in the tenant's notice. The tenant may not prevent
2 the landlord from having access to the rental premises
3 to make repairs or provide a remedy to the condition
4 described in the tenant's notice, and

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

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

10 a. actual damages and consequential damages,

11 b. attorney fees and court costs,

12 c. injunctive relief, and

13 d. any other remedy appropriate under the circumstances.

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

15 a. the landlord has notice or actual knowledge of
16 noncompliance, and

17 b. the landlord has:

18 (1) refused to remedy the noncompliance, or

19 (2) failed to remedy the noncompliance within a

20 reasonable amount of time, not to exceed fourteen

21 (14) days, following the actual knowledge.

22 B. Except as otherwise provided in this act, if there is a
23 material noncompliance by the landlord with any of the terms of the
24 rental agreement or any of the provisions of Section 118 of this

1 title which noncompliance materially affects health and the breach
2 is remediable by repairs, the reasonable cost of which is equal to
3 or less than one month's rent, the tenant may notify the landlord in
4 writing of his or her intention to correct the condition at the
5 landlord's expense after the expiration of fourteen (14) days. If
6 the landlord fails to comply within said fourteen (14) days, or as
7 promptly as conditions require in the case of an emergency, the
8 tenant may thereafter cause the work to be done in a workmanlike
9 manner and, after submitting to the landlord an itemized statement,
10 deduct from his or her rent the actual and reasonable cost or the
11 fair and reasonable value of the work, not exceeding the amount
12 specified in this subsection, in which event the rental agreement
13 shall not terminate by reason of that breach.

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

20 1. The tenant proves by a preponderance of the evidence that,
21 while not in arrears in rent, he or she provided written notice of
22 the violation to the person to whom he or she customarily pays rent;
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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 or animals on the premises
6 with the 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. Except as otherwise provided in this act, if, contrary to
11 the rental agreement or Section 118 of this title, the landlord
12 willfully or negligently fails to supply heat, running water, hot
13 water, electric, gas or other essential service, the tenant may give
14 written notice to the landlord specifying the breach and thereafter
15 may:

16 1. Upon written notice, immediately terminate the rental
17 agreement; or

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

22 3. Recover damages based upon the ~~diminution of the fair rental~~
23 ~~value of the dwelling unit~~ landlord's noncompliance at the
24 discretion of the court, including reasonable attorney fees; or

1 4. Upon written notice, procure reasonable substitute housing
2 during the period of the landlord's noncompliance, in which case the
3 tenant is excused from paying rent for the period of the landlord's
4 noncompliance.

5 D. Except as otherwise provided in this act, if there is a
6 noncompliance by the landlord with the terms of the rental agreement
7 or Section 118 of this title, which noncompliance renders the
8 dwelling unit uninhabitable or poses an imminent threat to the
9 health and safety of any occupant of the dwelling unit and which
10 noncompliance is not remedied as promptly as conditions require, the
11 tenant may immediately terminate the rental agreement upon written
12 notice to the landlord which notice specifies the noncompliance.

13 E. All rights of the tenant under this section do not arise
14 until he or she has given written notice to the landlord or if the
15 condition complained of was caused by the deliberate or negligent
16 act or omission of the tenant, a member of his or her family, his or
17 her animal or pet or other person or animal on the premises with his
18 or her consent.

19 SECTION 3. This act shall become effective November 1, 2023.
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21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
22 02/20/2023 - DO PASS, As Amended and Coauthored.
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