

Comparison of HB1563 and HB1769/SB594—[Arkansans for Stronger Communities](#)

	HB1563	HB1769/SB594
Applies to	All residential leases, unless landlord owns four or fewer rental units Why four or fewer? Because in our conversations with tenant advocates they all agreed that it's problem landlords who own numerous properties that are the problem.	All leases entered into or executed after Nov. 1, 2021 that don't contain an option to purchase. PROBLEM: This will affect a lot of tenants at present. Also, landlords could start adding rent-to-own clauses to affect even more. Many tenants fall victim to predatory rent-to-own contracts with landlords who never intend to see in the first place.
Nonwaiver provision, so that a lease can't require the tenant to give up these rights	Yes NOTE: This is an essential element of an implied warranty of habitability bill.	No
Limits tort liability of landlords	Yes	Yes
Waterproofing	Reasonable waterproofing and weather protection of exterior, so health and safety not materially affected	A functioning roof and building envelope
Plumbing	Maintained in good working order	A sanitary sewer system compliant with code at time of installation. NOTE: A "sanitary sewer system" is the below-ground pipes. It's not the above-ground plumbing.
Heating	Maintained in good working order	Whatever heat or lack of heat at the time the tenant moved in. PROBLEM: Many problem landlords routinely rent unlivable housing promising to make repairs, then just don't. Conceivably here a tenant could find themselves living without heat and no way to get it. A bad LR landlord rented a unit in June with no heat. It was later cited as unlivable by the City. That landlord would be in compliance with this bill.
Ventilation	Maintained in good working order	No
Air conditioning	If supplied, maintained in good working order	Whatever AC or lack of AC at the time the tenant moved in
Hot and cold running water	Yes	An available source PROBLEM: The kitchen sink could work but not the bathtub and shower.
Potable drinking water	No	A source
Electricity	With wiring and equipment that are	An available source

	maintained in good working order	PROBLEM: Electricity could be working in one room but not in three others. There would still be a source of electricity.
Rodents, insects, vermin	No infestation materially affecting health and safety, unless tenants causing infestation	No requirement PROBLEM: Rodents/insect infestations are one of the top two exacerbators of health in bad housing.
Harmful mold	None materially affecting health and safety	No requirement PROBLEM: Excessive quantities of harmful mold are one of the top two exacerbators of health in bad housing.
Working smoke detector	Tenant can't disable	No requirement of landlord; tenant can install and if so is responsible for maintaining.
Working carbon monoxide detector	Tenant can't disable	No requirement of landlord; tenant can install and if so is responsible for maintaining.
Floors, walls, doors, structure	In good repair so as not to materially affect health and safety	No
Locks	Working locks or other security devices on all exterior doors	No
List of above requirements supersedes what's in the lease, unless tenant agrees in writing to make all repairs	No	Yes. PROBLEM: What if the lease says the landlord will make all repairs, as many leases do? This provision seems to say that landlords only need repair what's on the above list. It's also not clear that landlords are actually expected to repair once the tenant moves in.
When the list of above requirements doesn't apply, in addition to tenant-caused exception	No other exceptions	If the landlord is prevented from supplying because of an act of God, failure of public utility services, other force majeure events, any epidemic or pandemic that causes work stoppages, labor or material shortages, or required social distancing that impacts the ability to maintain or repair
Automatic compliance	No	Yes, if landlord gives tenant a form to list defects at the beginning of the tenancy and the tenant signs without noting defects. PROBLEM: How would a tenant know whether a sewage system is code compliant when signing the lease? Will a tenant run the heater in June?
No remedies if someone else causes damage	Tenant, tenant's family, licensee, any other person on the premises	Tenant, tenant's family, other occupant or visitor, anyone employed by tenant to make repairs without landlord's permission

No remedies if tenant isn't current with rent	Yes	Yes
Notice to landlord of noncompliance	In writing	By certified mail or any other method provided by the lease
Time to remedy noncompliance	14 days, with exceptions—difficulty of repair, insurance payment late, can't get repairman, inclement weather, etc.	30 days
If landlord doesn't make the repair	<p>Tenant can choose from among these remedies:</p> <ul style="list-style-type: none"> \$ terminate lease and move out \$ get injunction and/or \$ restitution, or \$ if a major repair landlord can pay tenant a month's rent to move out and can't re-rent until in compliance <p>NOTE: Remedies are an essential element of an implied warranty of habitability, which creates the duty of repair. The tenant must have meaningful remedies in addition to being able to terminate the lease.</p>	<p>Tenant can terminate lease and move out</p> <p>PROBLEM: This sole "remedy" makes this bill ineffective as an implied warranty of habitability. The tenant has one choice, to stay without repairs being made or to move out. And if the tenant moves out, the landlord need not make any repairs. Lack of remedies is one reason why this bill doesn't impose a duty to repair on the landlord.</p>
Destruction of premises by fire or casualty or natural disaster	Landlord can terminate the lease, if to make the repair tenant would have to vacate anyway.	No.
Prohibition against retaliation by landlord if tenant exercises rights	<p>Yes</p> <p>NOTE: An anti-retaliation provision is an essential element of an implied warranty of habitability, otherwise tenants won't be able to exercise their rights.</p>	No
Remedies for retaliation	Yes	No
Does it limit landlord's rights under other law?	No	No

Does it limit tenant's rights under other law?	No	Yes, the tenant has a only one remedy, the "sole remedy," and thus could not sue the landlord in constructive eviction, or use constructive eviction as a defense .
Removes the requirement of a pre-hearing deposit in unlawful detainer cases	No	Yes NOTE: This is the best feature of the bill. Unfortunately, it doesn't outweigh the bill's weaknesses.

General Comments:

This bill basically requires landlords to supply utilities and not much else, and does not require any repairs. So it will lead to situations where the tenant will be stuck with no repairs and will basically have to decide how long she can stand it before leaving.

This bill will gut the common law doctrine of constructive eviction, one of the few doctrines that tenants can use right now, because it says the "sole remedy" is to terminate the lease, with nothing more. A landlord could turn off utilities or render premises uninhabitable in some other way and force the tenant out.

18-17-501(a) seems to be saying that a landlord doesn't even have to provide heat or electricity or water at the outset of a lease if there's a pandemic, tornado, etc., and that a tenant wouldn't be entitled to the remedy in those cases. Conceivably a house could burn down after being struck by lightning (an act of God or force majeure). 501(a) says the landlord is not required to provide anything in that case. Would the tenant still have to pay rent, because the landlord was off the hook and the tenant was entitled to no remedy? This actually happened recently. The landlord wanted the tenant to pay the rent through the lease term.

Even if a tenant qualifies for a repair, they'll have to pay for a month of rent for a house without water, electricity, or whatever, and then after moving out wait 60 days for a security deposit, which some problem landlords routinely withhold.