

Past Due: An Alabama Landlord-Tenant Law

This fact sheet made possible by the members of Arise Citizens' Policy Project

October 6, 2005

A long-term effort

Tenants' rights have been an Alabama Arise legislative priority since 1993. At that time, Alabama was one of only two states that failed to provide any protection to residential renters; by 2005, we were the *only* state denying all such protection. Over this period, Arise's repeated attempts to develop a compromise bill with representatives of landlords' interests have failed, and none of the half-dozen bills we have brought before the Legislature have passed. Nearly 500,000 rental households in Alabama still have no legal right to live in a safe and habitable property, still have no guarantee that rental deposits will be returned, and still have no protection from eviction if they dare complain to officials about the physical condition of their housing

In 2001, with no breakthrough in sight, the Alabama Legislature asked the *Alabama Law Institute (ALI)* to undertake a study of residential landlord-tenant laws. A Law Institute committee of distinguished law professors and practitioners met for

over a year to draft a landlord-tenant statute for Alabama. The committee used as its guide the *Uniform Residential Landlord-Tenant Act* drafted by the National Conference of Commissioners on Uniform State Laws in 1972. The uniform legislation has been adopted in 20 states.

The ALI bill

Arise and other advocacy groups endorsed the ALI Alabama Uniform Residential Landlord-Tenant Law during the 2005 legislative session as the best option to provide basic rights to Alabama tenants. The proposed legislation includes the following provisions:

- The obligations of a landlord and tenant are interdependent, not independent. In other words, both the tenant and the landlord have obligations they must meet in a rental agreement;
- A landlord may require up to one month's rental deposit, and may deduct from that deposit damages caused by the tenant. The landlord must return the deposit within 21 days of termination of the lease, and provide an itemized statement of any charges to the tenant;
- A landlord must comply with housing codes that affect health and safety; must maintain the dwelling in a habitable condition; and must provide hot and cold water and a source of heat.
- A tenant must keep premises safe and clean;
- A landlord may adopt rules, but rules must apply to all tenants and must be disclosed prior to signing the rental agreement;
- A landlord has a right to inspect and repair premises but must give the tenant notice of intent to inspect, except in emergency situations;
- A tenant must give the landlord 14 days' notice of non-compliance with habitability provisions and may terminate the lease if the landlord fails to make necessary repairs;
- For minor repairs related to habitability, the landlord must make repairs within 7 days of notice. After 7 days, the tenant may make the repairs and deduct the actual cost of the repairs up to a maximum of one-half month's rent;
- The proposed statute would abolish the landlord's *lien* on tenant's property;
- A landlord may not increase rent or decrease services in retaliation for tenant's complaints to a governmental agency regarding the dwelling.

Keywords

Alabama Law Institute (ALI)— advisory body established by the Legislature in 1967 “to bring the law of the state, both civil and criminal, into harmony with modern conditions” by revising laws that are out-of-date and recommending new laws to address issues not adequately covered.

common law – an unwritten body of law, originating in England, that is based on judicial decisions rather than legislative action.

default – failure to meet an obligation, such as payment of rent.

habitability – the extent to which a dwelling is fit to be occupied. In a warrant of habitability, the landlord promises in the lease agreement that the premises will be reasonably fit for occupation.

independence of the covenant to pay rent – an ancient principle of common law that requires a tenant to pay rent whether or not the landlord fulfills his or her obligations.

lien – a claim upon property as security for payment of an obligation, such as rent.

repair and deduct – the process by which a tenant undertakes a basic property repair and deducts the cost from the rent payment.

security deposit – an amount paid up front by a tenant to a landlord as a security against damages to the property.

Uniform Residential Landlord-Tenant Act – model legislation adopted by 20 states, as of mid-2005.

The Realtors' bill

Although attorneys representing landlord interests participated in drafting the ALI bill, the Alabama Association of Realtors has continued to oppose its passage and has, in fact, proposed an alternative landlord-tenant act. The Realtors' proposal, on first glance, appears to offer many of the same protections as the ALI bill. There is one important difference, however: Under the Realtors' bill, if a tenant is in *default* of any provision of the rental agreement, the protections are not enforceable.

In addition, the proposal would codify, or write into law, the *independence of the covenant to pay rent*. This provision, currently a matter of *common law* in Alabama and enforceable under court rulings, requires a tenant to pay rent whether or not the landlord complies with his or her obligations. Under the Realtors' proposal, Alabama would become only the third state in the nation to codify the independence of the covenant and would be the only state in which this provision was not subject to a habitability requirement.

The Realtors' bill specifically denies tenants the opportunity to make repairs and withhold the cost from rent due. For many low- and middle-income tenants, the *repair and deduct* process may be the only way repairs get made. The chief objection raised by Realtors in regard to this provision is the concern that repairs made by a tenant would be of poor quality and thus pose additional costs to the landlord. The response of tenants' advocates is that the landlord can avoid this problem simply by making timely repairs.

Landlord-tenant laws in other states

For years, Realtors have portrayed the protections sought by Arise and other advocacy groups as radical and contrary to sound business practices. A 2004 study by the Alabama Appleseed Center for Law & Justice clearly refutes this claim. The study, *Residential Landlord and Tenant Law: A Fifty State Survey of Selected Issues*, shows that many protections in the ALI legislation are found in laws of other states. For example:

- 39 states require landlords to meet minimum housing standards;
- 21 states allow a tenant to deduct repair costs if the landlord fails to make timely repairs required by the lease or by law;
- 27 states require that all utilities and major systems be in good and safe working order;
- 48 states limit the amount of security deposits or set a time frame for return of deposits, or both;

- 45 states allow tenants to seek actual damages if landlords fail to meet their obligations, and 35 allow tenants to seek punitive damages;
- 35 states prohibit the landlord from retaliating against a tenant who complains to a governmental agency about housing violations;
- 33 states address the time in which a landlord must make repairs affecting health or safety.

Alabama tenants enjoy none of these protections; in fact, the only provisions in current Alabama law relating to the landlord-tenant relationship deals with eviction processes. While most landlords in Alabama treat their tenants fairly as a good business practice, there continue to be those who exploit the absence of protective legislation.

Our lack of a landlord-tenant law puts Alabama renters at a disadvantage in comparison to renters in neighboring states:

- A landlord in Escambia County, Florida, has to keep his rental property in a fit and habitable condition, but a landlord across the state line in Escambia County, Alabama, does not.
- A landlord in Columbus, Georgia, must return a rental deposit within 30 days or face a penalty of three times the amount withheld, while across the river in Phenix City, there is no requirement that a deposit be returned at all.
- A landlord in Hamburg, Tennessee, is required to provide running water, hot water and heat, but a landlord less than six miles away in Bridgeport, Alabama, does not.
- A tenant in Columbus, Mississippi, may, after the failure of the landlord to make necessary repairs, make such repairs and deduct the cost from the following month's rent, while a tenant in Reform, Alabama, has no such recourse.

Fair to all involved

Landlord-tenant reform will benefit landlords, too. Conscientious landlords, intent on keeping their premises safe and sanitary, face unfair competition from landlords who allow their properties to fall into disrepair while undercutting rental rates of responsible landlords. The time has come for Alabama to enact legislation that spells out the responsibilities and protections of both landlords and tenants.

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