

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2534 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Aaron Stiles

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2534

By: Stiles

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to forcible entry and detainer;
9 amending 12 O.S. 2011, Sections 1148.4, 1148.5,
10 1148.5A, 1148.6, 1148.10, 1148.10A and 1148.14, which
11 relate to forcible entry and detainer actions;
12 requiring defendant to file written answer within
13 certain time; requiring defendant to deliver answer
14 to plaintiff; directing court clerk to set trial date
15 within certain time frame; mandating judgment and
16 restitution for plaintiff if defendant fails to
17 answer; modifying procedure and requirements for
18 service of process; stating service is effective at
19 time of posting; providing for entry and detainer
20 action in certain cases; deleting affidavit option;
21 removing provision that defendant is not required to
22 answer prior to trial; providing for writ of
23 restitution instead of writ of execution; exempting
24 certain additional postjudgment court costs;
modifying notice requirement to include service by
private process servers; modifying time limits;
making assignment to small claims docket permissive;
deleting mandate on court clerks to assist plaintiffs
in certain cases; amending 12 O.S. 2011, Section
1751, which relates to the Small Claims Procedure
Act; exempting limitation of attorney fees for
uncontested forcible entry and detainer cases;
amending 41 O.S. 2011, Sections 111, 115, 121, 122,
130, 131, 132 and 133, which relate to the Oklahoma
Residential Landlord and Tenant Act; clarifying date
requirements; mandating recovery if tenant remains in
possession of the premises after notice; deleting
certified mailing requirement; modifying mailing
requirements for certain written statements;

1 permitting mailing to last known-address of tenant;
2 clarifying dates; requiring tenant be in full
3 compliance to assert certain rights; extending
4 applicability to guest of tenant; deleting certified
5 mailing requirement; limiting landlord responsibility
6 to store or maintain certain items; permitting
7 delivery of written demand for payment notice;
8 clarifying dates; mandating actual and statutory
9 damages for landlord; allowing termination after
10 certain notice to vacate; permitting recovery of
11 actual and statutory damages; allowing lien for
12 security and storing property; modifying definition;
13 repealing 12 O.S. Sections 1148.15 and 1148.16, which
14 relate to forcible entry and detainer affidavit and
15 summons; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 1148.4, is
amended to read as follows:

Section 1148.4 A. The summons shall be issued and returned as
in other cases, except that it shall command the sheriff, or other
person serving it, to summon the defendant to ~~appear for trial at~~
~~the time and place specified therein, which time shall be not less~~
~~than five (5) days nor more than ten (10) days from the date that~~
~~the summons is issued~~ file a written answer to the petition with the
court within three (3) days after service of the summons upon the
defendant. Within this same time, a copy of the defendant's answer
shall be delivered or mailed to the plaintiff or attorney for the
plaintiff. The summons shall apprise the defendant of the nature of
the claim that is being asserted against ~~him~~ the defendant; and

1 there shall be endorsed upon the summons the relief sought and the
2 amount for which the plaintiff will take judgment if the defendant
3 fails to ~~appear~~ answer. In all cases, pleadings may be amended to
4 conform to the evidence.

5 B. If an answer is filed by the defendant within three (3) days
6 after service of the summons, a trial date and time shall be set by
7 the court clerk. The trial date shall be not less than three (3)
8 days nor more than seven (7) days from the date the answer is filed.
9 If an answer is not filed by the defendant within three (3) days
10 after service of the summons, plaintiff shall be entitled to a
11 judgment for the relief and amount sought in the petition and the
12 court shall immediately issue a writ of restitution for possession
13 of the premises.

14 SECTION 2. AMENDATORY 12 O.S. 2011, Section 1148.5, is
15 amended to read as follows:

16 Section 1148.5 The summons may be served as in other cases
17 ~~except that such service shall be at least three (3) days before the~~
18 ~~day of trial, and the return day shall not be later than the day of~~
19 ~~trial, and it may also be served by leaving a copy thereof with some~~
20 ~~person over fifteen (15) years of age, residing on the premises, at~~
21 ~~least three (3) days before the day of trial; or, if service cannot~~
22 ~~be made by the exercise of reasonable diligence on the tenant or on~~
23 ~~any person over the age of fifteen (15) years residing on the~~
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1 ~~premises, the same may be served by certified mail with return~~
2 ~~receipt postmarked at least three (3) days before the date of trial.~~

3 SECTION 3. AMENDATORY 12 O.S. 2011, Section 1148.5A, is
4 amended to read as follows:

5 Section 1148.5A If, in the exercise of reasonable diligence,
6 service cannot be made upon the defendant personally nor upon any
7 person residing upon the premises over fifteen (15) years of age,
8 then in lieu of service by certified mail, service may be obtained
9 for the sole purpose of adjudicating the right to restitution of the
10 premises by the sheriff's posting or by private process service
11 posting of said summons conspicuously on the building on the
12 premises, and, if there be no building on said premises, then by
13 posting the same at some conspicuous place on the premises sought to
14 be recovered ~~at least five (5) days prior to the date of trial~~, and
15 by the claimant's mailing a copy of said summons to the defendant at
16 ~~his~~ the last-known address by certified mail ~~at least five (5) days~~
17 ~~prior to said date of trial.~~ This service shall be deemed effective
18 at the time of posting. Such service shall confer no jurisdiction
19 upon the court to render any judgment against the defendant for the
20 payment of money nor for any relief other than the restoration of
21 possession of the premises to the claimant, unless the defendant
22 ~~appears at trial~~ answers pursuant to Section 1148.4 of this title.
23 Such service shall not be rendered ineffectual by the failure of the
24 defendant to actually see or receive such posted process nor by his

1 failure to actually receive or sign a return receipt for such mailed
2 process.

3 SECTION 4. AMENDATORY 12 O.S. 2011, Section 1148.6, is
4 amended to read as follows:

5 Section 1148.6 A. In all cases in which the cause of action is
6 based on an asserted breach of a lease by the defendant, or the
7 termination or expiration of a lease under which the defendant
8 claims an interest in the property in a verified answer, the
9 plaintiff may proceed with the forcible entry and detainer action
10 instead of an ejectment action as described below.

11 B. In all cases in which the defendant wishes to assert title
12 to the land or that the boundaries of the land are in dispute, ~~he~~
13 the defendant shall, ~~before the time for the trial of the cause~~
14 within three (3) days after service of the summons, file a verified
15 answer ~~or an affidavit~~ which contains a full and specific statement
16 of the facts constituting ~~his~~ the defense of title or boundary
17 dispute. If the defendant files such a verified answer ~~or~~
18 ~~affidavit,~~ the action shall proceed as one in ejectment before the
19 proper division of the district court. ~~If the defendant files an~~
20 ~~affidavit he shall file answer within ten (10) days after the date~~
21 ~~the affidavit is filed.~~

22 ~~B. In all cases in which the cause of action is based on an~~
23 ~~asserted breach of a lease by the defendant, or the termination or~~
24 ~~expiration of a lease under which the defendant claims an interest~~

1 ~~in the property in a verified answer or affidavit, the plaintiff may~~
2 ~~proceed with the forcible entry and detainer action instead of an~~
3 ~~ejectment action.~~

4 ~~C. No answer by the defendant shall be required before the time~~
5 ~~for trial of the cause.~~

6 SECTION 5. AMENDATORY 12 O.S. 2011, Section 1148.10, is
7 amended to read as follows:

8 Section 1148.10 If judgment be for plaintiff, the court shall,
9 at the request of the plaintiff, ~~his~~ agent of the plaintiff or
10 attorney, immediately issue a writ of ~~execution thereon, which shall~~
11 ~~be in substantially the following form:~~

12 ~~The State of Oklahoma, _____ County.~~

13 ~~The State of Oklahoma to the Sheriff of _____ County:~~

14 ~~Whereas, in a certain action for the forcible entry and~~
15 ~~detention (or for the forcible detention as the case may be) of the~~
16 ~~following described premises, to wit: _____ lately tried~~
17 ~~before me, wherein _____ was plaintiff, and _____ was~~
18 ~~defendant, judgment was rendered on the ____ day of _____, 19__,~~
19 ~~that the plaintiff have restitution of said premises; and also that~~
20 ~~he recover rent, attorney fees and costs in the sum of _____; you,~~
21 ~~therefore, are hereby commanded to cause the defendant to be~~
22 ~~forthwith removed from said premises and the said plaintiff to have~~
23 ~~restitution of the same; also that you levy on the goods and~~
24 ~~chattels of the said defendant, and make the costs aforesaid, and~~

1 ~~all accruing costs, and of this writ, make legal service and due~~
2 ~~return.~~

3 Witness my hand this _____ day of _____, 19__.

4 _____
5 A.B., Judge

6 restitution. The writ of restitution on a forcible entry and
7 detainer judgment shall not be subject to additional postjudgment
8 court costs, except for the costs of service. A motion for a new
9 trial may be filed only within three (3) days of judgment but shall
10 not operate to stay execution.

11 SECTION 6. AMENDATORY 12 O.S. 2011, Section 1148.10A, is
12 amended to read as follows:

13 Section 1148.10A A. The plaintiff or agent of the plaintiff,
14 private process server or officer shall immediately notify the
15 defendant in person or by posting of said notice that the plaintiff
16 or agent of the plaintiff or officer shall return in forty-eight
17 (48) hours to restore the plaintiff possession of the premises by
18 executing the writ prescribed in Section 1148.10 of this title and
19 shall make levy to collect the amount of the judgment and all
20 accruing costs.

21 B. The original writ of ~~execution~~ restitution issued as
22 provided by Section 1148.10 of this title shall be filed in the
23 action in the manner provided for judgments in civil cases.
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1 C. The plaintiff or agent of the plaintiff, private process
2 server or officer may execute the writ upon the defendant by
3 personally serving a certified copy of the writ upon the defendant
4 or upon a person authorized to receive service of process as
5 provided by Section 2004 of this title. If the plaintiff or agent
6 of the plaintiff, private process server or officer is unable to
7 personally serve the defendant or a person authorized to receive
8 service of process as provided by Section 2004 of this title, the
9 plaintiff or agent of the plaintiff, private process server or
10 officer may post a notice in a conspicuous place at the premises
11 address that the plaintiff or agent of the plaintiff, private
12 process server or officer shall return at a specified date and time,
13 which shall be not less than forty-eight (48) hours from the time of
14 posting, to restore the plaintiff to possession of the premises by
15 executing the writ prescribed in Section 1148.10 of this title.

16 D. Any person who wrongfully refuses to surrender possession of
17 the premises described in the writ of ~~execution~~ restitution upon
18 service of the writ by the plaintiff or agent of the plaintiff,
19 private process server or officer or the agent of the plaintiff
20 shall, upon conviction, be deemed guilty of a trespass and may be
21 punished by a fine in an amount not to exceed Five Hundred Dollars
22 (\$500.00) or by confinement in the county jail for a period not to
23 exceed thirty (30) days or by both such fine and imprisonment.

1 E. The plaintiff or the agent of the plaintiff may summon
2 either the sheriff of the county or the law enforcement agency of
3 the city or town in which the premises are located for assistance in
4 executing the writ.

5 F. The plaintiff's, the agent of the plaintiff's, the private
6 process server's or the officer's return shall be as upon other
7 executions. Within two (2) days of the date of the judgment, the
8 defendant may post supersedeas bond conditioned as provided by law.
9 This time limit may be enlarged by a trial judge's order to not more
10 than ~~seven (7)~~ five (5) days after the date of judgment. The
11 posting of a supersedeas bond shall not be construed to relieve the
12 defendant of ~~his~~ the defendant's duty to pay current rent as it
13 becomes due while the appeal is pending. The rent shall be paid
14 into the court clerk's office together with poundage. If there be
15 controversy as to the amount of rent, the judge shall determine by
16 order how much shall be paid in what time intervals. Withdrawal by
17 the plaintiff of rent deposited in the court clerk's office pending
18 appeal shall not operate to estop ~~him~~ the plaintiff from urging on
19 appeal ~~his~~ the plaintiff's right to the possession of the premises.
20 Failure to pay current rentals while the appeal is pending shall be
21 considered as abandonment of the appeal.

22 SECTION 7. AMENDATORY 12 O.S. 2011, Section 1148.14, is
23 amended to read as follows:
24

1 Section 1148.14 An action for forcible entry and detainer
2 brought pursuant to procedures prescribed otherwise in this title
3 standing alone or when joined with a claim for recovery of rent,
4 damages to the premises, or a claim arising under the Oklahoma
5 Residential Landlord and Tenant Act, where the total recovery
6 sought, exclusive of attorney's fees and other court costs, does not
7 exceed the jurisdictional amount for the small claims court, ~~shall~~
8 may be placed on the small claims docket of the district court when
9 properly answered by the defendant within the time prescribed by
10 Section 1148.6 of this title. The district courts may provide by
11 court rule that any action for forcible entry and detainer may be
12 assigned to the small claims division for determination of the right
13 to possession, regardless of the underlying amount in controversy,
14 at the conclusion of which, the matter shall be returned to the
15 assigned judge for further proceedings. ~~The court clerk shall in~~
16 ~~connection with such actions prepare the affidavit, by which the~~
17 ~~action is commenced, and the summons, and generally assist~~
18 ~~unrepresented plaintiffs to the same extent that he is now required~~
19 ~~so to do under~~ Despite assignment to the small claims docket, the
20 court shall prescribe the judgment, fees and awards under the
21 forcible entry and detainer procedures set forth in Sections 1148.1
22 through 1148.14 of this title and not the judgment, fees and awards
23 set forth in the Small Claims Procedure Act, ~~Section 1751 et seq. of~~
24 ~~this title.~~

SECTION 8. AMENDATORY 12 O.S. 2011, Section 1751, is amended to read as follows:

Section 1751. A. The following suits may be brought under the small claims procedure:

1. Actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in which the amount sought to be recovered, exclusive of ~~attorneys~~ attorney fees and other court costs, does not exceed Six Thousand Dollars (\$6,000.00);

2. Actions to replevy personal property the value of which does not exceed Six Thousand Dollars (\$6,000.00). If the claims for possession of personal property and to recover money are pled in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought to be recovered, exclusive of ~~attorneys~~ attorney fees and other costs, exceeds Six Thousand Dollars (\$6,000.00); and

3. Actions in the nature of interpleader, as provided for in Section 2022 of this title, in which the value of the money which is the subject of such action does not exceed Six Thousand Dollars (\$6,000.00).

B. No action may be brought under the small claims procedure by any collection agency, collection agent, or assignee of a claim, except that an action may be brought against an insurer or third-party administrator by a health care provider as that term is

1 defined in Section 6552 of Title 36 of the Oklahoma Statutes, who is
2 an assignee of benefits available under an accident and health
3 insurance policy, trust, plan, or contract.

4 C. In those cases which are uncontested, the amount of
5 ~~attorneys~~ attorney fees allowed shall not exceed ten percent (10%)
6 of the judgment; however, this subsection shall not apply to
7 uncontested forcible entry and detainer cases as provided in Section
8 1148.14 of this title.

9 D. No action may be brought under the small claims procedure
10 for any alleged claim against any city, county or state agency, or
11 employee of a city, county or state agency, if the claim alleges
12 matters arising from incarceration, probation, parole or community
13 supervision.

14 E. No action by a plaintiff who is currently incarcerated in
15 any jail or prison in the state may be brought against any person or
16 entity under the small claims procedure.

17 SECTION 9. AMENDATORY 41 O.S. 2011, Section 111, is
18 amended to read as follows:

19 Section 111. A. Except as otherwise provided in the Oklahoma
20 Residential Landlord and Tenant Act, when the tenancy is
21 month-to-month or tenancy at will, the landlord or tenant may
22 terminate the tenancy provided the landlord or tenant gives a
23 written notice to the other at least thirty (30) calendar days
24 before the date upon which the termination is to become effective.

1 The thirty-day period to terminate shall begin to run from the date
2 notice to terminate is served as provided in subsection E of this
3 section.

4 B. Except as otherwise provided in the Oklahoma Residential
5 Landlord and Tenant Act, when the tenancy is less than
6 month-to-month, the landlord or tenant may terminate the tenancy
7 provided the landlord or tenant gives to the other a written notice
8 served as provided in subsection E of this section at least seven
9 (7) calendar days before the date upon which the termination is to
10 become effective.

11 C. Unless earlier terminated under the provisions of the
12 Oklahoma Residential Landlord and Tenant Act or unless otherwise
13 agreed upon, a tenancy for a definite term expires on the ending
14 date thereof without notice.

15 D. If the tenant remains in possession without the landlord's
16 consent after the expiration of the term of the rental agreement or
17 its termination under the Oklahoma Residential Landlord and Tenant
18 Act or a residential rental agreement, the landlord may immediately
19 bring an action for possession and damages. If the ~~tenant's~~
20 ~~holdover is willful and not in good faith~~ tenant remains in
21 possession of the premises after proper notice of termination has
22 been posted or delivered pursuant to Section 1148.5A of Title 12 of
23 the Oklahoma Statutes, the landlord ~~may~~ shall also recover, in
24 addition to amounts due under the rental agreement, statutory

1 ~~damages equal to an amount not more than~~ twice the ~~average monthly~~
2 ~~rental~~ daily rent amount, computed and prorated on a daily basis,
3 for each month or portion thereof that said tenant remains in
4 possession. If the landlord consents to the tenant's continued
5 occupancy, a month-to-month tenancy is thus created, unless the
6 parties otherwise agree.

7 E. The written notice, required by the Oklahoma Residential
8 Landlord and Tenant Act, to terminate any tenancy shall be served on
9 the tenant or landlord personally unless otherwise specified by law.
10 If the tenant cannot be located, service shall be made by delivering
11 the notice to any family member of such tenant over the age of
12 twelve (12) years residing with the tenant. If service cannot be
13 made on the tenant personally or on such family member, notice shall
14 be posted at a conspicuous place on the dwelling unit of the tenant.
15 ~~If the notice is posted, a copy of such notice shall be mailed to~~
16 ~~the tenant by certified mail.~~ If service cannot be made on the
17 landlord personally, the notice shall be mailed to the landlord by
18 certified mail. For the purpose of this subsection, the word
19 "landlord" shall mean any person authorized to receive service of
20 process and notice pursuant to Section 116 of this title.

21 SECTION 10. AMENDATORY 41 O.S. 2011, Section 115, is
22 amended to read as follows:

23 Section 115. A. Any damage or security deposit required by a
24 landlord of a tenant must be kept in an escrow account for the

1 tenant, which account shall be maintained in the State of Oklahoma
2 with a federally insured financial institution. Misappropriation of
3 the security deposit shall be unlawful and punishable by a term in a
4 county jail not to exceed six (6) months and by a fine in an amount
5 not to exceed twice the amount misappropriated from the escrow
6 account.

7 B. Upon termination of the tenancy, any security deposit held
8 by the landlord may be applied to the payment of accrued rent and
9 the amount of damages which the landlord has suffered by reason of
10 the tenant's noncompliance with ~~this act~~ the Oklahoma Residential
11 Landlord and Tenant Act and the rental agreement, all as itemized by
12 the landlord in a written statement delivered by mail to ~~be by~~
13 ~~return receipt requested and to be signed for by any person of~~
14 ~~statutory service age at such address or in person to the tenant if~~
15 ~~he can reasonably be found~~ the last-known address of the tenant. If
16 the landlord proposes to retain any portion of the security deposit
17 for rent, damages or other legally allowable charges under the
18 provisions of ~~this act~~ the Oklahoma Residential Landlord and Tenant
19 Act or the rental agreement, the landlord shall return the balance
20 of the security deposit without interest to the tenant within thirty
21 (30) days after the termination of tenancy, delivery of possession
22 and written demand by the tenant. If the tenant does not make such
23 written demand of such deposit within six (6) months after
24 termination of the tenancy, the deposit reverts to the landlord in

1 consideration of the costs and burden of maintaining the escrow
2 account, and the interest of the tenant in that deposit terminates
3 at that time.

4 C. Upon cessation of a landlord's interest in the dwelling unit
5 including, but not limited to, termination of interest by sale,
6 assignment, death, bankruptcy, appointment of receiver or otherwise,
7 the person in possession of the tenants' damage or security deposits
8 at his option or pursuant to court order shall, within a reasonable
9 time:

10 1. Transfer said deposits to the landlord's successor in
11 interest and notify the tenants in writing of such transfer and of
12 the transferee's name and address; or

13 2. Return the deposits to the tenants.

14 D. Upon receipt of the transferred deposits under paragraph 1
15 of subsection C of this section, the transferee, in relation to such
16 deposits, shall have all the rights and obligations of a landlord
17 holding such deposits under ~~this act~~ the Oklahoma Residential
18 Landlord and Tenant Act.

19 E. If a landlord or manager fails to comply with this section
20 or fails to return any prepaid rent required to be paid to a tenant
21 under ~~this act~~ the Oklahoma Residential Landlord and Tenant Act, the
22 tenant may recover the damage and security deposit and prepaid rent,
23 if any.

24

1 F. Except as otherwise provided by the rental agreement, a
2 tenant shall not apply or deduct any portion of the security deposit
3 from the last month's rent or use or apply such tenant's security
4 deposit at any time in lieu of payment of rent.

5 G. This section does not preclude the landlord or tenant from
6 recovering other damages to which ~~he~~ the landlord or tenant may be
7 entitled under ~~this act~~ the Oklahoma Residential Landlord and Tenant
8 Act.

9 SECTION 11. AMENDATORY 41 O.S. 2011, Section 121, is
10 amended to read as follows:

11 Section 121. A. Except as otherwise provided in ~~this act~~ the
12 Oklahoma Residential Landlord and Tenant Act, if there is a material
13 noncompliance by the landlord with the terms of the rental agreement
14 or a noncompliance with any of the provisions of Section ~~18~~ 118 of
15 this ~~act~~ title which noncompliance materially affects health or
16 safety, the tenant may deliver to the landlord a written notice
17 specifying the acts and omissions constituting the breach and that
18 the rental agreement will terminate upon a date not less than thirty
19 (30) days after receipt of the notice if the breach is not remedied
20 within fourteen (14) calendar days, and thereafter the rental
21 agreement shall so terminate as provided in the notice unless the
22 landlord adequately remedies the breach within the time specified.

23 B. Except as otherwise provided in ~~this act~~ the Oklahoma
24 Residential Landlord and Tenant Act, if there is a material

1 noncompliance by the landlord with any of the terms of the rental
2 agreement or any of the provisions of Section ~~18~~ 118 of this ~~act~~
3 title which noncompliance materially affects health and the breach
4 is remediable by repairs, the reasonable cost of which is less than
5 One Hundred Dollars (\$100.00), the tenant may notify the landlord in
6 writing of his intention to correct the condition at the landlord's
7 expense after the expiration of fourteen (14) calendar days. If the
8 landlord fails to comply within said fourteen (14) calendar days, or
9 as promptly as conditions require in the case of an emergency, the
10 tenant may thereafter cause the work to be done in a workmanlike
11 manner and, after submitting to the landlord an itemized statement,
12 deduct from ~~his~~ the tenant's rent the actual and reasonable cost or
13 the fair and reasonable value of the work, not exceeding the amount
14 specified in this subsection, in which event the rental agreement
15 shall not terminate by reason of that breach.

16 C. Except as otherwise provided in ~~this act~~ the Oklahoma
17 Residential Landlord and Tenant Act, if, contrary to the rental
18 agreement or Section ~~18~~ 118 of this ~~act~~ title, the landlord
19 willfully or negligently fails to supply heat, running water, hot
20 water, electric, gas or other essential service, the tenant may give
21 written notice to the landlord specifying the breach and thereafter
22 may:

23 1. Upon written notice, immediately terminate the rental
24 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.

11 D. Except as otherwise provided in ~~this act~~ the Oklahoma
12 Residential Landlord and Tenant Act, if there is a noncompliance by
13 the landlord with the terms of the rental agreement or Section ~~18~~
14 118 of this ~~act~~ title, which noncompliance renders the dwelling unit
15 uninhabitable or poses an imminent threat to the health and safety
16 of any occupant of the dwelling unit and which noncompliance is not
17 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~~ the tenant has given written notice to the landlord or if
22 the condition complained of was caused by the deliberate or
23 negligent act or omission of the tenant, a ~~member of his~~ family
24

1 member of the tenant, ~~his~~ a guest, an animal or pet or other person
2 or animal on the premises with ~~his~~ consent of the tenant.

3 F. In order to qualify and utilize the provisions of this
4 section, the tenant shall be in full compliance with all obligations
5 to the landlord under the terms and conditions of the rental
6 agreement, including but not limited to being current on financial
7 obligations, abiding by restrictions within the rental agreement and
8 not being subject to any notification to vacate.

9 SECTION 12. AMENDATORY 41 O.S. 2011, Section 122, is
10 amended to read as follows:

11 Section 122. A. If the dwelling unit or premises are damaged
12 or destroyed by fire or other casualty to an extent that enjoyment
13 of the dwelling unit is substantially impaired, unless the
14 impairment is caused by the deliberate or negligent act or omission
15 of the tenant, a ~~member of his family, his~~ member of the tenant, a
16 guest, an animal or pet or other person or animal on the premises
17 with ~~his~~ consent of the tenant, the tenant may:

18 1. Immediately vacate the premises and notify the landlord in
19 writing within one (1) week thereafter of ~~his~~ the tenant's intention
20 to terminate the rental agreement, in which case the rental
21 agreement terminates as of the date of vacating; or

22 2. If continued occupancy is possible, vacate any part of the
23 dwelling unit rendered unusable by the fire or casualty, in which
24

1 case the tenant's liability for rent is reduced in proportion to the
2 diminution in the fair rental value of the dwelling unit.

3 B. If the rental agreement is terminated under this section the
4 landlord shall return all deposits recoverable under Section ~~45~~ 115
5 of this ~~act~~ title and all prepaid and unearned rent. Accounting for
6 rent in the event of termination or apportionment shall be made as
7 of the date of the fire or other casualty.

8 SECTION 13. AMENDATORY 41 O.S. 2011, Section 130, is
9 amended to read as follows:

10 Section 130. A. If the tenant abandons or surrenders
11 possession of the dwelling unit or has been lawfully removed from
12 the premises through eviction proceedings and leaves household
13 goods, furnishings, fixtures, or any other personal property in the
14 dwelling unit, the landlord may take possession of the property, and
15 if, in the judgment of the landlord, the property has no
16 ascertainable or apparent value, the landlord may dispose of the
17 property without any duty of accounting or any liability to any
18 party. The landlord may dispose of perishable property in any
19 manner the landlord considers fit.

20 B. If the tenant abandons or surrenders possession of the
21 dwelling unit or has been lawfully removed from the premises through
22 eviction proceedings and leaves household goods, furnishings,
23 fixtures, or any other personal property in the dwelling unit, the
24 landlord may take possession of the property, and if, in the

1 judgment of the landlord the property has an ascertainable or
2 apparent value, the landlord shall provide written notice to the
3 tenant by ~~certified~~ mail to the last-known address that if the
4 property is not removed within the time specified in the notice, the
5 property will be deemed abandoned. Any property left with the
6 landlord for a period of thirty (30) days or longer shall be
7 conclusively determined to be abandoned and as such the landlord may
8 dispose of said property in any manner which he deems reasonable and
9 proper without liability to the tenant or any other interested
10 party.

11 C. The landlord shall store all personal property of the tenant
12 in a place of safekeeping and shall exercise reasonable care of the
13 property. The landlord shall not be responsible to the tenant for
14 any loss not caused by the landlord's deliberate or negligent act.
15 The landlord may elect to store the property in the dwelling unit
16 that was abandoned or surrendered by the tenant, in which event the
17 storage cost may not exceed the fair rental value of the premises.
18 If the tenant's property is removed to a commercial storage company,
19 the storage cost shall include the actual charge for the storage and
20 removal from the premises to the place of storage.

21 D. If the tenant removes the personal property within the time
22 limitations provided in this section, the landlord is entitled to
23 the cost of storage for the period during which the property
24 remained in the landlord's safekeeping plus all other costs that

1 accrued under the rental agreement, prior to allowing the tenant to
2 remove the items.

3 E. The landlord may not be held to respond in damages in an
4 action by a tenant claiming loss by reason of the landlord's
5 election to destroy, sell or otherwise dispose of the property in
6 compliance with the provisions of this section. If, however, the
7 landlord deliberately or negligently violated the provisions of this
8 section, the landlord shall be liable for actual damages.

9 F. The landlord is not responsible to store or maintain items
10 that are dangerous, require maintenance, or may spoil if the tenant
11 abandons or surrenders possession of the dwelling unit or has been
12 lawfully removed from the premises through eviction proceedings.
13 The landlord shall not be held liable for the disposition of any
14 item left in the premises under this subsection.

15 SECTION 14. AMENDATORY 41 O.S. 2011, Section 131, is
16 amended to read as follows:

17 Section 131. A. If rent is unpaid when due, the landlord may
18 bring an action for recovery of the rent at any time thereafter or
19 the landlord may wait until the expiration of the period allowed for
20 curing a default by the tenant, as prescribed in subsection B of
21 this section, before bringing such action.

22 B. A landlord may terminate a rental agreement for failure to
23 pay rent when due, if the tenant fails to pay the rent within five
24 (5) calendar days after written notice of landlord's demand for

1 payment. The notice may be given before or after the landlord files
2 any action authorized by subsection A of this section. Demand for
3 past due rent is deemed a demand for possession of the premises and
4 no further notice to quit possession need be given by the landlord
5 to the tenant for any purpose. Written notice of the demand for
6 payment from the landlord may be delivered to the tenant personally
7 or by leaving a copy of the demand with a person over the age of
8 fifteen (15) at the place of business or residence of the tenant or
9 by affixing a copy of the notice in a conspicuous place on the
10 residence of the tenant. Termination of the rental agreement for
11 nonpayment of rent shall not release tenants from obligation to pay
12 future rent under the rental agreement subject to the obligation to
13 mitigate of the landlord.

14 SECTION 15. AMENDATORY 41 O.S. 2011, Section 132, is
15 amended to read as follows:

16 Section 132. A. Except as otherwise provided in the Oklahoma
17 Residential Landlord and Tenant Act, if there is a noncompliance by
18 the tenant with the rental agreement or with Section 127 of this
19 title which noncompliance can be remedied by repair, replacement of
20 a damaged item, or cleaning and the tenant fails to comply as
21 promptly as conditions require in the case of an emergency or within
22 ten (10) calendar days after written notice served as provided in
23 subsection E of Section 111 of this title by the landlord specifying
24 the breach and requiring that the tenant remedy it within that

1 period of time, the landlord may enter the dwelling unit and cause
2 the work to be done in a workmanlike manner and thereafter submit
3 the itemized bill for the actual and reasonable cost or the fair and
4 reasonable value thereof as rent on the next date rent is due, or if
5 the rental agreement has terminated, for immediate payment. If the
6 landlord remedies the breach as provided in this subsection, the
7 landlord may not terminate the rental agreement by reason of the
8 tenant's failure to remedy the breach.

9 B. Except as otherwise provided in the Oklahoma Residential
10 Landlord and Tenant Act, if there is a material noncompliance by the
11 tenant with the rental agreement or with any provision of Section
12 127 of this title, the landlord may deliver to the tenant a written
13 notice served as provided in subsection E of Section 111 of this
14 title specifying the acts and omissions constituting the
15 noncompliance and that the rental agreement will terminate upon a
16 date not less than ~~fifteen (15)~~ ten (10) calendar days after receipt
17 of the notice unless remedied within ten (10) calendar days. If the
18 breach is not remedied within ten (10) calendar days from receipt of
19 the notice, the rental agreement shall terminate as provided in the
20 notice and the landlord shall be entitled to actual damages and
21 statutory damages as provided by subsection D of Section 111 of this
22 title. If within the ten (10) calendar days the tenant adequately
23 remedies the breach complained of, or if the landlord remedies the
24 breach according to the provisions of subsection A of this section,

1 the rental agreement shall not terminate by reason of the breach.
2 Any subsequent breach of the lease or noncompliance under this
3 section shall be grounds, upon written notice to the tenant, for
4 immediate termination of the lease.

5 C. Notwithstanding other provisions of this section, if there
6 is a noncompliance by the tenant with the rental agreement or with
7 any of the provisions of Section 127 of this title, which
8 noncompliance causes or threatens to cause imminent and irreparable
9 harm to the premises or to any person ~~and which noncompliance is not~~
10 ~~remedied by the tenant as promptly as conditions require after the~~
11 ~~tenant has notice of it~~, the landlord may terminate the rental
12 agreement after giving a five-calendar-day notice to vacate by
13 immediately filing a forcible entry and detainer action. In this
14 case, the landlord shall be entitled to actual damages and statutory
15 damages as provided by subsection D of Section 111 of this title.

16 D. Any criminal activity that threatens the health, safety or
17 right of peaceful enjoyment of the premises by other tenants
18 committed by a tenant or by any member of the tenant's household or
19 any guest or other person under the tenant's control or is a danger
20 to the premises and any drug-related criminal activity on or near
21 the premises by the tenant or by any member of the tenant's
22 household or any guest or other person under the tenant's control or
23 any other criminal act prohibited by the landlord shall be grounds
24 for immediate termination of the lease. The landlord shall serve a

1 five-calendar-day notice to vacate and may thereafter immediately
2 file a forcible entry and detainer action. In this case, the
3 landlord shall be entitled to actual damages and statutory damages
4 as provided by subsection D of Section 111 of this title.

5 SECTION 16. AMENDATORY 41 O.S. 2011, Section 133, is
6 amended to read as follows:

7 Section 133. A landlord shall have a lien upon that part of the
8 property ~~belonging to the tenant~~ within the premises which has a
9 reasonable relationship as nearly as practicable to the amount of
10 the debt owed, which may be in a rental unit used by ~~him~~ the tenant
11 at the time notice is given, for the proper charges owed by the
12 tenant, and for the cost of enforcing the lien, securing the
13 property and storing the property, with the right to possession of
14 the property until the debt obligation is paid to the landlord.
15 Provided, however, that such lien shall be secondary to the claim of
16 any prior bona fide holder of a chattel mortgage or to the rights of
17 a conditional seller of such property, other than the tenant.

18 For purposes of this section, property shall mean any baggage or
19 other property belonging to the tenant which may be in the rental
20 unit used by the tenant but which shall not include all tools,
21 musical instruments or books used by the tenant in any trade or
22 profession, all family portraits and pictures, ~~all wearing apparel,~~
23 any type of prosthetic or orthopedic appliance, hearing aid,
24 glasses, false teeth, glass eyes, bedding, contraceptive devices,

1 soap, tissues, washing machines, vaporizers, refrigerators, food,
2 cooking and eating utensils, all other appliances personally used by
3 the tenant for the protection of ~~his~~ the health of the tenant, or
4 any baby bed or any other items used for the personal care of
5 babies.

6 SECTION 17. REPEALER 12 O.S. 2011, Sections 1148.15 and
7 1148.16, are hereby repealed.

8 SECTION 18. This act shall become effective November 1, 2012.

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