

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3409

By: Bush, **Pae**, and **Provenzano**

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to landlord and tenant; providing
10 that a landlord may not retaliate against a tenant
11 for certain actions; providing that a landlord is not
12 liable for retaliation if the landlord proves that
13 the action was not made for purposes of retaliation,
14 unless the action violates a prior court order;
15 providing certain circumstances that are not
16 considered retaliatory; proving for a rebuttable
17 presumption of retaliation; providing exceptions;
18 providing for the rebuttal of a presumption of
19 retaliation; providing remedies for retaliation;
20 providing how to prove a bad faith claim of
21 retaliation; providing landlords a remedy for a claim
22 retaliation made in bad faith; providing that in an
23 eviction suit, retaliation rent deduction lawfully
24 made by the tenant is a defense for nonpayment of the
 rent; amending 41 O.S. 2021, Section 121, which
 relates to landlord's breach of a rental agreement;
 modifying the amount a tenant may be reimbursed by
 the landlord for making repairs; providing for
 codification; and proving 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 202 of Title 41, unless there is
3 created a duplication in numbering, reads as follows:

4 A. A landlord may not retaliate against a tenant by taking an
5 action described by subsection B of this section because the tenant:

6 1. In good faith exercises or attempts to exercise against a
7 landlord a right or remedy granted to the tenant by lease, municipal
8 ordinance, or federal or state statute;

9 2. Gives a landlord a notice to repair or exercise a remedy
10 under this act;

11 3. Complains to a governmental entity responsible for enforcing
12 building or housing codes, a public utility, or a civic or nonprofit
13 agency, and the tenant:

14 a. claims a building or housing code violation or utility
15 problem, and

16 b. believes in good faith that the complaint is valid and
17 that the violation or problem occurred; or

18 4. Establishes, attempts to establish, or participates in a
19 tenant organization.

20 B. A landlord may not, within six (6) months after the date of
21 the tenant's action under subsection A of this section, retaliate
22 against the tenant by:

23 1. Filing an eviction proceeding, except for the grounds stated
24 in Section 2 of this act;

1 2. Depriving the tenant of the use of the premises, except for
2 reasons authorized by law;

3 3. Decreasing services to the tenant;

4 4. Increasing the tenant's rent or terminating the tenant's
5 lease; or

6 5. Engaging, in bad faith, in a course of conduct that
7 materially interferes with the tenant's rights under the tenant's
8 lease.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 203 of Title 41, unless there is
11 created a duplication in numbering, reads as follows:

12 A. The landlord is not liable for retaliation under this
13 section if the landlord proves that the action was not made for
14 purposes of retaliation, nor is the landlord liable, unless the
15 action violates a prior court order, for:

16 1. Increasing rent under an escalation clause in a written
17 lease for utilities, taxes, or insurance; or

18 2. Increasing rent or reducing services as part of a pattern of
19 rent increases or service reductions for an entire multidwelling
20 project.

21 B. An eviction or lease termination based on the following
22 circumstances, which are valid grounds for eviction or lease
23 termination, in any event, does not constitute retaliation if:

1 1. The tenant is delinquent in rent when the landlord gives
2 notice to vacate or files an eviction action;

3 2. The tenant, a member of the tenant's family, a guest, an
4 invitee of the tenant, or an animal under control of the tenant
5 intentionally damages property on the premises or by word or conduct
6 threatens the personal safety of the landlord, the landlord's
7 employees, or another tenant;

8 3. The tenant has materially breached the lease, other than by
9 holding over, by an action such as violating written lease
10 provisions prohibiting serious misconduct or criminal acts, except
11 as provided by this section;

12 4. The tenant holds over after giving notice of termination or
13 intent to vacate;

14 5. The tenant holds over after the landlord gives notice of
15 termination at the end of the rental term, and the tenant does not
16 take action under Section 1 of this act until after the landlord
17 gives notice of termination; or

18 6. The tenant holds over, and the landlord's notice of
19 termination is motivated by a good faith belief that the tenant, a
20 member of the tenant's family, or a guest or invitee of the tenant
21 or an animal under the control of the tenant might:

22 a. adversely affect the quiet enjoyment by other tenants
23 or neighbors,
24

1 b. materially affect the health or safety of the
2 landlord, other tenants, or neighbors, or

3 c. damage the property of the landlord, other tenants, or
4 neighbors.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 204 of Title 41, unless there is
7 created a duplication in numbering, reads as follows:

8 A. Except as otherwise provided in subsection B of this
9 section, evidence that a tenant engaged in conduct described in
10 subsection A of Section 1 of this act, within six (6) months before
11 the landlord's alleged retaliatory conduct creates a rebuttable
12 presumption that the purpose of the landlord's conduct was
13 retaliation.

14 B. A presumption does not arise under subsection A of this
15 section, if the tenant engaged in conduct described subsection A of
16 Section 1 of this act, after the landlord gave the tenant notice of
17 the landlord's intent to engage in conduct described in subsection B
18 of Section 1 of this act.

19 C. A landlord may rebut a presumption under subsection A of
20 this section by a preponderance of evidence showing that the
21 landlord had sufficient justification for engaging in the conduct
22 that created the presumption and would have engaged in the conduct
23 in the same manner and at the same time whether or not the tenant
24

1 engaged in conduct described in subsection A of Section 1 of this
2 act.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 205 of Title 41, unless there is
5 created a duplication in numbering, reads as follows:

6 In addition to other remedies provided by law, if a landlord
7 retaliates against a tenant under this act, the tenant may recover
8 from the landlord a civil penalty of one month's rent plus Five
9 Hundred Dollars (\$500.00), actual damages, court costs, and
10 reasonable attorney fees in an action for recovery of property
11 damages, moving costs, actual expenses, civil penalties, or
12 declaratory or injunctive relief, less any delinquent rents or other
13 sums for which the tenant is liable to the landlord. If the
14 tenant's rent payment to the landlord is subsidized in whole or in
15 part by a governmental entity, the civil penalty granted under this
16 section shall reflect the fair market rent of the dwelling plus Five
17 Hundred Dollars (\$500.00).

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 206 of Title 41, unless there is
20 created a duplication in numbering, reads as follows:

21 A. If a tenant files or prosecutes a suit for retaliatory
22 action based on a complaint asserted under paragraph 3 of subsection
23 A of Section 1 of this act, and the government building or housing
24 inspector or utility company representative visits the premises and

1 determines in writing that a violation of a building or housing code
2 does not exist or that a utility problem does not exist, there is a
3 rebuttable presumption that the tenant acted in bad faith.

4 B. If a tenant files or prosecutes a suit under this act in bad
5 faith, the landlord may recover possession of the dwelling unit and
6 may recover from the tenant a civil penalty of one month's rent plus
7 Five Hundred Dollars (\$500.00), court costs, and reasonable attorney
8 fees. If the tenant's rent payment to the landlord is subsidized in
9 whole or in part by a governmental entity, the civil penalty granted
10 under this section shall reflect the fair market rent of the
11 dwelling plus Five Hundred Dollars (\$500.00).

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 207 of Title 41, unless there is
14 created a duplication in numbering, reads as follows:

15 In an eviction suit, retaliation by the landlord under Section 1
16 of this act is a defense, and a rent deduction lawfully made by the
17 tenant under Section 2 of this act is a defense for nonpayment of
18 the rent to the extent allowed by Section 2 of this act. Other
19 judicial actions under this act may not be joined with an eviction
20 suit or asserted as a defense or crossclaim in an eviction suit.

21 SECTION 7. AMENDATORY 41 O.S. 2021, Section 121, is
22 amended to read as follows:

23 Section 121. A. Except as otherwise provided in this act, if
24 there is a material noncompliance by the landlord with the terms of

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

10 B. Except as otherwise provided in this act, if there is a
11 material noncompliance by the landlord with any of the terms of the
12 rental agreement or any of the provisions of Section ~~18~~ 118 of this
13 ~~act~~ title which noncompliance materially affects health and the
14 breach is remediable by repairs, the reasonable cost of which is
15 ~~less than One Hundred Dollars (\$100.00)~~ equal to or less than one
16 month's rent, the tenant may notify the landlord in writing of his
17 intention to correct the condition at the landlord's expense after
18 the expiration of fourteen (14) days. If the landlord fails to
19 comply within said fourteen (14) days, or as promptly as conditions
20 require in the case of an emergency, the tenant may thereafter cause
21 the work to be done in a workmanlike manner and, after submitting to
22 the landlord an itemized statement, deduct from his or her rent the
23 actual and reasonable cost or the fair and reasonable value of the
24 work, not exceeding the amount specified in this subsection, in

1 which event the rental agreement shall not terminate by reason of
2 that breach.

3 C. Except as otherwise provided in this act, if, contrary to
4 the rental agreement or Section ~~18~~ 118 of this ~~act~~ title, the
5 landlord willfully or negligently fails to supply heat, running
6 water, hot water, electric, gas or other essential service, the
7 tenant may give written notice to the landlord specifying the breach
8 and thereafter may:

9 1. Upon written notice, immediately terminate the rental
10 agreement; or

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

15 3. Recover damages based upon the diminution of the fair rental
16 value of the dwelling unit; or

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

21 D. Except as otherwise provided in this act, if there is a
22 noncompliance by the landlord with the terms of the rental agreement
23 or Section ~~18~~ 118 of this ~~act~~ title, which noncompliance renders the
24 dwelling unit uninhabitable or poses an imminent threat to the

1 health and safety of any occupant of the dwelling unit and which
2 noncompliance is not remedied as promptly as conditions require, the
3 tenant may immediately terminate the rental agreement upon written
4 notice to the landlord which notice specifies the noncompliance.

5 E. All rights of the tenant under this section do not arise
6 until he or she has given written notice to the landlord or if the
7 condition complained of was caused by the deliberate or negligent
8 act or omission of the tenant, a member of his or her family, his or
9 her animal or pet or other person or animal on the premises with his
10 or her consent.

11 SECTION 8. This act shall become effective November 1, 2022.
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13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
14 03/02/2022 - DO PASS, As Amended and Coauthored.
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