

Overview of HB08-1356

§ 38-12-501. Legislative declaration – matter of statewide concern – purposes and policies.

- Makes unenforceable any conflicting local government ordinance
- Describes purposes including simplifying, clarifying, modernizing and revising residential landlord – tenant law; encouraging landlords and tenants to maintain properties; and make uniform the law throughout the State.

§ 38-12-502. Definitions

§ 38-12-503. Warranty of Habitability.

- In every rental agreement, landlord warrants that premises are fit for human habitation
- Defines breach of warranty of habitability to require an uninhabitable premises in a condition that is materially dangerous or hazardous to a tenant's life, health or safety, that the landlord has failed to cure within a reasonable time after having received written notice of the condition by the tenant
- No breach can be the result of misconduct of the tenant, member of household, guest, etc.
- Gives landlord right to move tenant to a comparable unit in response to tenant's written notice of condition
- Bars the waiver or modification of obligations under the Act in the parties' lease
- Clarifies that landlord can still terminate lease for casualty or catastrophe, for nonpayment of rent, breach of lease or tenant's violation of requirements to maintain premises as described below

§ 38-12-504. Tenant's maintenance of premises.

- Requires tenant to keep unit in clean, safe and sanitary condition
- Requires that tenant and guests conduct themselves so as not to disturb other tenants quiet enjoyment
- Mandates that tenant promptly notify landlord of conditions in need of repair
- Prohibits tenant from destroying or damaging premises

§ 38-12-505. Uninhabitable residential premises.

- Provides list of requirements for housing which if not properly maintained could result in a condition that breaches the warranty of habitability
- Clarifies that no condition in the common areas can render a premises uninhabitable unless it materially and substantially limits the tenant's use of her unit
- States that a residential premises should be in a habitable condition before it is rented

§ 38-12-506. Opt-out.

- Allows landlord of a unit in a mobile home park or owner of between 1-4 units on a single plot of land to require the tenant be responsible for keeping common areas clean, extermination and providing for their own exterior trash

- Allows landlord of a unit in a mobile home park or owner of between 1-4 units on a single plot of land to require the tenant be responsible for other repairs, maintenance tasks, alterations and remodeling provided there is an agreement entered into in good faith, in separate writing, supported by adequate consideration, does not adversely affect other tenants and so long as premises are habitable when rented to tenant
- Allows landlord renting a single family home to rent it in an uninhabitable condition with the agreement that the tenant will make it habitable provided there is an agreement entered into in good faith, in separate writing, supported by adequate consideration, and the tenant has the skills necessary to make the premises habitable

§ 38-12-507. Breach of warranty of habitability – tenant’s remedies.

- Allows tenant to terminate lease after giving second written notice and opportunity to correct
- Allows tenant to seek an order to correct condition by filing action in District Court after notifying local government, but gives landlord ability to avoid order by paying tenant damages
- Allows tenant to use breach of warranty of habitability as a defense to an eviction action for nonpayment of rent, provided tenant pay rent due less any expenses already incurred as result of the breach of the warranty of habitability
- Allows tenant to sue for damages as a result of a breach
- Allows tenant to obtain attorneys fees for successful claim of breach if lease has provision for either party to obtain attorney fees

§ 38-12-508. Landlord’s defenses to a claim of breach of warranty of habitability – limitations on claiming breach.

- Defense to claim of breach if tenant prevented landlord from fixing condition
- Limits who can raise a claim of the breach of the warranty of habitability
- Limits breach as a defense to an eviction for nonpayment of rent only
- If breach is fault of third party and landlord cannot remedy breach, limits tenants remedy to terminating tenancy

§ 38-12-509. Prohibition on retaliation.

- States that a landlord shall not retaliate against a tenant by increasing rent, decreasing services or seeking to evict a tenant in response to the tenant making a good faith complaint to the landlord or government alleging a breach of the warranty
- Requires tenant to prove breach (dangerous or hazardous condition, written notice and landlord’s failure to repair in a timely manner) in order to have a claim
- Grants rebuttable presumption in favor of the landlord that actions were not retaliatory
- Requires tenant to rebut presumption by providing other evidence in addition to the timing of the landlord’s decision

§ 38-12-510. Unlawful removal or exclusion.

- States it is unlawful for landlord to remove a tenant without resorting to court process or to willfully terminate utilities, remove doors, windows or locks for the purpose of getting the tenant to vacate

§ 38-12-511. Application.

- Excludes hospitals, nursing homes, colleges, religious housing, occupancy under a contract of sale of a home, fraternal or social organizations, occupancy in a hotel or motel lasting less than 30 days, employee housing, occupancy by the owner of a condo or coop, occupancy incident to recreational purposes in remote areas, agricultural housing, and the relationship between a mobile home owner and the mobile home park
- Clarifies that these exclusions do not prevent occupants of these types of housing from seeking relief elsewhere in the law

§ 13-40-111. Issuance and return of summons.

- Amends requirements for a summons in an eviction action to alert the tenant that if they are planning on raising the breach of the warranty of habitability as a defense to an action for nonpayment of rent, they will have to deposit rent less already incurred expenses into the court registry on the return date of the summons

§ 13-40-123. Damages.

- a) Amends attorney fee provision of eviction action to indicate that the prevailing party in an eviction action is only entitled to attorney fees if the parties' lease has a provision in it for either party to obtain attorney fees

Section 4. Effective date – applicability.

- Act applies to leases entered into, extended or renewed on or after September 1, 2008.