

# 2011 Amendments to the Alabama Residential Landlord Tenant Act

Thank you to Chuck Robertson, of Regal Realty in Birmingham, for asking me to write on the following subject.

State Senator Marsh, and State Representative Jones, sponsored legislation to amend the Alabama Residential Landlord Tenant Act (ARLTA.) The law passed the legislature, and was signed by Governor Bentley on June 9, 2011.

I'll explain each of the changes, below. If you want to skip ahead to a particular topic, click below. I encourage you to read all topics, though. You might be surprised about some things, especially the section on Time Limits.

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## **Time Limits**

There are many time limits in the landlord tenant law for doing certain things.

You might be surprised to learn there are different ways to count time in Alabama. One is in the Alabama Rules of Civil Procedure (ARCP). Many lawyers think those rules about counting apply just when you are in court, but that's wrong. The ARCP says its counting rules apply to court matters AND to any other Alabama statute or law.

The other method of counting time is in Alabama Code 1-1-4. Nobody is real sure about how you resolve inconsistencies between ARCP and Alabama Code 1-1-4.

Now there is a THIRD way to count time, and that is the rule in the Alabama Residential Landlord Tenant Act (ARLTA.) Here is a summary of the differences. For anything under ARLTA, you must use the counting method in ARLTA, and not the other methods. The problem is, ARLTA doesn't cover all the bases, so sometimes you have to refer to one of the other laws.

This is REALLY, REALLY, important, because if you miss a deadline, you might be dead in the water and not able to exercise your rights. Or, if you do something more quickly than you are allowed to do it, the

other side could sue you and collect big money in damages. I know this stuff is not sexy, but you need to know how to count time under the law.

Here are the different ways in Alabama. For purposes of the ARLTA, you use the methods in the third column. I'm showing you the other methods in case you get in an argument with someone about this stuff. You can say, "NO, that's the rule under ARCP 6(a), NOT the rule under the Landlord Tenant Act." This is important, because even lawyers make mistakes sometimes. (Surprise!—you always knew it, didn't you? You were just waiting for someone to admit it.)

ARCP 6(a)	Alabama Code 1-1-4	Ala Res. Landlord Tenant Act
Day "One" is day after an event. For example, if the default happened today, then tomorrow is Day One for counting purposes.	Day "One" is day after an event	Probably same; doesn't say
If a time period is less than 7 days, don't count weekends and legal holidays. In other words, if you have five days to do something, and Day One is Friday, then Day Two is Monday.	All time periods count the same; no special rule for time periods less than 7 days	The Alabama Supreme Court has held in the past that you use ARCP 6(a) rule for time periods of less than 7 days unless a statute specifically provides a different counting method. The new amendment to ARLTA says, " <i>day</i> " means calendar day notwithstanding Rule 6 of the Alabama Rules of Civil Procedure. I would interpret this to mean all time periods count the same and there is no special rule for time periods less than 7 days, because ARLTA seems to specifically <b>REJECT</b> Rule 6(a)

ARCP 6(a)	Alabama Code 1-1-4	Ala Res. Landlord Tenant Act
<p>If last day is a Saturday, Sunday, or legal holiday, then the deadline is the first business day afterwards. Legal holidays are listed, and then there is a catch-all of “or as prescribed in 1-1-8.” (Those holidays are listed in the 2<sup>nd</sup> column, the next row down)</p>	<p>If the last day is a Sunday or a legal holiday, then the deadline is the first business day afterwards. Note that under 1-1-4, Saturdays are treated the same as Tuesdays or Fridays. Under 1-1-4, if your deadline runs out on a Saturday, then Saturday is the day. You don’t get until Monday.</p>	<p>If the last day is a Saturday, Sunday, or official holiday, then the deadline is the next day afterwards on which the courts are open. (Strange wording. You have to wonder—what if the last day is Saturday, December 30<sup>th</sup>. You don’t count Saturday or Sunday, you don’t count Monday because it’s New Years Day and a legal holiday, and then what if the courts in the county where the real estate is located are closed for four days because of snow? Is the deadline extended? I don’t know. I just like to play with these kinds of questions.</p>
<p>These are the allowed holidays, listed in ARCP 6(a), so if the last day is on a holiday, you have until the next day that is not a weekend or holiday:</p> <p>New Year’s Day  Martin Luther King Jr Birthday  President’s Day  Memorial Day  Independence Day  Labor Day  Columbus Day  Veteran’s Day  Thanksgiving Day  Christmas Day</p> <p>+And any other day appointed as a holiday by President or Congress</p> <p>+Any day that is a holiday in Alabama Code 1-1-8 (which is the list in the 2<sup>nd</sup> column)</p>	<p>These are the allowed holidays under Alabama Code 1-1-8, so if the last day is on a holiday, you have until the next day that is not a weekend or holiday:</p> <p>New Year’s Day  Martin Luther King Jr Birthday  Robert E. Lee’s Birthday  George Washington’s Birthday  Thomas Jefferson’s Birthday  Mardis Gras (Mobile and Baldwin Counties only)  Confederate Memorial Day  National Memorial Day  Jefferson Davis’ Birthday  Fourth of July  Labor Day  Columbus Day  Fraternal Day  Veteran’s Day  American Indian Heritage Day  Thanksgiving (Thursday and Friday, if so designated by the Governor)  Christmas Day</p>	<p>The Landlord Tenant Law makes reference to “official holidays.” I assume that would mean all the holidays listed to the left, as described in Alabama Code 1-1-8.</p>

### **Consequences of Illegal Provisions in Rental Agreements**

Certain provisions are not allowed in rental agreements and are unenforceable. Under former law, if the landlord “deliberately uses” a rental agreement with those clauses, a tenant could sue and recover one month’s rent plus legal fees. The new law says the landlord is liable only if he or she tries to enforce the illegal provisions.

### **Tenant Consent for Entry to Make Requested Repairs**

The existing law required a landlord to give two days’ notice before entering the tenant’s premises, unless the entry was required because of an emergency or certain other situations described in §35-9A-303 of the Alabama Code. Some parts of ARLTA seem to imply the tenant’s consent must be obtained before entry. Other parts just talk about notice. I’m not sure how the courts are going to resolve that issue. The new amendment does clarify what happens when a tenant requests repairs, though. Now, if the tenant requests repairs, maintenance or improvements, then they are considered to have given consent for the landlord to enter and do the work. That’s just common sense, and I’m glad this change was made.

### **Attorney Fees Allowed Against Landlord and Tenant**

Prior law said that if a tenant could prove that a landlord were guilty of bad faith in violating a rental agreement, then the tenant could recover attorneys fees. If the landlord could prove that a tenant’s default was “willful,” then the landlord could recover attorneys fees. Both of those things are hard to prove, and “willful” is just too vague a standard.

Some courts held that failing to pay rent was always “willful.” Other courts held that if a tenant didn’t have the money, then not paying the rent was not “willful,” it was a simple fact of life that couldn’t be helped. In those counties, the landlord would have to prove the tenant had the money but spent it on liquor and wild women, I guess.

The amendment changes the law so it is more like most contracts. Most contracts say that if one side sues the other and loses, the loser has to pay the winner’s legal fees. Such clauses used to be in leases, but the ARLTA made them illegal and unenforceable. It caused a lot of very unfair results. Now, the statute restores the right to legal fees, but you still aren’t allowed to write it into your lease agreements. Parties have the right to legal fees because of the statute, NOT because of the lease itself.

### **Consequences of Fraud in Rental Agreement or Application**

If a tenant makes “an intentional misrepresentation of a material fact in a rental agreement or application” then the landlord can terminate the lease on 14 days notice. The tenant cannot cure or remedy that defect. The non-cure part of the law just makes official what everyone knows as a matter of common sense: Once you lie, there is no way to “un-lie.” As the saying goes, “you can’t un-ring that bell.”

Civil rights advocates say this change is the bootstrap landlords will use to evict undocumented aliens when it becomes convenient to do so. On the other hand, Alabama's new immigration law says it is illegal for a landlord to rent to an undocumented alien. If the landlord can be held liable for having such tenants, then there has to be a mechanism to end the lease before the landlord faces criminal charges.

Other consumer protection lawyers say the change is just too wide open and capable of individual interpretation and manipulation. What if a tenant prospect says they are a non-smoker, but that's not true? Suppose they never smoke inside the rental, always smoke outside, and always properly dispose of debris. Can their lease be terminated for a material misrepresentation? We don't know. Suppose a landlord had a deathly fear of someone throwing a cigarette butt on the ground and starting a fire. Would the misrepresentation be material to that landlord? Probably. I see the need for this change in the law, but I also see a lot of court cases arguing about it, too.

### **Tenant Not Entitled to Cure or Remedy Certain Defaults**

The new law makes certain defaults non-curable unless the landlord consents. *[Landlords beware: Make sure your lease agreements say that anything alleged to be a consent must be in writing. Otherwise, you'll find tenants claiming you "consented" to ignore a default or allow the tenant to cure, under a wide variety of circumstances you never intended.]* For the following defaults, the law allows the lease to be terminated on 7 days notice (not the 14-days required when a landlord discovers that a tenant intentionally lied in the agreement or the application.) Those defaults include:

Possession or use of illegal drugs in the dwelling unit or common areas

Discharge of a firearm on the premises of the rental property, except in cases of self defense, defense of a third party, or as permissible in [Section 13A-3-23](#) (There is a pretty interesting variety of circumstances under which you are allowed to use force or even kill another person. Click the link to read the statute.)

Criminal assault of a tenant or guest on the premises of the rental property, except in cases of self defense, defense of a third party, or as permissible in Section 13A-3-23.

### **Landlord Obligations in Event of Abandonment of Premises**

The new law changes the landlord's obligations in the case of tenant abandonment.

Formerly, "If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord had notice of the abandonment." That clause has been stricken entirely.

It served only as a fertile ground for litigation over whether, or when, the landlord had notice of an abandonment. If the tenant were gone for six months, was she in Iraq? Was she living with her boyfriend? Had she abandoned the premises? Who knows? I lived in Houston for about six months after my husband, and all our household goods, had moved to Alabama. I had a pay check in Houston and needed to stay there until I could find a job in Alabama. During that six months, I had an efficiency

apartment with a cot, a radio, some books and a few clothes. I flew to Birmingham every weekend (back when a Southwest Airlines round trip ticket was \$69!) I spent 12 and 15 hours a day at the office. Any landlord entering my apartment to spray for bugs would think I'd abandoned the place, but he would be wrong. Caution would dictate assuming I had not abandoned. But then, what if I HAD abandoned? When did the landlord have notice? You see the problem. I'm glad the abandonment clause in ARLTA has been changed to remove the bad consequences of such uncertainty.

### **Effective Date of New Law**

The law takes effect on August 1, 2011.

### **The Tenants' View of Changes to Law**

If you want to read a well-reasoned article about what some consider BAD about the amendments, click [HERE](#). I confess I have a landlord sort of mentality, so some of the arguments against the law did not occur to me. They make sense, though, and I agree that the amendments erode tenant's rights and make tenants more vulnerable to unscrupulous landlords.