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House committee defeats repeal of criminal eviction statute

BY **Max Brantley** ON **April 5, 2021** 11:01 am

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TESTIFYING: Rep. Nicole Clowney (left) and Lynn Foster.

Rep. Nicole Clowney (D-Fayetteville) failed Monday in her attempt to get approval for HB 1798 to end Arkansas's status as the only state in the country to make a crime of failure to pay rent.

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Clowney emphasized that the bill wouldn't affect the civil eviction process, which allows the removal of non-paying renters. Landlords spoke against the bill, supported by landlord/legislators.

The bill failed on a roll call vote. I couldn't make it all the votes, but 11 votes were needed for passage. I heard at least 8 for and 7 against, with several members not responding to the roll call. The chair, Rep. Mark Lowery, who didn't vote, would have been a no vote.

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UPDATE: The roll call:

For: Reps. Gazaway (landlord), Clowney, Hodges (landlord), Murdock, Fielding, K. Ferguson, Allen, Richardson

Against: Reps. Lundstrom (landlord), Boyd, Brown, Penzo (realtor), Evans, Ray, Maddox

Under the failure to vacate law, being one day late for rent payment is a ground for criminal eviction and further charges if a tenant fails to appear in court. Payment of past-due rent doesn't halt the process.

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"This is causing real, unjust harm and bringing us really negative national attention," Clowney said. She said it's time to do as every other state does and depend on civil evictions.

In some counties, judges have held the criminal law unconstitutional and refuse to enforce it. There's been no Arkansas Supreme Court ruling on the issue.

Lynn Foster, a retired law professor who's long worked on the issue, said she believed only about 20 percent of the state's district courts still enforce the law, with about 350 cases in the last year, mostly in Garland and Miller counties. She said criminal eviction seemed to be the "procedure of choice" in those counties.

She spoke of the shame of tenants handcuffed and led to a patrol car in front of children for failing to pay rent. The landlord becomes a victim. He or she does not need an attorney and need not pay court costs or fees. In no other type of civil dispute is a business essentially privileged to have taxpayers cover their legal costs on what is essentially a civil complaint, Foster said.



Foster said tenants v

Foster disputed the

Avoid crowds

Avoid crowds, wear a mask, keep six feet apart, and get vaccinated. All of it

Rep. David Ray (R-

Rep. Robin Lundstru

Rep. Robin Lundstrum (R-Springdale), a landlord, said she'd evicted someone who'd done \$3,000 damages, which she viewed as stealing. She wondered why she couldn't prosecute for that. The law in all other states views that as a breach of contract and the landlord can sue for unpaid rent and damages, Foster said. Lundstrum said she didn't see why the law change was needed. If a mortgage payment is late, it isn't viewed as theft, Foster noted.

Rep. Clint Penzo (R-Springdale), a realtor, made the point that people couldn't be jailed for failure to vacate, only for failure to appear in court. But Clowney said this overlooks the jailing only follows failure to be unable to pay rent. "That population may not understand all the ramifications of failure to appear."

Rep. Mark Lowery (R-Maumelle), chair of the committee, doubted a charge could arise from being one day late. It is permissible, Clowney said, though followed by a 10-day notice.

Rep. John Maddox (R-Mena), a lawyer, said in his experience that the law was an effective way to get people out when they found themselves facing a court hearing within 30 days. Foster said the cases she'd read generally showed about a seven-day lag. And she said no-contact orders complicate tenants' ability to move out.

Rep. Jimmy Gazaway (R-Paragould), an advocate of improvement to landlord-tenant law, asked for someone to explain the use of the “coercive power of criminal process to essentially evict someone on a civil debt or breach of contract when we typically allow these to be taken care of almost exclusively through civil process.” Foster explained how being late in rent payment can grow into crimes for failure to vacate, failure to appear in court and failure to pay fines assessed. None of this can happen in civil court.

Realtors and landlords have been lobbying against the bill, but Clowney and Foster said neither group had talked to them.

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William Jones, president of the **Arkansas Landlords Association**, opposed the bill. He said it is an “effective tool.” It saves him money because he doesn’t have to use an attorney. **Rep. Fred Allen** (D-Little Rock) said it bothered him that Jones had never reached out to sponsors with a compromise. Why? Jones said it didn’t seem like negotiation was in the cards.

Rep. Karilyn Brown said an unfair picture had been painted by landlords. Jones couldn’t agree more, of course. Landlords live to “benefit tenants,” he said. “They continue to be portrayed as this huge horrible entity that’s trying to gobble up poor people.”

Pulaski Circuit Judge Herb Wright testified for the bill on behalf of the Arkansas Bar Association. He said he’s handled these cases as a lawyer and judge. He said the situation is essentially a contract between two people. The defendant has no recourse to defenses. Last week, he had a civil eviction proceeding. The tenant had a hole in her ceiling that was never replaced and she had a \$1,000 February heating bill. That would be a pretty good defense in a breach of contract action. “What this statute does is strip away one party’s right under a contract,” he said. In a civil case, a tenant gets to make a case. It might not be good enough and the judge can order the sheriff to move someone out. Under the criminal statute, a renter risks fines in a large amount if they want to tell a court their side.

Kendall Lewellen of the Center for Arkansas Legal Services spoke for the bill (not against as I originally wrote) saying it was “harmful and unnecessary.” She told the story of a woman, a new mother, whose rent was refused and she was evicted, then acquitted a trial, but the arrest remained on her record. She said the civil eviction process is speedy under the law and some courts do it at low cost and quickly. The solution to court access, she said, is “not to turn civil debts into crimes.” Lewellen said Hot Springs, Texarkana, Russellville and Springdale are the primary cities where the criminal process is still used.

Rep. Richard McGrew (R-Hot Springs), a landlord, said the quickest he can get somebody evicted is a citation after 20 days of nonpayment and then about a two-week delay before eviction. He said the average is more like three months to get a tenant removed. “Never has anyone been fined or went to jail for this ordinance.” He said judges in Hot Springs are happy to hear these cases. “Nobody advocates for the lower end more than me,” he said. “People need to consider the landlords.”

Clowney disputed testimony that said the statute was used because of damage or sale of property. It may not be used for that, she said, only for non-payment. Law enforcement should be used for public safety, she said, “not this.” It takes away none of the civil protections in the law for landlords. Risking a poor tenant’s future is ultimately an issue of humanity and compassion. “Every other state has managed to do just fine without a criminal eviction statute. Arkansas can too,” she said.

Gazaway said the state of Arkansas becomes a party against tenants under this law. “That’s unprecedented. Nowhere else in the country do they allow this. That ought to tell you something.” Fail to pay a mortgage, a car note or a credit card, you don’t get charged with a crime, he said. He said landlords need an easy and cheap process in civil court.

Penzo talked about the damage done by bad tenants. But even he acknowledged this has nothing to do with the criminal eviction statute. Lundstrum talked about property rights. She didn’t talk about the lack of

habitability standards in Arkansas. Might that encourage a lack of respect among tenants, I wondered. Non-paying tenants are “stealing from landlords,” Lundstrum said.

A bill to address habitability came out of committee earlier but hasn’t been called up on the floor, an apparent sign of its death. Even if it were to pass in the House, landlord senators are in strong opposition.

Brown and Ray spoke of landlords doing a service by providing low-cost housing and said this legislation could jeopardize that.

Rep. Monte Hodges (D-Blytheville) was a rare rent house owner in support of the bill. “it’s a good bill,” he said.

Max Brantley

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