

LANDLORD AND TENANT

CHAPTER 7

Valid through 2008 Legislative Session

§ 89-7-1 through § 89-7-125

Section

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§ 89-7-1. Goods not to be removed until rent paid.

No goods or chattels, lying or being in or upon any message, lands or tenements, leased or rented for life, years, at will, or otherwise, shall at any time be liable to be taken by virtue of any writ of execution, or other process whatever, unless the party so taking the same shall, before the removal of the goods or chattels from such premises, pay or tender to the landlord or lessor thereof, all the unpaid rent for the said premises, whether the day of payment shall have come or not, provided it shall not amount to more than one year's rent; and the party suing out such execution or other process, paying or tendering to such landlord or lessor the rent unpaid, not to exceed one year's rent, may proceed to execute his judgment or process; and the officer levying the same shall be empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the money due under the process, and when the rent contracted for is payable, not in money, but in other things, the creditor shall pay the landlord the money value of such things.

Sources: Codes, 1906, § 2851; Hemingway's 1917, § 2349; Laws, 1930, § 2175; Laws, 1942, § 897; Laws, 1894, ch. 52.

§ 89-7-3. Tenant not bound to pay rent for, or to restore, buildings destroyed-exception.

A tenant shall not be bound to pay rent for buildings after their destruction by fire or otherwise, nor shall a covenant or promise by a lessee to leave or restore the premises in good repair have the effect to bind him to erect or pay for such buildings as may be so destroyed, unless in respect to the matters aforesaid there was negligence or fault on his part, or unless he has expressly stipulated to be so bound.

Sources: Codes, 1880, §§ 1239, 1240; 1892, §§ 2497, 2498; Laws, 1906, §§ 2834, 2835; Hemingway's 1917, §§ 2332, 2333; Laws, 1930, § 2176; Laws, 1942, § 898.

§ 89-7-5. Action for use and occupation where there is no contract.

Where there is no contract, or where the agreement is not in writing, a landlord may maintain an action to recover a reasonable satisfaction for the use and occupation of the lands held and enjoyed by another. If on the trial of such action there appear in evidence any demise or agreement the plaintiff shall not on that account be nonsuited, but may make use thereof as evidence of the amount to be recovered.

Sources: Codes, 1857, ch. 41, art. 19; 1871, § 1638; 1880, § 1323; 1892, § 2538; Laws, 1906, § 2876; Hemingway's 1917, § 2374; Laws, 1930, § 2177; Laws, 1942, § 899.

§ 89-7-7. Remedy by action for rent in arrear.

A person having rent in arrear or due upon any lease or demise of lands for life or lives, for years, at will, or otherwise, may bring an action for such arrears of rent against the person who ought to have paid the same or his legal representative.

Sources: Codes, 1857, ch. 41, art. 14; 1871, § 1633; 1880, § 1322; 1892, § 2537; Laws, 1906, § 2875; Hemingway's 1917, § 2373; Laws, 1930, § 2178; Laws, 1942, § 900.

§ 89-7-9. Death of tenant for life; apportionment of rent.

When a tenant for life who shall have demised lands, shall die on or after the day when any rent became payable, his executor or administrator may recover from the under-tenant the whole rent due; and if he die before the day when any rent is to become due, he may recover the proportion of the rent which accrued before the time of the death of the tenant. The tenant for the life of another, his executor or administrator, in case of the death of the person for whose life the estate is held, on or before the day when any rent shall become due shall have like remedy; and a like apportionment shall be made in the case of annuities.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (22); 1857, ch. 41, art. 20; 1871, § 1639; 1880, § 1328; 1892, § 2543; Laws, 1906, § 2881; Hemingway's 1917, § 2379; Laws, 1930, § 2179; Laws, 1942, § 901.

§ 89-7-11. Rent assets in hands of personal representative.

If a person lease his land and die, the rent to accrue for the land during the year of his death shall be payable to the personal representative of the decedent, who shall have the same remedy therefor as the decedent would have had if he had lived.

§ 89-7-13. Executor or administrator may sue or distrain.

The executor or administrator of a person to whom rent is due and not paid at the time of his death may have an action for all such arrearages against the tenant or tenants who ought to have paid the rent so being behind in the lifetime of their testator or intestate, or against the executors or administrators of such tenants. Every executor or administrator of any person to whom such rent is due and not paid at the time of his death, may distrain for the arrearages of all such rents on the lands which were charged with the payment of such rents, and liable to the distress of the testator or intestate, so long as the same continue in the seizin or possession of the tenant who ought to have paid the rent to the testator or intestate in his lifetime, or in the seizin or possession of any person claiming the lands, only by and from the tenant, by purchase, gift, or descent, in like manner and form as the said executor's or administrator's testator or intestate might have done in his lifetime. The executors and administrators for the same distress may lawfully make avowry.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (20); 1857, ch. 41, art. 17; 1871, § 1636; 1880, § 1326; 1892, § 2541; Laws, 1906, § 2879; Hemingway's 1917, § 2377; Laws, 1930, § 2181; Laws, 1942, § 903.

§ 89-7-15. Rights of assignees of lessor.

The grantees or assignees, and their heirs, personal representatives and assignees, of any lands let to lease, or of the reversion thereof, may have and enjoy the same advantages against the lessees, their personal representatives and assigns, by entry for the non-payment of rent, or for doing of waste or suffering any forfeiture, and may have and avail of all the covenants and agreements contained in the leases, demises or grants against the lessees, their personal representatives and assigns, which the lessors themselves or their heirs could have had or enjoyed.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (18); 1857, ch. 41, art. 15; 1871, § 1634; 1880, § 1324; 1892, § 2539; Laws, 1906, § 2877; Hemingway's 1917, § 2375; Laws, 1930, § 2182; Laws, 1942, § 904.

§ 89-7-17. Grants of rents, good without attornment.

Grants of rents or reversions or remainders shall be good and effectual without attornment of the tenants; but a tenant who has paid the rent to the grantor before notice of the grant shall not suffer any damage thereby.

Sources: Codes, Hutchinson's 1848, ch. 42, art. 1 (30); 1857, ch. 36, art. 5; 1871, § 2288; 1880, § 1191; 1892, § 2499; Laws, 1906, § 2836; Hemingway's 1917, § 2334; Laws, 1930, § 2183; Laws, 1942, § 905.

§ 89-7-19. Attornment of tenant to stranger void; exception.

The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or pursuant to or in consequence of the judgment of a court of law or the decree of a court of equity.

Sources: Codes, Hutchinson's 1848, ch. 42, art. 1 (31); 1857, ch. 36, art. 6; 1871, § 2289; 1880, § 1192; 1892, § 2500; Laws, 1906, § 2837; Hemingway's 1917, § 2335; Laws, 1930, § 2184; Laws, 1942, § 906.

§ 89-7-21. Rights of lessees against assignees of lessor.

All lessees of lands for a term of years, life or lives, their executors, administrators, or assigns, may have like action and advantage against all and every person or persons, their heirs and assigns, which have any gift or grant of the reversion of said lands, so leased, or any parcel thereof, for any condition, covenant, or agreement in their lease or leases, as the lessees, or any of them, might have had against the lessors and their heirs, only excepting the benefit and advantage of recoveries in value, by reason of any warranty in deed or law.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (19); 1857, ch. 41, art. 16; 1871, § 1635; 1880, § 1325; 1892, § 2540; Laws, 1906, § 2878; Hemingway's 1917, § 2376; Laws, 1930, § 2185; Laws, 1942, § 907.

§ 89-7-23. Notice to terminate tenancy.

Notice to quit shall be necessary only where the term is not to expire at a fixed time. In all cases in which a notice is required to be given by the landlord or tenant to determine a tenancy, two (2) months' notice, in writing, shall be given where the holding is from year to year, and one (1) month's notice shall be given where the holding is by the half-year or quarter-year; and where the letting is by the month or by the week, one (1) week's notice, in writing, shall be given. This section shall not apply to rental agreements governed by the Residential Landlord and Tenant Act.

Sources: Codes, 1857, ch. 41, art. 21; 1871, § 1640; 1880, § 1330; 1892, § 2544; Laws, 1906, § 2882; Hemingway's 1917, § 2380; Laws, 1930, § 2224; Laws, 1942, § 946; Laws, 1991, ch. 478, § 15, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-7-25. Tenant holding after notice liable for double rent.

When a tenant, being lawfully notified by his landlord, shall fail or refuse to quit the demised premises and deliver up the same as required by the notice, or when a tenant shall give notice of his intention to quit the premises at a time specified, and shall not deliver up the premises at the time appointed, he shall, in either case, thenceforward pay to the landlord double the rent which he should otherwise have paid, to be levied, sued for, and recovered as the single rent before the giving of notice could be; and double rent shall continue to be paid during all the time the tenant shall so continue in possession.

Sources: Codes, 1857, ch. 41, art. 23; 1871, § 1642; 1880, § 1331; 1892, § 2545; Laws, 1906, § 2883; Hemingway's 1917, § 2381; Laws, 1930, § 2225; Laws, 1942, § 947.

§ 89-7-27. Proceedings against tenant holding over.

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assigns, under-tenants, or legal representatives of such tenant or lessee, may be removed from the premises by the judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

- First.* Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.
- Second.* After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when satisfaction of the rent cannot be obtained by distress of goods, and three days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person owing the same.

Sources: Codes, 1857, ch. 41, art. 27; 1871, § 1646; 1880, § 1333; 1892, § 2547; Laws, 1906, § 2885; Hemingway's 1917, § 2383; Laws, 1930, § 2226; Laws, 1942, § 948.

§ 89-7-29. Affidavit to remove.

The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall make oath or affirmation of the facts which, according to the last preceding section, authorize the removal of the tenant, describing therein the premises claimed and the amount of rent due and when payable, and that the necessary notice has been given to terminate such tenancy.

Sources: Codes, 1857, ch. 41, art. 28; 1871, § 1648; 1880, § 1334; 1892, § 2548; Laws, 1906, § 2886; Hemingway's 1917, § 2384; Laws, 1930, § 2227; Laws, 1942, § 949.

§ 89-7-31. Issuance of summons.

On receiving such affidavit, the county judge, justice, mayor, or other officer shall issue a summons, directed to the sheriff or any constable of the county, or the marshal of the city, town, or village wherein the premises, or some part thereof, are situated, describing the premises, and commanding him to require the person in possession of the same or claiming the possession thereof, forthwith to remove therefrom, or to show cause before the justice or other officer, on a day to be named not less than three nor more than five days from the date of the summons, why possession of the premises should not be delivered to the applicant.

Sources: Codes, 1857, ch. 41, art. 29; 1871, § 1649; 1880, § 1335; 1892, § 2549; Laws, 1906, § 2887; Hemingway's 1917, § 2385; Laws, 1930, § 2228; Laws, 1942, § 950.

§ 89-7-33. Service of summons.

Such summons shall be served as a summons is served in other cases, if the tenant can be found; if not, then by putting up a copy in some conspicuous place on the premises where the tenant last or usually resided.

Sources: Codes, 1857, ch. 41, art. 30; 1871, § 1650; 1880, § 1336; 1892, § 2550; Laws, 1906, § 2888; Hemingway's 1917, § 2386; Laws, 1930, § 2229; Laws, 1942, § 951.

§ 89-7-35. Proceedings where no defense.

If, at the time appointed, it appear that the summons has been duly served, and if sufficient cause be not shown to the contrary, the magistrate shall issue his warrant to the sheriff or any constable of the county, or to a marshal of the city, town, or village where the premises, or some part thereof, are situated, commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

Sources: Codes, 1857, ch. 41, art. 31; 1871, § 1651; 1880, § 1337; 1892, § 2551; Laws, 1906, § 2889; Hemingway's 1917, § 2387; Laws, 1930, § 2230; Laws, 1942, § 952.

§ 89-7-37. Defense may be made.

The person in possession of such premises, or any person claiming possession thereof, may, at or before the time appointed in the summons for showing cause, file an affidavit with the magistrate who issued the same, denying the facts upon which the summons was issued; and the matters thus controverted may be tried by the magistrate.

Sources: Codes, 1857, ch. 41, art. 32; 1871, § 1652; 1880, § 1338; 1892, § 2552; Laws, 1906, § 2890; Hemingway's 1917, § 2388; Laws, 1930, § 2231; Laws, 1942, § 953.

§ 89-7-39. Continuances, subpoenas.

The magistrate may, at the request of either party, adjourn the hearing from time to time, one adjournment not to exceed ten days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses.

Sources: Codes, 1857, ch. 41, art. 35; 1871, § 1655; 1880, § 1339; 1892, § 2553; Laws, 1906, § 2891; Hemingway's 1917, § 2389; Laws, 1930, § 2232; Laws, 1942, § 954.

§ 89-7-41. Form of judgment for landlord.

If the decision be in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue his warrant to the sheriff, constable, or other officer, commanding him forthwith to put such landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

Sources: Codes, 1857, ch. 41, art. 36; 1871, § 1656; 1880, § 1340; 1892, § 2554; Laws, 1906, § 2893; Hemingway's 1917, § 2390; Laws, 1930, § 2233; Laws, 1942, § 955.

§ 89-7-43. Judgment for defendant.

If the decision be in favor of the tenant, he shall recover costs of the applicant, and the magistrate shall issue execution therefor.

Sources: Codes, 1857, ch. 41, art. 37; 1871, § 1657; 1880, § 1341; 1892, § 2555; Laws, 1906, § 2892; Hemingway's 1917, § 2391; Laws, 1930, § 2234; Laws, 1942, § 956.

§ 89-7-45. Stay of proceedings.

If the proceedings be founded upon the non-payment of rent, the issuance of the warrant for the removal of the tenant shall be stayed if the person owing the rent shall, before the warrant be actually issued, pay the rent due and the costs of the proceedings, or give such security as shall be satisfactory to the magistrate, to the person entitled to the rent, for the payment thereof and costs in ten days; and if the rent and costs shall not be paid accordingly, the warrant shall then issue as if the proceedings had not been stayed.

Sources: Codes, 1857, ch. 41, art. 38; 1871, § 1658; 1880, § 1342; 1892, § 2556; Laws, 1906, § 2894; Hemingway's 1917, § 2392; Laws, 1930, § 2235; Laws, 1942, § 957.

§ 89-7-47. Record, appeals.

The magistrate before whom proceedings shall be had against a tenant holding over, shall keep a full record of his proceedings, and shall carefully preserve all papers in the cause, and the same costs shall be taxed and paid as are allowed for similar service in cases of unlawful entry and detainer, and the right of appeal shall exist as in such cases.

Sources: Codes, 1857, ch. 41, art. 39; 1871, § 1659; 1880, § 1343; 1892, § 2557; Laws, 1906, § 2895; Hemingway's 1917, § 2393; Laws, 1930, § 2236; Laws, 1942, § 958.

§ 89-7-49. Proceedings when tenant deserts premises.

If a tenant of lands, being in arrear for rent, shall desert the demised premises and leave the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any constable of the county may, at the request of the landlord, and upon due proof by affidavit that the premises have been deserted, leaving rent in arrear, and not sufficient distress thereon, go upon and view the premises, and upon being satisfied that the premises have been so deserted, he shall affix a notice, in writing, upon a conspicuous part of the premises, stating what day he will return to take a second view thereof, not less than five (5) days nor more than fifteen (15) days thereafter, and requiring the tenant then to appear and pay the rent due. At the time specified in the notice the constable shall again view the premises, and if, upon second view, the tenant shall not pay the rent due, or there shall not be sufficient distress upon the premises, then the justice court may put the landlord in possession of the premises, and the lease thereof to such tenant shall become void. The tenant may appeal to the circuit court from the proceedings of the justice court at any time within thirty (30) days after possession delivered, by serving notice in writing thereof upon the landlord, and by giving bond, with sufficient sureties, to be approved by the justice court, for the payment to the landlord of the costs of appeal, which may be adjudged against the tenant; and thereupon the justice court shall return the proceedings before him to the next term of the circuit court, and said court shall, at the return term, examine the proceedings in a summary way, and may order restitution to be made to the tenant, with costs of appeal, to be paid by the landlord; or in case of affirming the proceedings, shall award costs against the tenant and sureties in his bond.

Sources: Codes, 1857, ch. 41, art. 24; 1871, § 1643; 1880, § 1332; 1892, § 2546; Laws, 1906, § 2884; Hemingway's 1917, § 2382; Laws, 1930, § 2237; Laws, 1942, § 959; Laws, 1990, ch. 404, § 1, eff from and after July 1, 1990.

§ 89-7-51. Lien of landlord.

- (1) Every lessor of land shall have a lien on the agricultural products of the leased premises, however and by whomsoever produced, to secure the payment of the rent and of money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises. This lien shall be paramount to all other liens, claims, or demands upon such products when perfected in accordance with Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101, et seq.). The claim of the lessor for supplies furnished may be enforced in the same manner and under the same circumstances as his claim for rent may be; and all the provisions of law as to attachment for rent and proceedings under it shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent, as well as on the agricultural products.
- (2) All articles of personal property, except a stock of merchandise sold in the normal course of business, owned by the lessee of real property and situated on the leased premises shall be subject to a lien in favor of the lessor to secure the payment of rent for such premises as has been contracted to be paid, whether or not then due. Such lien shall be subject to all prior liens or other security interests perfected according to law. No such articles of personal property may be removed from the leased premises until such rent is paid except with the written consent of the lessor. All of the provisions of law as to attachment for rent and proceedings thereunder shall be applicable with reference to the lessor's lien under this subsection.

Sources: Codes, 1880, § 1301; 1892, § 2495; Laws, 1906, § 2832; Hemingway's 1917, § 2330; Laws, 1930, § 2186; Laws, 1942, § 908; Laws, 1972, ch. 343, § 1; Laws, 2001, ch. 495, § 34, eff from and after Jan. 1, 2002.

§ 89-7-53. Lien for live stock, implements and vehicles.

A landlord shall have, for one (1) year, a lien for the reasonable value of all live stock, farming tools, implements and vehicles furnished by him to his tenant, upon the property so furnished and, as an additional security therefor, upon all the agricultural products raised upon the leased premises. The said property so furnished shall be considered as supplies and the lien therefor may be enforced accordingly. Such lien shall be a superior and first lien when perfected in accordance with Uniform Commercial Code Article 9 - Secured Transactions (Section 75-9-101 et seq.), and need not otherwise be evidenced by writing.

Sources: Codes, 1892, § 2496; Laws, 1906, § 2833; Hemingway's 1917, § 2331; Laws, 1930, § 2187; Laws, 1942, § 909; Laws, 2001, ch. 495, § 35, eff from and after Jan. 1, 2002.

§ 89-7-55. Attachment for rent and supplies; who entitled to and for what.

An attachment or distress may be sued out by the lessor of lands, his executors, administrators, or assigns. It may be had for rent of the leased premises due and in arrear, or to become due, as the case may be, and for advances made by the landlord or his administrator or executor for supplies for the tenant and others for whom the tenant may have contracted and for his business carried on upon the leased premises.

Sources: Codes, 1892, § 2501; Laws, 1906, § 2838; Hemingway's 1917, § 2336; Laws, 1930, § 2188; Laws, 1942, § 910.

§ 89-7-57. How obtained.

To obtain such attachment or distress, the party entitled thereto, his agent or attorney, shall make complaint on oath before a justice of the peace, averring the facts which entitle the party seeking it to the remedy; and, if anything be demanded on account of supplies, there shall be filed with the complaint an itemized bill of particulars thereof. The complainant shall enter into bond with sufficient sureties, payable to the tenant, his executor or administrator, in a penalty equal to double the sum claimed to be due, conditioned to pay all such damages as may be sustained by the obligee by the wrongful suing out of the writ, and all costs that may be awarded against the principal obligor.

Sources: Codes, 1892, § 2502; Laws, 1906, § 2839; Hemingway's 1917, § 2337; Laws, 1930, § 2189; Laws, 1942, § 911.

§ 89-7-59. Before whom complaint made.

Such complaint and bond may be made before any justice of the peace of the county in which the leased premises, or some part thereof, may be situated, or of any county in which the property, or some part thereof, sought to be distrained or seized may be found.

Sources: Codes, 1892, § 2503; Laws, 1906, § 2840; Hemingway's 1917, § 2338; Laws, 1930, § 2190; Laws, 1942, § 912.

§ 89-7-61. Writ.

When the complaint shall have been made and bond given, and approved by the justice, it shall be his duty to issue a distress warrant or attachment-writ, commanding the seizure of the agricultural products, if any, upon which the party instituting the proceedings shall have claimed a lien, and also commanding the officer to distrain the goods and chattels other than the agricultural products of such tenant, if necessary, and deal with the same as provided by law; the entire seizure and distraint to be of value sufficient to satisfy the sum demanded with interest and costs.

Sources: Codes, 1892, § 2504; Laws, 1906, § 2841; Hemingway's 1917, § 2339; Laws, 1930, § 2191; Laws, 1942, § 913.

§ 89-7-63. Form of affidavit.

The affidavit for an attachment for rent and supplies, or either, may be in the following form, viz.:

"State of Mississippi,

_____ County.

"Before me, _____, a justice of the peace of the County of _____, came _____, who, being duly sworn, says on oath: That _____ [the tenant] is indebted to him [or if the affidavit be made by an agent or attorney, strike out 'him' and insert the name of the landlord or person to whom the rent is due, and add after the landlord's name, 'of whom the affiant is agent'] in the sum of _____ dollars for rent in arrears [or if the rent be not due, strike out the words 'in arrears,' and insert 'to become due on the _____ day of _____, A.D. _____'] by virtue of a lease for the term commencing on the _____ day of _____, A.D. _____, and ending on the _____ day of _____, A.D. _____ of land situated in _____ County, and described as [here describe the leased premises; it is well to describe by name, if it has one, or by its occupants, and if such be the case it would be well to say 'and occupied by said _____, tenant, during the year _____'].

"And the said _____, the tenant, is further indebted to affiant [or if the oath be made by an agent or attorney, strike out 'affiant' and insert the name of the landlord or person to whom the debt is due] in the further sum of _____ dollars, now due [if the debt be not due, strike out the words 'now due,' and insert 'to become due on the _____ day of _____, A.D. _____] _____ of which supplies a bill of particulars is attached hereto. Affiant [or if made by an agent or attorney, say 'affiant's said principal'] claims a lie the following

agricultural products raised during the year _____, on the said leased premises [here describe the products, giving their location, if known, for the officer's guidance].

"Sworn to and subscribed before me, this the _____ day of _____, A.D. _____, J.P."

- (a) If the attachment be for rent only, strike out all relating to supplies; and if the claim be for supplies only, strike out all relating to the sum due for rent, and alter the form to suit the case.
- (b) If the claim be not due, add to the form the following words: "And affiant has just cause to suspect, and does verily believe that the said tenant will remove [or has removed, as the case may be] his effects from said leased premises before said claim [or claims] be or shall become due, so that a distress or seizure cannot be made therefor, or so as to impair the landlord's lien on the agricultural products raised on the premises."
- (c) If the rent be for part of the crop, or other thing than money, the affidavit should state it as it is, giving the money value of what is due.

Sources: Codes, 1892, § 2505; Laws, 1906, § 2842; Hemingway's 1917, § 2340; Laws, 1930, § 2192; Laws, 1942, § 914.

§ 89-7-65. Form of bond.

The bond for an attachment for rent or supplies may be in the following form, viz.:

"We, _____, principal, and _____ and _____, sureties, bind ourselves to pay _____ the sum of _____ dollars, unless the said principal obligor herein shall pay to the said _____ all such damages as he shall sustain by reason of the wrongful suing out of an attachment for rent and supplies [if for rent only, strike out the words 'and supplies;' and if for supplies only, strike out the words 'rent and'] in favor of said principal obligor against the said obligee for _____ dollars, for rent and supplies [if for rent only, strike out the words 'and supplies;' and if for supplies only, strike out the words 'rent and'] due and in arrears [or if the attachment be for a debt to become due, strike out the words 'due and in arrears,' and insert 'to become due on the _____ day of _____, A.D. _____'] upon certain leased premises, in _____ County.

"Witness our hands, this the _____ day of _____, A.D. _____

" _____,
"

"The above bond is approved by me, this _____ day of _____, A.D. _____.

" _____, J.P."

Sources: Codes, 1892, § 2506; Laws, 1906, § 2843; Hemingway's 1917, § 2341; Laws, 1930, § 2193; Laws, 1942, § 915.

§ 89-7-67. Form of the writ.

The writ of attachment for rent and supplies, or either, may be in the following form, viz.:

"The State of Mississippi.

"To the sheriff or any constable of _____ County, greeting:

"Complaint on oath having been made before the undersigned, an acting justice of the peace in and for _____ County, that _____ is indebted to _____ for rent in arrear on the following leased premises [here describe the premises as in the affidavit], in the sum of _____ dollars, and that the said _____ is further indebted to _____ for supplies furnished the said _____, the tenant, by his landlord, in the sum of _____ dollars additional; and the claim having been made that there is a lien to secure the said debts on the following named agricultural products [here describe the products as in the affidavit], and bond having been given as required by law:

"Now, this is to command you that you forthwith seize and take the said agricultural products to an amount sufficient to satisfy the said debts, with interest and costs; and, if there be not a sufficiency of said products so to do, then that you distrain the other goods and chattels of the said _____, the tenant, so that your whole seizure may be sufficient to satisfy both of said sums, with interest and costs, and that you deal with the same as the law directs.

"Witness my hand, the _____ day of _____, A.D. _____, J.P."

The above form must be varied so as to conform to the affidavit; and if a lien be not claimed, the command will be in these words:

"This is to command you to distrain the goods and chattels of the said _____, the tenant, to an amount sufficient to satisfy the said demands, with interest and costs, and that you deal with the same as the law directs."

Sources: Codes, 1892, § 2507; Laws, 1906, § 2844; Hemingway's 1917, § 2342; Laws, 1930, § 2194; Laws, 1942, § 916.

§ 89-7-69. Goods sold if not replevied.

The officer making a distress or seizure shall give notice thereof, with the cause of taking, to the tenant or his representative in person if to be found, or if not found, by leaving such notice at the dwelling house or other conspicuous place

on the premises charged with the rent distrained for, and shall forthwith advertise the property distrained or seized for sale as if under execution; and if the tenant or owner of the goods distrained or seized shall not, before the time appointed for the sale, replevy the same by giving bond with sufficient sureties, to be approved by such officer, payable to the plaintiff in the attachment, in double the amount claimed, conditioned for the payment of the sum demanded, with lawful interest for the same, and costs, at the end of three months after making such distress, the officer shall sell the goods and chattels distrained or seized at public sale to the highest bidder for cash, and shall, out of the proceeds of the sale, pay the costs of the proceedings, and shall pay to the plaintiff the amount of his demand, with interest.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(2); 1857, ch. 41, art. 2; 1871, § 1621; 1880, § 1303; 1892, § 2508; Laws, 1906, § 2845; Hemingway's 1917, § 2343; Laws, 1930, § 2195; Laws, 1942, § 917.

§ 89-7-71. Form of bond for payment of rent.

The bond to be taken by the officer for the payment of the rent and supplies, or either, in three months, may be in the following form, viz.:

"The State of Mississippi,

County of _____

"We, _____, principal, and _____ and _____, sureties, bind ourselves to pay _____ the sum of _____ [here insert double the sum claimed] dollars, unless, on or before the _____ day of _____, A.D. _____, the said _____ shall pay to the said _____ the sum of _____ dollars, being for rent and supplies due him from the said _____, the tenant on the land in said county, being [here describe the leased premises as in the writ], together with interest thereon to said date, and the costs of the attachment for the same, levied on the property of said tenant, and now restored to him by virtue of this bond.

"Witness our signatures, this _____ day of _____, A.D. _____.

"_____
"_____
"_____."

"The foregoing bond is approved by me, this _____ day of _____, A.D. _____.

"_____, Sheriff."

If the attachment be for rent not due, the bond for the payment thereof will vary in its terms to suit the case.

Sources: Codes, 1892, § 2509; Laws, 1906, § 2846; Hemingway's 1917, § 2344; Laws, 1930, § 2196; Laws, 1942, § 918.

§ 89-7-73. Bond delivered to lessor, and proceedings thereon.

The bond taken for the payment of rent or supplies shall be forthwith delivered to the landlord for whom the distress was made; and if the money be not paid according to the condition, any court having jurisdiction of the amount thereof shall, on motion, award execution against the obligors therein, the bond being filed in the court, and five days' notice given of the motion.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(3); 1857, ch. 41, art. 6; 1871, § 1625; 1880, § 1307; 1892, § 2510; Laws, 1906, § 2847; Hemingway's 1917, § 2345; Laws, 1930, § 2197; Laws, 1942, § 919.

§ 89-7-75. Remedy when claim not due in certain cases.

When any landlord or lessor shall have just cause to suspect, and shall verily believe, that his tenant will remove his agricultural products on which there is a lien, or any part thereof, from the leased premises to any other place before the expiration of his term, or before the rent or claim for supplies will fall due, or that he will remove his other effects, so that distress cannot be made, the landlord or lessor, in either case, on making oath thereof, and of the amount the tenant is to pay, and at what time the same will fall due, and giving bond, as required were the debt due, may, in like manner, obtain an attachment against the goods and chattels of such tenant; and the officer making the distress shall give notice thereof, and advertise the property distrained or seized for sale. If the tenant shall not, before the time appointed for sale, give bond, with sufficient sureties, in double the amount of the rent or other demand, payable to the plaintiff, conditioned for the payment of the sum due at the time it shall fall due, with costs, the goods distrained or seized, or so much thereof as may be necessary, shall be sold by the officer, at public sale, to the highest bidder, for cash, and out of the proceeds of the sale he shall pay the costs, and shall pay to the plaintiff the amount owing to him, deducting interest for the time until the same shall become due.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(7); 1857, ch. 42, art. 3; 1871, § 1622; 1880, § 1304; 1892, § 2511; Laws, 1906, § 2848; Hemingway's 1917, § 2346; Laws, 1930, § 2198; Laws, 1942, § 920.

§ 89-7-77. Goods removed before debt due, distrained.

When any tenant shall have actually removed his effects, other than the agricultural products, upon which there is a lien, from the leased premises before the rent or demand for supplies has become due, so that there be no sufficient property liable to distress or seizure left on the premises, the landlord may in like manner obtain an attachment at any time after such removal or within thirty days after such rent or other claim becomes due, and may levy the same on the effects so removed wherever they may be found and like proceedings shall be had thereon as in other cases. And if any tenant shall remove his agricultural products upon which there is a lien from the leased premises, the landlord may at any time have the same seized wherever they

may be found, and like proceedings shall be had thereon as in other cases.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(8); 1857, ch. 41, art. 4; 1871, § 1623; 1880, § 1305; 1892, § 2512; Laws, 1906, § 2849; Hemingway's 1917, § 2347; Laws, 1930, § 2199; Laws, 1942, § 921.

§ 89-7-79. Goods removed, seized within thirty days.

If any tenant shall at any time convey or carry off from the demised premises, his goods or chattels, leaving the rent, or any part thereof, or the sum owing for supplies, unpaid, the landlord or lessor, or his assigns, may, within thirty days next after such conveying away or carrying off such goods or chattels, cause the same to be taken and seized wherever found, and the same to sell in like manner as if they had been distrained in or upon the demised premises. But goods or chattels, other than the agricultural products upon which there is a lien, so carried off and sold in good faith for a valuable consideration before seizure made, shall not be afterwards liable to be taken and seized for rent or supplies.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(12); 1857, ch. 41, art. 5; 1871, § 1624; 1880, § 1306; 1892, § 2513; Laws, 1906, § 2850; Hemingway's 1917, § 2348; Laws, 1930, § 2200; Laws, 1942, § 922.

§ 89-7-81. Distress may be made after termination of lease.

Any person, or his executor, administrator, or assigns having rent in arrear upon any lease for life, years, or otherwise, ended and determined, or a claim for supplies, may distrain for such arrears, after the termination of the lease, in the same manner as if the same had not been determined; but the distress must be made within six months after the termination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears are due.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(14); 1857, ch. 41, art. 7; 1871, § 1626; 1880, § 1308; 1892, § 2514; Laws, 1906, § 2852; Hemingway's 1917, § 2350; Laws, 1930, § 2201; Laws, 1942, § 923.

§ 89-7-83. Sale of goods stopped without bond.

If the tenant shall make affidavit, before the officer holding his property under an attachment for rent or supplies alleged to be due or to become due, that he does not or will not owe the amount claimed, such officer shall not sell the property, unless it be liable to perish or greatly depreciate, or be expensive to keep, in which case he shall sell it and hold the proceeds to the end of the suit; and he shall return the attachment with the affidavit and a statement of his proceedings to the proper court, and shall summon the party who sued out the attachment to appear there; and further proceedings shall be had as if the tenant had replevied the goods by giving bond.

Sources: Codes, 1880, § 1316; 1892, § 2528; Laws, 1906, § 2866; Hemingway's 1917, § 2364; Laws, 1930, § 2202; Laws, 1942, § 924.

§ 89-7-85. Distress to be reasonable, and property seized not to be removed from county.

It shall not be lawful for any officer who may execute an attachment for rent or supplies to remove the property distrained or seized out of the county where the distress or seizure was made; and if any officer or other person shall so remove any property distrained or seized, he shall pay to the party aggrieved double the value of the property removed, to be recovered in an action. And, moreover, distresses and seizures shall in all cases be reasonable and not too great; and any officer who shall make an unreasonable distress or seizure, under color of law, shall be liable to the party aggrieved for double damages.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5(23); 1857, ch. 41, art. 8; 1871, § 1627; 1880, § 1309; 1892, § 2515; Laws, 1906, § 2853; Hemingway's 1917, § 2351; Laws, 1930, § 2203; Laws, 1942, § 925.

§ 89-7-87. Irregularities not to affect distress.

When any distress or seizure shall be made for rent or supplies justly due, and any irregularity or unlawful act shall afterwards be done by the officer distraining or seizing, the distress or seizure shall not, for that reason, be unlawful, nor the officer making or seizing it, or the party at whose instance the writ was issued, become a trespasser from the beginning, but the party aggrieved by such irregularity or unlawful act, may recover the special damage he may have sustained thereby. However, an action shall not be sustained if tender of amends be made by the party distraining before suit is brought.

Sources: Codes, 1880, § 1310; 1892, § 2516; Laws, 1906, § 2854; Hemingway's 1917, § 2352; Laws, 1930, § 2204; Laws, 1942, § 926.

§ 89-7-89. How goods replevied.

The tenant, his executor or administrator, may replevy the agricultural products or other property distrained, at any time before the sale thereof, by giving bond with one or more sufficient sureties, to be approved by the officer in whose custody the property may be, payable to the party in whose name or right the distress or seizure was made, in a penalty double the amount distrained for or double the value of the property seized, where the value is less than the amount distrained for, conditioned to prosecute his suit against the obligee in the bond for the property, and to perform the judgment of the court in such suit, in case he shall fail therein. Upon the delivery of such bond to the officer having control of the property, he shall deliver the same to the party giving the bond, and shall return the bond and the writ of attachment, with a statement of his proceedings, to the clerk of the circuit court if the value of the property or amount distrained for exceed two hundred dollars, and to the justice of the peace who issued the attachment if neither the amount claimed nor the value of the property exceed two hundred dollars; and he shall summon the party in whose name or right the distress or seizure was made, to appear at the next term of the court to which

return of the attachment and bond shall be made, to answer the suit of the person replevying the property; and the officer shall make his return of having summoned such party on the papers by him returned to the court.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (15); 1857, ch. 41, art. 11; 1871, § 1630; 1880, § 1312; 1892, § 2518; Laws, 1906, § 2856; Hemingway's 1917, § 2354; Laws, 1930, § 2205; Laws, 1942, § 927.

§ 89-7-91. Summons or publication for party distraining.

In case of failure to summon in the first instance the party in whose name or right the distress was made, a summons may be issued for him by the clerk of the circuit court or justice of the peace; and if he cannot be found, publication may be made as in attachment cases.

Sources: Codes, 1880, § 1313; 1892, § 2520; Laws, 1906, § 2858; Hemingway's 1917, § 2356; Laws, 1930, § 2206; Laws, 1942, § 928.

§ 89-7-93. Form of replevin-bond.

The tenant's replevin-bond, or that of a claimant, may be in the following form, viz.:

"We, _____, principal, and _____ and _____, sureties, bind ourselves to pay _____ the sum of _____ dollars [double the value of the goods and chattels, if that be less than the rent claimed], unless the said _____ shall prosecute his suit against the said _____ for certain goods and chattels, to wit: Eight bales of cotton [or whatever is distrained], distrained for rent [or supplies, or both, as the case may be] by virtue of an attachment in favor of _____ against _____, issued by _____, a justice of the peace of _____ County, and now here restored to the said _____, and shall perform the judgment of the court in such suit in case he shall fail therein.

"Witness our hands, the _____ day of _____, A.D. _____.

"_____
"_____
"_____."

"I approve the foregoing bond, this _____ day of _____, A.D. _____.

"_____"

Sources: Codes, 1880, § 1353; 1892, § 2519; Laws, 1906, § 2857; Hemingway's 1917, § 2355; Laws, 1930, § 2207; Laws, 1942, § 929.

§ 89-7-95. Party replevying to propound claim.

By the first day of the next term of the court to which such replevy-bond and attachment shall have been returned, or afterwards, if longer time be granted by the court, the party who replevied the property shall file either a motion to quash the attachment proceedings or his declaration in replevin, if in the circuit court, or appear and prosecute his claim, if in a justice's court, against the party in whose name or right the distress or seizure was made. Such party shall make defense, and if the attachment proceeding be quashed it may be amended. A tenant may file his declaration after a motion to quash shall have been denied, and the cause shall proceed to an issue and trial; and if upon trial it be found that the sum for rent or supplies was due, in whole or part, and that the distress was lawfully made, the landlord shall have judgment against the obligors in the replevy-bond for a return of the property replevied, or its value, to an amount sufficient to pay the sum found due, with interest and costs of suit. If the property replevied be restored, it shall be sold to satisfy the judgment, and if it be not sufficient, execution shall go against the party replevying for the residue.

Sources: Codes, 1880, § 1314; 1892, § 2521; Laws, 1906, § 2859; Hemingway's 1917, § 2357; Laws, 1930, § 2208; Laws, 1942, § 930.

§ 89-7-97. Form of declaration.

The declaration in replevin in such case may be substantially in the following form, to wit:

"State of Mississippi.

Circuit court, _____ term, A.D. _____

County of _____

"Thomas East, the plaintiff in this case, complains of William West, the defendant, in an action of replevin.

"For that heretofore, to wit: on the _____ day of _____, A.D. _____, the said defendant wrongfully caused an officer of _____ County to seize and take from the plaintiff's possession, under an attachment for rent [or rent and supplies, or for supplies, as the case may be], certain personal property of the plaintiff's, to wit: here describe the property and give the value of each separate item of it.

"And the plaintiff avers that he is entitled to recover the same and also to recover of defendant the sum of _____ dollars damages for the said wrongful taking; wherefore, he sues and demands judgment accordingly, and costs of suit."

Sources: Codes, 1892, § 2522; Laws, 1906, § 2860; Hemingway's 1917, § 2358; Laws, 1930, § 2209; Laws, 1942, § 931.

§ 89-7-99. Pleas to the declaration.

The only pleas to a declaration in replevin shall be either, first, a denial that the goods were seized on demand or at the plaint of the defendant; or, second, an avowry that they were rightfully seized for rent or supplies, or both, due and in arrear, or

to become due. The two pleas can only be pleaded together when each is to only a part of the declaration and relates to separate portions of the property. The first of said pleas shall be substantially to the following effect, to wit:

"Thomas East

v. Circuit court, _____ County.

William West.

"Now comes the defendant, William West, and for plea to plaintiff's declaration, says: It is not true that he caused an officer of _____ County to seize and take from plaintiff, Thomas East, under an attachment for rent, the possession of the property, or any part of it, described in the said declaration; and of this the defendant puts himself upon the country."

On the trial of this plea the burden of proof shall be on the plaintiff.

Sources: Codes, 1892, § 2523; Laws, 1906, § 2861; Hemingway's 1917, § 2359; Laws, 1930, § 2210; Laws, 1942, § 932.

§ 89-7-101. The avowry.

The avowry shall be substantially to the following effect, to wit:

"Thomas East

v. Circuit court, _____ County.

William West.

"And now comes the defendant, William West, and for plea to plaintiff's declaration he says: True it is that he caused the property described in the plaintiff's declaration to be seized; but the seizure was not wrongful, because he says that before the said seizure defendant was the plaintiff's landlord; that he, the defendant, as landlord, leased to the plaintiff, as tenant, certain premises in said county, to wit: [here describe the leased premises] for the term beginning on the _____ day of _____, A.D. _____, and ending on the _____ day of _____, A.D. _____; that at the time of the said seizure the plaintiff, as tenant, was indebted to defendant, as landlord, in the sum of _____ dollars, for rent of said premises and for supplies furnished his said tenant by this defendant [or for rent alone or supplies alone, as the case may be]. An itemized account or statement of said indebtedness is herewith filed [or the note or writing evidencing said debt, as the case may be], and the said debt became due on the _____ day of _____, A.D. _____, and the said seizure was made to satisfy the sum so due; and this the defendant is ready to verify."

If the avowry be for a sum to become due, strike out from the form all after the last parenthesis, and insert in lieu thereof the following, viz.:

"Which said indebtedness will become due on the _____ day of _____, A.D. _____, and defendant had just cause to suspect, and verily believed, that the plaintiff would remove his effects, or some part of the agricultural products raised thereon, from the leased premises before the expiration of his term, or before the said debt would become due, so that distress could not be made, and the said seizure was made to satisfy the said sum. This the defendant is ready to verify."

Sources: Codes, 1892, § 2524; Laws, 1906, § 2862; Hemingway's 1917, § 2360; Laws, 1930, § 2211; Laws, 1942, § 933.

§ 89-7-103. The replication.

If the avowry be for rent and supplies, or either, claimed to be due and in arrears, the replication by the plaintiff shall be substantially in the following form, viz.:

"Thomas East

v. Circuit court, _____ County.

William West.

"And the plaintiff, for replication, says he was not indebted to the defendant as stated in his said avowry; and of this the plaintiff puts himself upon the country."

Sources: Codes, 1892, § 2525; Laws, 1906, § 2863; Hemingway's 1917, § 2361; Laws, 1930, § 2212; Laws, 1942, § 934.

§ 89-7-105. Replication in case rent not due.

If the avowry be a claim for rent or supplies, or both, to become due, the plaintiff shall reply either that he was not indebted, as in the form last above, or he may reply in substance as in the following form, viz.:

"Thomas East

v. Circuit court, _____ County.

William West.

"And the plaintiff, for replication, says that the defendant did not have just cause to suspect and verily believe that the plaintiff would remove his effects, or some part of the agricultural products raised thereon, from the leased premises before the expiration of his term or before the said debt would become due, so that distress could not be made; and of this plaintiff puts himself upon the country."

The plaintiff may, in proper case, unite the said replications, or he may reply any other facts constituting a legal answer.

And on the trial of an issue on an avowry, the burden of proof shall be on the avowant, the landlord, and he shall have the right to open and conclude the argument.

Sources: Codes, 1892, § 2526; Laws, 1906, § 2864; Hemingway's 1917, § 2362; Laws, 1930, § 2213; Laws, 1942, § 935.

§ 89-7-107. Replevin; when triable, and judgment upon default.

Suits by the tenant or a third person replevying the property, shall be triable at the first term of the court; and in either case, if the party replevying shall make default or fail to prosecute his suit, like judgment shall be entered against him and the sureties on the bond as upon an issue found against him on trial, and a new replevin or writ of second deliverance shall not be allowed.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (17); 1857, ch. 41, art. 13; 1871, § 1632; 1880, § 1320; 1892, § 2535; Laws, 1906, § 2873; Hemingway's 1917, § 2371; Laws, 1930, § 2214; Laws, 1942, § 936.

§ 89-7-109. Suit revived in case of death of party.

If either party to such replevin or other action growing out of an attachment for rent or supplies, die pending the same, the suit may be revived for or against the representatives of the deceased party as other actions that survive may be revived.

Sources: Codes, 1857, ch. 41, art. 25; 1871, § 1644; 1880, § 1321; 1892, § 2536; Laws, 1906, § 2874; Hemingway's 1917, § 2372; Laws, 1930, § 2215; Laws, 1942, § 937.

§ 89-7-111. Judgment if trial results against lessor.

If the trial of suit result in favor of the party replevying the property, the judgment shall be that he retain it, and recover of the party in whose name or right such distress was sued out damages for the wrongful suing out of the attachment. Thereupon scire facias may be issued to the sureties on the attachment-bond to appear at the next term of the court to show cause against a judgment being given against them for the amount of the judgment for damages against their principal, not to exceed the penalty of their bond; and if cause be not affirmatively shown, judgment shall be rendered against them.

Sources: Codes, 1880, § 1315; 1892, § 2527; Laws, 1906, § 2864; Hemingway's 1917, § 2363; Laws, 1930, § 2216; Laws, 1942, § 938.

§ 89-7-113. Papers transferred, if returned to wrong court.

If the papers, in case of a replevin of property, be returned to the wrong court, they shall be transferred to the proper court, and the case be there proceeded with as if they had been returned to that court in the first instance.

Sources: Codes, 1880, § 1319; 1892, § 2534; Laws, 1906, § 2872; Hemingway's 1917, § 2370; Laws, 1930, § 2217; Laws, 1942, § 939.

§ 89-7-115. Tenant's remedy against landlord.

If any distress or seizure and sale be made under color of law for rent or supplies pretended to be due and in arrear, where, in truth, no rent or sum for supplies is due or owing to the party causing the distress or seizure to be made, then the owner of the agricultural products or other property so taken and sold, his executor or administrator, shall have remedy by action against the person in whose name or right such property was taken, his executor or administrator, and shall recover double the value of the property, with costs, or may put the bond of the plaintiff in suit to recover damages for the wrongful suing out of the writ, and shall recover therein double the value of the property, if the penalty of the bond amount to so much.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (5); 1857, ch. 41, art. 10; 1871, § 1629; 1880, § 1311; 1892, § 2517; Laws, 1906, § 2855; Hemingway's 1917, § 2353; Laws, 1930, § 2218; Laws, 1942, § 940.

§ 89-7-117. Property of strangers not liable.

Property, except agricultural products on which there is a lien for rent, found or being on any demised premises, not belonging to the tenant or to some person bound or liable for the rent of such premises, shall not be liable to be distrained for rent; but if the tenant or other person liable for the rent have a limited interest in the property, the same may be distrained, and the interest therein of the tenant or person liable for the rent may be sold.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (10); 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1317; 1892, § 2529; Laws, 1906, § 2867; Hemingway's 1917, § 2365; Laws, 1930, § 2219; Laws, 1942, § 941.

§ 89-7-119. Replevin of property by strangers.

When any person other than the tenant shall claim to be the owner of any property distrained or seized for rent or supplies, he may make affidavit that said property is his, and not the property of the tenant, and not held to the use of the tenant in any manner whatever, and is not liable to such distress or seizure. If he desire immediate possession of said property, he shall give bond, with sufficient sureties, in the manner directed for the tenant, and such affidavit and bond shall be delivered to the officer who made the distress, who shall deliver the property to the claimant. Such claim may be interposed without giving bond, and the same proceedings shall be had thereon, except that the property claimed shall not be delivered to the claimant, but shall be disposed of as in the case of replevy by the tenant. Upon such claim being made, the landlord may release the property so claimed and forthwith distrain or seize other property in lieu thereof.

Sources: Codes, Hutchinson's 1848, ch. 56, art. 5 (10, 16); 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1317; 1892, § 2530; Laws, 1906, § 2868; Hemingway's 1917, § 2366; Laws, 1930, § 2220; Laws, 1942, § 942.

§ 89-7-121. Form of affidavit by third person.

The affidavit by a third person claiming property distrained or seized for rent or supplies may be in the following form, to wit:

"State of Mississippi,
_____ County.

"Before me, _____, a justice of the peace of the said county, _____ makes oath that certain property to wit: eight bales of cotton [or whatever the property may be], distrained for rent by _____, a constable of said county, by virtue of an attachment for rent in favor of _____ against _____, are the property of affiant and not the property of _____, nor held in trust for his use, in any manner whatsoever; and are not liable to such distress.

"Sworn to and subscribed before me, the _____ day of _____, A.D.
"_____, J.P."

Sources: Codes, 1892, § 2532; Laws, 1906, § 2870; Hemingway's 1917, § 2368; Laws, 1930, § 2221; Laws, 1942, § 943.

§ 89-7-123. Proceedings to be as in replevin by tenant.

The affidavit may be made before the officer having the property, and he shall make return of it and of the bond, if any, and the attachment papers, and summon the other party, as required in case of a replevin by the tenant; and the claimant replevying the property shall prosecute his suit against the party in whose name or right it was attached, in all respects as the tenant is required to do; and the pleadings and proceedings shall be conformed so as to present the proper issues.

Sources: Codes, 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1318; 1892, § 2533; Laws, 1906, § 2871; Hemingway's 1917, § 2360; Laws, 1930, § 2222; Laws, 1942, § 944.

§ 89-7-125. Burden of proof.

On the trial of the issue between the landlord and such claimant, the burden of proof to show ownership in the property shall be on the claimant.

Sources: Codes, 1892, § 2531; Laws, 1906, § 2869; Hemingway's 1917, § 2367; Laws, 1930, § 2223; Laws, 1942, § 945.

RESIDENTIAL LANDLORD AND TENANT ACT
CHAPTER 8

Valid through 2008 Legislative Session

§ 89-8-1 through § 89-8-27

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§ 89-8-1. Short title.

This chapter shall be known and may be cited as the "Residential Landlord and Tenant Act."

Sources: Laws, 1991, ch. 478, § 1, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-3. Application of chapter.

- (1) This chapter shall apply to, regulate and determine rights, obligations and remedies under any rental agreement entered into after July 1, 1991, wherever made, for a dwelling unit located within this state. The rights, obligations and remedies of this chapter shall be in addition to all other rights, obligations and remedies provided by law and shall not alter or abridge the rights, obligations and remedies available to residential landlords and tenants pursuant to Sections 89-7-1 through 89-7-125.
- (2) The following arrangements are not governed by this chapter:
 - (a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;
 - (b) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;
 - (c) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;
 - (d) Transient occupancy in a hotel, motel or lodgings;
 - (e) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or
 - (f) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes or when the occupant is performing agricultural labor for the owner and such premises are rented for less than fair rental value.

Sources: Laws, 1991, ch. 478, § 2, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date; Laws, 1993, ch. 312, § 1, eff from and after passage (approved March 12, 1993).

§ 89-8-5. Waiver of rights prohibited; provisions prohibited in rental agreement.

In any agreement, oral or written, for the rental of real property as a dwelling place, a landlord or tenant may not agree to waive or otherwise forego any of the rights, duties or remedies under this chapter, except as otherwise provided by this chapter. No rental agreement may provide that the tenant or the landlord:

- (a) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or
- (b) Agrees to the exculpation or limitation of any liability of the landlord arising as a result of the landlord's willful misconduct or the costs connected therewith.

Sources: Laws, 1991, ch. 478, § 3, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-7. Definitions; agent of landlord.

- (1) Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:
 - (a) "Building and housing codes" includes any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit;
 - (b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;
 - (c) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing;
 - (d) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor;
 - (e) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;
 - (f) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;
 - (g) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;
 - (h) "Rent" means all payments to be made to the landlord under the rental agreement;
 - (i) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under Section 89-8-11 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;
 - (j) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;
 - (k) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.
- (2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.

Sources: Laws, 1991, ch. 478, § 4, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-9. Obligation to act in good faith.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter, including the landlord's termination of a tenancy or nonrenewal of a lease, imposes an obligation of good faith in its performance or enforcement.

Sources: Laws, 1991, ch. 478, § 5, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-11. Rules and regulations of landlord concerning tenant's use and occupancy of premises.

- (1) A landlord may, from time to time, adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. They are enforceable against the tenant only if:
 - (a) Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abuse, or make a fair distribution of services and facilities provided for the tenants generally;
 - (b) They are reasonably related to the purpose for which they are adopted;
 - (c) They apply to all tenants in the premises in a fair manner;
 - (d) They are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;
 - (e) They are not for the purpose of evading the obligations of the landlord.
- (2) A rule or regulation adopted or amended after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption or amendment is given to the tenant and it does not work a substantial modification of the rental agreement.
- (3) If the dwelling unit is an apartment in a horizontal property regime, the tenant shall comply with the bylaws of the association of the apartment owners; and if the dwelling unit is an apartment in a cooperative housing corporation, the tenant shall comply with the bylaws of the corporation.
- (4) Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit.

Sources: Laws, 1991, ch. 478, § 6, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security.

- (1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.
- (2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.
- (3) The nonbreaching party may deliver a written notice to the party in breach specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of thirty (30) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:
 - (a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate;
 - (b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement;
 - (c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.
- (4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.
- (5) Notwithstanding the provisions of this section or any other provisions of this chapter to the contrary, if the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver thirty (30) days' written notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

Sources: Laws, 1991, ch. 478, § 7, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date; Laws, 1993, ch. 312, § 2, eff from and after passage (approved March 12, 1993).

§ 89-8-15. Repair of defects by tenant.

- (1) If, within thirty (30) days after written notice to the landlord of a specific and material defect which constitutes a breach of the terms of the rental agreement or of the obligation of the landlord under Section 89-8-23, the landlord fails to repair such defect, the tenant:
 - (a) May repair such defect himself; and
 - (b) Except as otherwise provided in subsection (2) of this section, shall be entitled to reimbursement of the expenses of such repairs within forty-five (45) days after submission to the landlord of receipted bills for such work, provided that:
 - (i) The tenant has fulfilled his affirmative obligations under Section 89-8-25;
 - (ii) The expenses incurred in making such repairs do not exceed an amount equal to one (1) month's rent;
 - (iii) The tenant has not exercised the remedy provided by this section in the six (6) months immediately preceding; and
 - (iv) The tenant is current in his rental payment.
- (2) A tenant shall not be entitled to be reimbursed for repairs made pursuant to this section in an amount greater than the usual and customary charge for such repairs.
- (3) Before correcting a condition affecting facilities shared by more than one (1) dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans and shall so arrange the work as to create the least practicable inconvenience to the other tenants.
- (4) The cost of repairs made by a tenant pursuant to this section may be offset against future rent.
- (5) No provision of this section shall be construed to grant a lien against the real property.

Sources: Laws, 1991, ch. 478, § 8, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-17. Rights of landlord after expiration of rental agreement.

Notwithstanding the provisions of Section 89-8-13, the landlord may, at any time after the expiration of a rental agreement, recover possession of the dwelling unit, cause the tenant to quit the dwelling unit involuntarily, demand an increase in rent or decrease the services to which the tenant has been entitled in accordance with any other provisions of this chapter, if such actions by the landlord did not have the dominant purpose of retaliation against the tenant for his actions authorized under this chapter and the landlord received written notice of each condition which was the subject of such actions of the tenant.

Sources: Laws, 1991, ch. 478, § 9, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-19. Length of term of tenancy; notice to terminate tenancy; exception to notice requirement.

- (1) Unless the rental agreement fixes a definite term a tenancy shall be week to week in case of a tenant who pays weekly rent, and in all other cases month to month.
- (2) The landlord or the tenant may terminate a week-to-week tenancy by written notice given to the other at least seven (7) days prior to the termination date.
- (3) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the termination date.
- (4) Notwithstanding the provisions of this section or any other provision of this chapter to the contrary, notice to terminate a tenancy shall not be required to be given when the landlord or tenant has committed a substantial violation of the rental agreement or this chapter that materially affects health and safety.

Sources: Laws, 1991, ch. 478, § 10, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-21. Tenant's security deposit.

- (1) Any payment or deposit of money, the primary function of which is to secure the performance of a rental agreement or any part of such an agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement shall be governed by the provisions of this section.
- (2) Any such payment or deposit of money shall be held by the landlord for the tenant who is a party to such agreement. The claim of a tenant to such payment or deposit shall be governed by the provisions of this section. The claim of a tenant to such payment or deposit shall be prior to the claim of any creditor of the landlord.
- (3) The landlord, by written notice delivered to the tenant, may claim of such payment or deposit only such amounts as are reasonably necessary to remedy the tenant's defaults in the payment of rent, to repair damages to the premises caused by the tenant, exclusive of ordinary wear and tear, to clean such premises upon termination of the tenancy, or for other reasonable and necessary expenses incurred as the result of the tenant's default, if the payment or deposit is made for any or all of those specific purposes. The written notice by which the landlord claims all or any portion of such payment or deposit shall itemize the amounts claimed by such landlord. Any remaining portion of such payment or deposit shall be returned to the tenant no later than forty-five (45) days after the termination of his tenancy, the delivery of possession and demand by the tenant.
- (4) The retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section and with absence of good faith, may subject the landlord or his transferee to damages not to exceed Two Hundred Dollars (\$200.00) in addition to any actual damages.

Sources: Laws, 1991, ch. 478, § 11, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-23. Duties of landlord.

- (1) A landlord shall at all times during the tenancy:
 - (a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - (b) Maintain the dwelling unit, its plumbing, heating and/or cooling system, in substantially the same condition as at the inception of the lease, reasonable wear and tear excluded, unless the dwelling unit, its plumbing, heating and/or cooling system is damaged or impaired as a result of the deliberate or negligent actions of the tenant.
- (2) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the deliberate or negligent act of the tenant or persons on the premises with the tenant's permission.
- (3) Subject to the provisions of Section 89-8-5, the landlord and tenant may agree in writing that the tenant perform some or all of the landlord's duties under this section, but only if the transaction is entered into in good faith.
- (4) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the tenant's affirmative act or failure to comply with his obligations under Section 89-8-25.

Sources: Laws, 1991, ch. 478, § 12, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

§ 89-8-25. Duties of tenant.

A tenant shall:

- (a) Keep that part of the premises that he occupies and uses as clean and as safe as the condition of the premises permits;
- (b) Dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner in compliance with community standards;
- (c) Keep all plumbing fixtures in the dwelling unit used by the tenant as clean as their condition permits;
- (d) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises;
- (e) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or

- knowingly permit any other person to do so;
- (f) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of their premises;
 - (g) Inform the landlord of any condition of which he has actual knowledge which may cause damage to the premises;
 - (h) To the extent of his legal obligation, maintain the dwelling unit in substantially the same condition, reasonable wear and tear excepted, and comply with the requirements of applicable building and housing codes materially affecting health and safety;
 - (i) Not engage in any illegal activity upon the leased premises as documented by a law enforcement agency.

Sources: Laws, 1991, ch. 478, § 13, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date; Laws, 1994, ch. 331, § 1, eff from and after July 1, 1994.

§ 89-8-27. Housing authorities authorized to contract with tenant management organizations; authority to sell public housing units to tenant management organizations.

Any county, municipality, regional housing authority or local housing authority in the state may make application to and contract with qualified tenant management organizations for the operation and management of housing projects of the authority as a means of reducing vacancies, reducing administrative costs and creating jobs from the establishment of maintenance teams. Such counties, municipalities, regional housing authorities or local housing authorities shall have the authority to sell public housing units to such tenant management organizations, provided that such sale is in compliance with any applicable federal laws and regulations and any applicable state laws and regulations.

Sources: Laws, 1991, ch. 478, § 14, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.