

BILL ANALYSIS

C.S.H.B. 62
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a tenant may be evicted for nonpayment of rent or other lease violations in an eviction suit. Under the rules of civil procedure, if a tenant does not prevail in the suit, the tenant may appeal the judgment, which requires the payment of an appeal bond or a pauper's affidavit in lieu of an appeal bond.

Present statutes and court rules do not adequately address the procedures to be utilized in the eviction appeals process if the tenant claims to be a pauper. Both landlords and tenants often face problems in the appeals process because there are no guidelines for the justice of the peace (JP) and county judge regarding what constitutes pauper status. In addition, there has been abuse of the pauper's affidavit by non-paupers who falsely claim to be a pauper simply to slow down the eviction process and make it more costly for the landlord. This abuse also unjustifiably consumes the time of justices of the peace and county court judges.

There are problems that arise because parties fail to give the other side notice when filing (1) a pauper's affidavit, (2) a contest of the affidavit, or (3) a contest of the JP's decision on what portion of the rent in a government rent participation case the tenant should tender into court during appeal. There is no express requirement in the statutes for the JP to hold a hearing on these issues if they are contested.

If the government has been paying rent and no government rent payments are received by the landlord, there is no statutory guidance on whether the tenant must tender the entire rent or only the portion that he or she has been paying, into the court registry during appeal. There is no statutory provision for the tenant to assert that the government's failure to pay rent was actually the landlord's fault (such as failing to repair or process required paperwork).

Additionally, making a motion to a county court for issuance of a writ of possession for the tenant's failure to tender rent into the court during the appeal process is both costly and protracted. There is no latitude for a tenant who mistakenly was a bit late in tendering or who tendered the wrong amount.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The committee substitute for House Bill No. 62 amends the Property Code so that a tenant, in a residential eviction suit, can either (1) file an appeal bond to appeal the justice court's judgment, or (2) file a sworn affidavit stating that the tenant is unable to pay the costs of an appeal or file an appeal bond. The bill contains a specific list of information that the affidavit must contain about the claimed pauper status.

The bill requires the justice court to notify the landlord of the filing of a pauper's affidavit. If the landlord timely contests tenant's affidavit, the justice court must notify both parties of a hearing date, with the hearing to be held within 5 days. The tenant has the burden to prove by competent

evidence, other than the tenant's mere affidavit, the tenant's inability to pay the costs of appeal or file an appeal bond.

The bill requires the JP to note on the judgment the amount of rent that the tenant must tender into court at each rental pay period during appeal to preserve the tenant's appeal rights in an eviction case.

If the government has been paying rent and no government rent payments are received by the landlord, the tenant must pay the entire rent unless the government's non-payment was the fault of the landlord. A hearing must be held on this issue if the tenant alleges the government's non-payment was the landlord's fault.

When there is a dispute over the amount of rent due to be tendered by the tenant during appeal in government rent-participation cases, either the landlord or the tenant can obtain a special hearing before the JP and bring witnesses from the government agency that is paying all or part of the rent to quickly resolve the issue of what portion of the rent the tenant really should tender.

If a tenant fails to timely tender rent into the court registry as required by law, the landlord can file a sworn motion of non-payment with the county court and if the court verifies the tenant's non-tender into the court registry, the court must issue immediately the writ of possessions. If the tenant has failed to timely tender, the tenant is given a one-time "second chance" to avoid issuance of the writ if the tenant pays the required rent into court by the end of the day of the hearing and pays any attorneys fees incurred by the landlord in the hearing. Either party can appear at the county court hearing on such motion by the landlord without having to have an attorney. If a writ is issued by the county court, the writ cannot be executed by the constable for 5 days after issuance in order to give the tenant time to either move out or appeal to the Court of Appeals.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute is divided into three separate sections instead of being only in one long section of the Property Code. The substitute contains the same general principles as the original bill but adds a number of additional safeguards for landlords, tenants, and justices of the peace, as follows:

1. The substitute requires the justice court to notify the landlord of the filing of a pauper's affidavit. If the landlord timely contests tenant's affidavit, the justice court must notify both parties of a hearing date, with the hearing to be held within 5 days.
2. The substitute requires the JP to note on the judgment the amount of rent that the tenant must tender into court at each rental pay period during appeal to preserve the tenant's appeal rights in a nonpayment of rent case.
3. When there is a dispute over the amount of rent due to be tendered by the tenant during appeal in government rent-participation cases, the tenant's right to appeal the JP court's decision to the county court (in HB 62 as introduced) is changed to having a special, quick hearing in JP court with the opportunity for witnesses to come from the governmental agency to resolve the issue.
4. If the county court finds that the tenant has failed to timely tender during appeal as required, the court must issue the writ of possession, without delay.
5. If the tenant has failed to timely tender, the tenant is given a one-time "second chance" to avoid issuance of the writ if the tenant pays the required rent into county court by the end of the day of the hearing and pays any attorneys fees incurred by the landlord in the hearing.

6. If a writ is issued by the county court, the writ cannot be actually executed by the constable for 5 days after issuance in order to give the tenant time to either move out or appeal to the Court of Appeals.
7. Either party can appear without having to have an attorney at the county court hearing on the landlord's motion to issue the writ of possession because the tenant failed to tender rent on time into the court's registry during appeal.