

By: McClendon

H.B. No. 62

A BILL TO BE ENTITLED

AN ACT

relating to procedures for appealing a residential eviction suit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 24, Property Code, is amended by adding Sections 24.0052, 24.0053, and 24.0054 to read as follows:

Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

(1) the tenant's identity;

(2) the nature and amount of the tenant's employment income;

(3) the income of the tenant's spouse, if applicable and available to the tenant;

(4) the nature and amount of any governmental entitlement income of the tenant;

(5) all other income of the tenant;

(6) the amount of available cash and funds available in savings or checking accounts of the tenant;

1 (7) real and personal property owned by the tenant,
2 other than household furnishings, clothes, tools of a trade, or
3 personal effects;

4 (8) the tenant's debts and monthly expenses; and

5 (9) the number and age of the tenant's dependents and
6 where those dependents reside.

7 (b) The justice court shall make available an affidavit form
8 that a person may use to comply with the requirements of Subsection
9 (a).

10 (c) The justice court shall promptly notify the landlord if
11 a pauper's affidavit is filed by the tenant.

12 (d) A landlord may contest a pauper's affidavit on or before
13 the fifth day after the date the affidavit is filed. If the
14 landlord contests the affidavit, the justice court shall notify the
15 parties and hold a hearing to determine whether the tenant is unable
16 to pay the costs of appeal or file an appeal bond. The hearing shall
17 be held not later than the fifth day after the date the landlord
18 notifies the court clerk of the landlord's contest. At the hearing,
19 the tenant has the burden to prove by competent evidence, including
20 documents or credible testimony of the tenant or others, that the
21 tenant is unable to pay the costs of appeal or file an appeal bond.

22 (e) If the justice court approves the pauper's affidavit of
23 a tenant, the tenant is not required to pay the county court filing
24 fee or file an additional affidavit in the county court under
25 Subsection (a).

26 Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION.

27 (a) If the justice court enters judgment for the landlord in a

1 residential eviction case based on nonpayment of rent, the court
2 shall determine the amount of rent to be paid each rental pay period
3 during the pendency of any appeal and shall note that amount in the
4 judgment. If a portion of the rent is payable by a government
5 agency, the court shall determine and note in the judgment the
6 portion of the rent to be paid by the government agency and the
7 portion to be paid by the tenant. The court's determination shall
8 be in accordance with the terms of the rental agreement and
9 applicable laws and regulations. This subsection does not require
10 or prohibit payment of rent into the court registry or directly to
11 the landlord during the pendency of an appeal of an eviction case
12 based on grounds other than nonpayment of rent.

13 (b) If an eviction case is based on nonpayment of rent and
14 the tenant appeals by filing a pauper's affidavit, the tenant shall
15 pay the rent, as it becomes due, into the justice court or the
16 county court registry, as applicable, during the pendency of the
17 appeal, in accordance with the Texas Rules of Civil Procedure and
18 Subsection (a). If a government agency is responsible for all or a
19 portion of the rent under an agreement with the landlord, the tenant
20 shall pay only that portion of the rent determined by the justice
21 court under Subsection (a) to be paid by the tenant during appeal,
22 subject to either party's right to contest that determination under
23 Subsection (c).

24 (c) If an eviction case is based on nonpayment of rent and
25 the tenant's rent during the rental agreement term has been paid
26 wholly or partly by a government agency, either party may contest
27 the portion of the rent that the justice court determines must be

1 paid into the county court registry by the tenant under this
2 section. The contest must be filed on or before the fifth day after
3 the date the justice signs the judgment. If a contest is filed, not
4 later than the fifth day after the date the contest is filed the
5 justice court shall notify the parties and hold a hearing to
6 determine the amount owed by the tenant in accordance with the terms
7 of the rental agreement and applicable laws and regulations. After
8 hearing the evidence, the justice court shall determine the portion
9 of the rent that must be paid by the tenant under this section.

10 (d) If the tenant objects to the justice court's ruling
11 under Subsection (c) on the portion of the rent to be paid by the
12 tenant during appeal, the tenant shall be required to pay only the
13 portion claimed by the tenant to be owed by the tenant until the
14 issue is tried de novo along with the case on the merits in county
15 court. During the pendency of the appeal, either party may file a
16 motion with the county court to reconsider the amount of the rent
17 that must be paid by the tenant into the registry of the court.

18 (e) If either party files a contest under Subsection (c) and
19 the tenant files a pauper's affidavit that is contested by the
20 landlord under Section 24.0052(d), the justice court shall hold the
21 hearing on both contests at the same time.

22 Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL.

23 (a) During an appeal of an eviction case for nonpayment of rent, if
24 a tenant fails to pay rent into the justice court or county court
25 registry in accordance with the Texas Rules of Civil Procedure and
26 Section 24.0053, the landlord may file with the county court a sworn
27 motion that the tenant failed to pay rent as required. The landlord

1 shall notify the tenant of the motion and the hearing date.

2 (b) If the county court finds that the tenant has not
3 complied with the payment requirements of the Texas Rules of Civil
4 Procedure and Section 24.0053, the county court shall immediately
5 issue a writ of possession unless on or before the day of the
6 hearing the tenant pays into the court registry:

7 (1) all rent not paid in accordance with the Texas
8 Rules of Civil Procedure and Section 24.0053; and

9 (2) the landlord's reasonable attorney's fees, if any,
10 in filing the motion.

11 (c) If the court finds that a tenant has failed to timely pay
12 the rent into the court registry on more than one occasion:

13 (1) the tenant is not entitled to stay the issuance of
14 the writ by paying the rent and the landlord's reasonable attorney's
15 fees, if any; and

16 (2) the county court shall immediately issue a writ of
17 possession.

18 (d) A writ of possession issued under Subsection (c) may not
19 be executed before the sixth day after the date the writ is issued.

20 (e) In a motion or hearing in county court under Subsection
21 (a), the parties may represent themselves or be represented by
22 their authorized agents, who need not be attorneys.

23 (f) During the appeal of an eviction case, if a government
24 agency is responsible for payment of a portion of the rent and does
25 not pay that portion to the landlord or into the justice court or
26 county court registry, the landlord may file a motion with the
27 county court requesting that the tenant be required to pay into the

1 county court registry, as a condition of remaining in possession,
2 the full amount of each rental period's rent, as it becomes due
3 under the rental agreement. After notice and hearing, the court
4 shall grant the motion if the landlord proves by credible evidence
5 that:

6 (1) a portion of the rent is owed by a government
7 agency;

8 (2) the portion of the rent owed by the government
9 agency is unpaid;

10 (3) the landlord did not cause wholly or partly the
11 agency to cease making the payments;

12 (4) the landlord did not cause wholly or partly the
13 agency to pay the wrong amount; and

14 (5) the landlord is not able to take reasonable action
15 that will cause the agency to resume making the payments of its
16 portion of the total rent due under the rental agreement.

17 SECTION 2. This Act takes effect September 1, 2005.