

By: McClendon

H.B. No. 62

A BILL TO BE ENTITLED

1 AN ACT

2 relating to authorizing a procedure for an appeal by pauper's
3 affidavit of a residential eviction suit based on nonpayment of
4 rent.

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

6 SECTION 1. Chapter 24, Property Code, is amended by adding
7 Section 24.0052 to read as follows:

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

18 (1) the tenant's identity;

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

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

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

1 (5) all other income of the tenant;

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

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

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

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

10 (b) If the affidavit is contested by the landlord within the
11 time prescribed by the Texas Rules of Civil Procedure, the justice
12 court shall hold a hearing and rule on the matter not later than the
13 fifth day after the date the landlord's notice of contest is
14 received by the clerk. At the hearing, the tenant has the burden to
15 prove by competent evidence other than the affidavit the tenant's
16 inability to pay the costs of appeal or file an appeal bond.

17 (c) If the justice court determines that the tenant is
18 unable to pay the costs of appeal or file an appeal bond and the
19 tenant intends to stay in possession of the premises during the
20 pendency of the appeal, the tenant shall tender rent to the justice
21 court or county court registry, as applicable, in accordance with
22 the Texas Rules of Civil Procedure. If the tenant pays only a
23 portion of the rent for the premises and a governmental agency is
24 responsible for the remainder of the rent under an agreement with
25 the landlord, the tenant is required to tender only that portion of
26 the rent for which the tenant is liable under the lease agreement.

27 (d) If, on or before the fifth day after the date the justice

1 signs the judgment, a party to the suit files a motion with the
2 justice court disputing the amount of rent to be tendered into the
3 court registry under Subsection (c), the justice court shall, on or
4 before the fifth day after the date the motion is filed, hold a
5 hearing and determine the amount owed in accordance with the terms
6 of the lease agreement and applicable law. If the landlord contests
7 the tenant's affidavit under this section, a motion described by
8 this subsection must be made at or before the hearing on the
9 contest, and the justice court shall hold the hearing on the motion
10 at the same time as the hearing on the contest. The justice court's
11 decision may be appealed to the county court by the landlord or the
12 tenant not later than the fifth day after the date of the decision.
13 If a motion is filed under this subsection, the tenant is not
14 required to pay the disputed portion of the rent into the court
15 registry until the fifth day after the date of the justice court's
16 decision or, if an appeal of the decision is filed, until the fifth
17 day after the date the county court makes a final determination.

18 (e) If the justice court approves the affidavit, the tenant
19 is not required to pay the county court filing fee or file an
20 additional affidavit under Subsection (a).

21 (f) If a tenant fails to timely tender rent to the justice
22 court or county court registry in accordance with the Texas Rules of
23 Civil Procedure, the landlord may file a sworn motion of nonpayment
24 with the county court, and on a showing of the nonpayment to the
25 judge, the county court shall issue a writ of possession. If the
26 county court finds that the tenant has not complied with Subsection
27 (c) and the amount of rent is not in dispute under Subsection (d),

1 the county court may issue a writ of possession immediately. An
2 attorney is not required to file a motion or show nonpayment under
3 this subsection.

4 (g) During the appeal, if a governmental agency is
5 responsible for payment of a portion of the rent and does not pay
6 that portion to the landlord or into the justice court or county
7 court registry, the landlord may file a motion with the county court
8 requesting that the tenant be required to pay the full amount of the
9 rent into the county court registry as a condition of remaining in
10 possession. After notice and hearing, the court may grant the
11 motion only if the landlord:

12 (1) shows good cause;

13 (2) did not cause the agency to cease making the
14 payments; and

15 (3) is not able to take an action that will cause the
16 agency to resume making the payments or to otherwise pay all or part
17 of the rent.

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