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H.B. No. 882

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a residential tenant's right of restoration of
3 utilities after certain unlawful conduct.

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

5 SECTION 1. Section 92.008(b), Property Code, is amended to
6 read as follows:

7 (b) A [~~Except as provided by Subsections (c) and (d), a~~]
8 landlord may not interrupt or cause the interruption of water,
9 wastewater, gas, or electric service furnished to a tenant by the
10 landlord as an incident of the tenancy or by other agreement unless
11 the interruption results from bona fide repairs, construction, or
12 an emergency.

13 SECTION 2. Subchapter A, Chapter 92, Property Code, is
14 amended by adding Section 92.0091 to read as follows:

15 Sec. 92.0091. RESIDENTIAL TENANT'S RIGHT OF RESTORATION
16 AFTER UNLAWFUL UTILITY DISCONNECTION. (a) If a landlord has
17 interrupted utility service in violation of Section 92.008, the
18 tenant may obtain relief as provided by this section.

19 (b) The tenant must file with the justice court in the
20 precinct in which the rental premises are located a sworn complaint
21 specifying the facts of the alleged unlawful utility disconnection
22 by the landlord or the landlord's agent. The tenant must also state
23 orally under oath to the justice the facts of the alleged unlawful
24 utility disconnection.

1 (c) If the tenant has complied with Subsection (b) and if
2 the justice reasonably believes an unlawful utility disconnection
3 has likely occurred, the justice may issue, ex parte, a writ of
4 restoration of utility service that entitles the tenant to
5 immediate and temporary restoration of the disconnected utility
6 service, pending a final hearing on the tenant's sworn complaint.

7 (d) The writ of restoration of utility service must be
8 served on either the landlord or the landlord's management company,
9 on-premises manager, or rent collector in the same manner as a writ
10 of possession in a forcible detainer suit.

11 (e) The landlord is entitled to a hearing on the tenant's
12 sworn complaint for restoration of utility service. The writ of
13 restoration of utility service must notify the landlord of the
14 right to a hearing. The hearing shall be held not earlier than the
15 first day and not later than the seventh day after the date the
16 landlord requests a hearing.

17 (f) If the landlord fails to request a hearing on the
18 tenant's sworn complaint for restoration of utility service before
19 the eighth day after the date of service of the writ of restoration
20 of utility service on the landlord under Subsection (d), a judgment
21 for court costs may be rendered against the landlord.

22 (g) A party may appeal from the court's judgment at the
23 hearing on the sworn complaint for restoration of utility service
24 in the same manner as a party may appeal a judgment in a forcible
25 detainer suit.

26 (h) If a writ of possession is issued, it supersedes a writ
27 of restoration of utility service.

1 (i) If the landlord or the person on whom a writ of
2 restoration of utility service is served fails to immediately
3 comply with the writ or later disobeys the writ, the failure is
4 grounds for contempt of court against the landlord or the person on
5 whom the writ was served under Section 21.002, Government Code. If
6 the writ is disobeyed, the tenant or the tenant's attorney may file
7 in the court in which the action is pending an affidavit stating the
8 name of the person who has disobeyed the writ and describing the
9 acts or omissions constituting the disobedience. On receipt of an
10 affidavit, the justice shall issue a show cause order, directing
11 the person to appear on a designated date and show cause why the
12 person should not be adjudged in contempt of court. If the justice
13 finds, after considering the evidence at the hearing, that the
14 person has directly or indirectly disobeyed the writ, the justice
15 may commit the person to jail without bail until the person purges
16 the contempt action or omission in a manner and form as the justice
17 may direct. If the person disobeyed the writ before receiving the
18 show cause order but has complied with the writ after receiving the
19 order, the justice may find the person in contempt and assess
20 punishment under Section 21.002(c), Government Code.

21 (j) If a tenant in bad faith files a sworn complaint for
22 restoration of utility service resulting in a writ being served on
23 the landlord or landlord's agent, the landlord may in a separate
24 cause of action recover from the tenant an amount equal to actual
25 damages, one month's rent or \$500, whichever is greater, reasonable
26 attorney's fees, and costs of court, less any sums for which the
27 landlord is liable to the tenant.

1 (k) The fee for filing a sworn complaint for restoration of
2 utility service is the same as that for filing a civil action in
3 justice court. The fee for service of a writ of restoration of
4 utility service is the same as that for service of a writ of
5 possession. The fee for service of a show cause order is the same as
6 that for service of a civil citation. The justice may defer payment
7 of the tenant's filing fees and service costs for the sworn
8 complaint for restoration of utility service and writ of
9 restoration of utility service. Court costs may be waived only if
10 the tenant executes a pauper's affidavit.

11 SECTION 3. Sections 92.008(c), (d), and (e), Property Code,
12 are repealed.

13 SECTION 4. Section 92.0091, Property Code, as added by this
14 Act, applies only to a violation of Section 92.008, Property Code,
15 as amended by this Act, on or after the effective date of this Act or
16 a violation of Section 92.008, Property Code, as that section
17 existed immediately before the effective date of this Act, that
18 continues on or after the effective date of this Act. A violation
19 that occurred before the effective date of this Act and does not
20 continue after the effective date of this Act is covered by the law
21 in effect at the time the violation occurred, and the former law is
22 continued in effect for that purpose.

23 SECTION 5. This Act takes effect January 1, 2010.