

By: Rodriguez

H.B. No. 882

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. The heading to Section 92.009, Property Code, is amended to read as follows:

Sec. 92.009. RESIDENTIAL TENANT'S RIGHT OF RESTORATION [~~REENTRY~~] AFTER CERTAIN UNLAWFUL CONDUCT [~~LOCKOUT~~].

SECTION 2. Sections 92.009(a) through (i), (k), and (l), Property Code, are amended to read as follows:

(a) If a landlord has locked a tenant out of leased premises in violation of Section 92.0081, interrupted a utility service in violation of Section 92.008, removed a door, window, or appliance in violation of Section 92.0081(a), or violated another provision of Section 92.0081, the tenant may obtain relief [~~recover possession of the premises~~] as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for restoration [~~reentry~~], specifying the facts of the alleged unlawful conduct [~~lockout~~] by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful conduct [~~lockout~~].

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes [~~an~~] unlawful conduct [~~lockout~~] has

1 likely occurred, the justice may issue, ex parte, a writ of
2 restoration [~~reentry~~] that entitles the tenant to immediate and
3 temporary possession of the premises and the restoration of the
4 utility service, appliance, or premises to the condition that
5 existed prior to the alleged unlawful conduct, as appropriate,
6 pending a final hearing on the tenant's sworn complaint for
7 restoration [~~reentry~~].

8 (d) The writ of restoration [~~reentry~~] must be served on
9 either the landlord or the landlord's management company,
10 on-premises manager, or rent collector in the same manner as a writ
11 of possession in a forcible detainer action. A sheriff or constable
12 may use reasonable force in executing a writ of restoration
13 [~~reentry~~] under this section.

14 (e) The landlord is entitled to a hearing on the tenant's
15 sworn complaint for restoration [~~reentry~~]. The writ of restoration
16 [~~reentry~~] must notify the landlord of the right to a hearing. The
17 hearing shall be held not earlier than the first day and not later
18 than the seventh day after the date the landlord requests a hearing.

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

24 (g) A party may appeal from the court's judgment at the
25 hearing on the sworn complaint for restoration [~~reentry~~] in the
26 same manner as a party may appeal a judgment in a forcible detainer
27 suit.

1 (h) If a writ of possession is issued, it supersedes a writ
2 of restoration [~~reentry~~].

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

23 (k) If a tenant in bad faith files a sworn complaint for
24 restoration [~~reentry~~] resulting in a writ of restoration [~~reentry~~]
25 being served on the landlord or landlord's agent, the landlord may
26 in a separate cause of action recover from the tenant an amount
27 equal to actual damages, one month's rent or \$500, whichever is

1 greater, reasonable attorney's fees, and costs of court, less any
2 sums for which the landlord is liable to the tenant.

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

13 SECTION 3. This Act applies only to a violation that occurs
14 or continues to occur on or after the effective date of this Act. A
15 violation that occurred before the effective date of this Act is
16 covered by the law in effect at the time the violation occurred, and
17 the former law is continued in effect for that purpose.

18 SECTION 4. This Act takes effect September 1, 2009.