

By: Clardy, Moody

H.B. No. 1334

A BILL TO BE ENTITLED

AN ACT

relating to the appeal of 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 24.00511 and 24.00512 to read as follows:

Sec. 24.00511. APPEAL BOND FOR CERTAIN EVICTION SUITS. (a) In a residential eviction suit for nonpayment of rent, the justice court shall state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under Section 24.0053.

(b) In addition to meeting all other requirements of law, the bond must require the surety to provide the surety's contact information, including an address, phone number, and e-mail address, if any. If any of the contact information changes, the surety shall inform the court of the surety's new contact information.

Sec. 24.00512. CONTEST OF APPEAL BOND. (a) If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the justice court shall

1 notify the other party and the surety of the contest.

2 (b) Not later than the fifth day after the date the contest
3 is filed, the justice court shall hold a hearing to hear evidence to
4 determine whether to approve or disapprove the amount or form of the
5 bond or the surety.

6 (c) If a party contests the amount or form of the bond, the
7 contesting party has the burden to prove, by a preponderance of the
8 evidence, that the amount or form of the bond, as applicable, is
9 insufficient. If a party contests the financial ability of a surety
10 to pay the bond, the party filing the bond must prove, by a
11 preponderance of the evidence, that the surety has sufficient
12 nonexempt assets to pay the appeal bond. If the justice court
13 determines that the amount or form of the bond is insufficient or
14 the surety does not have sufficient nonexempt assets to pay the
15 appeal bond, the justice court must disapprove the bond. If the
16 surety fails to appear at the contest hearing, the failure to appear
17 is prima facie evidence that the bond should be disapproved.

18 (d) Not later than the fifth day after the date the justice
19 court disapproves an appeal bond, the party appealing may make a
20 cash deposit, file a sworn statement of inability to pay with the
21 justice court, or appeal the decision disapproving the appeal bond
22 to the county court. If the party appealing fails to make a cash
23 deposit, file a sworn statement of inability to pay, or appeal the
24 decision disapproving the appeal bond, the judgment of the justice
25 court becomes final and a writ of possession and other processes to
26 enforce the judgment must be issued on the payment of the required
27 fee.

1 (e) If an appeal is filed, the justice court shall transmit
2 to the county court the contest to the appeal bond and all relevant
3 documents. The county court shall docket the appeal, schedule a
4 hearing to be held not later than the fifth day after the date the
5 appeal is docketed, notify the parties and the surety of the hearing
6 time and date, and hear the contest de novo. The failure of the
7 county court to hold a timely hearing is not grounds for approval or
8 denial of the appeal. A writ of possession may not be issued before
9 the county court issues a final decision on the appeal bond.

10 (f) After the contest is heard by the county court, the
11 county clerk shall transmit the transcript and records of the case
12 to the justice court. If the county court disapproves the appeal
13 bond, the party may, not later than the fifth day after the date the
14 court disapproves the appeal bond, perfect the appeal of the
15 judgment on the eviction suit by making a cash deposit in the
16 justice court in an amount determined by the county court or by
17 filing a sworn statement of inability to pay with the justice court
18 pursuant to the Texas Rules of Civil Procedure. If the tenant is
19 the appealing party and a cash deposit in the required amount is not
20 timely made or a sworn statement of inability to pay is not timely
21 filed, the judgment of the justice court becomes final and a writ of
22 possession and other processes to enforce the judgment must be
23 issued on the payment of the required fee. If the landlord is the
24 appealing party and a cash deposit is not timely made or a sworn
25 statement of inability to pay is not timely filed, the judgment of
26 the justice court becomes final. If the appeal bond is approved by
27 the county court, the court shall transmit the transcript and other

1 records of the case to the justice court, and the justice court
2 shall proceed as if the appeal bond was originally approved.

3 SECTION 2. Chapter 24, Property Code, is amended by adding
4 Section 24.00521 to read as follows:

5 Sec. 24.00521. CONTEST OF APPEAL BOND IN COUNTY COURT. A
6 contest under Section 24.00512 does not preclude a party from
7 contesting the appeal bond in the county court after the county
8 court has jurisdiction over the eviction suit. After the county
9 court has jurisdiction over the eviction suit, the county court may
10 modify the amount or form of the bond and determine the sufficiency
11 of the surety.

12 SECTION 3. Section 24.0053, Property Code, is amended by
13 amending Subsections (a-1) and (a-2) and adding Subsections (a-3)
14 and (a-4) to read as follows:

15 (a-1) In an eviction suit for nonpayment of rent, if [If] a
16 tenant files a pauper's affidavit in the period prescribed by
17 Section 24.0052 or an appeal bond pursuant to the Texas Rules of
18 Civil Procedure [to appeal an eviction for nonpayment of rent], the
19 justice court shall provide to the tenant a written notice at the
20 time the pauper's affidavit or appeal bond is filed that contains
21 the following information in bold or conspicuous type:

22 (1) the amount of the initial deposit of rent stated in
23 the judgment that the tenant must pay into the justice court
24 registry;

25 (2) whether the initial deposit must be paid in cash,
26 cashier's check, or money order, and to whom the cashier's check or
27 money order, if applicable, must be made payable;

1 (3) the calendar date by which the initial deposit
2 must be paid into the justice court registry;

3 (4) for a court that closes before 5 p.m. on the date
4 specified by Subdivision (3), the time the court closes; and

5 (5) a statement that failure to pay the required
6 amount into the justice court registry by the date prescribed by
7 Subdivision (3) may result in the court issuing a writ of possession
8 without a hearing.

9 (a-2) The date by which an initial deposit must be paid into
10 the justice court registry under Subsection (a-1)(3) must be within
11 five days of the date the tenant files the pauper's affidavit as
12 required by the [Rule 749b(1),] Texas Rules of Civil Procedure.

13 (a-3) If a tenant files an appeal bond to appeal an eviction
14 for nonpayment of rent, the tenant must, not later than the fifth
15 day after the date the tenant filed the appeal bond, pay into the
16 justice court registry the amount of rent to be paid in one rental
17 pay period as determined by the court under Subsection (a). If the
18 tenant fails to timely pay that amount into the justice court
19 registry and the transcript has not yet been transmitted to the
20 county court, the plaintiff may request a writ of possession. On
21 request and payment of the applicable fee, the justice court shall
22 issue the writ of possession immediately and without a hearing.
23 Regardless of whether a writ of possession is issued, the justice
24 court shall transmit the transcript and appeal documents to the
25 county court for trial de novo on issues relating to possession,
26 rent, or attorney's fees.

27 (a-4) On sworn motion and hearing, the plaintiff in the

1 eviction suit may withdraw money deposited in the court registry
2 before the final determination in the case, dismissal of the
3 appeal, or order of the court after final hearing. The county court
4 shall give precedence to a hearing or motion under this subsection.

5 SECTION 4. The change in law made by this Act applies only
6 to an eviction suit filed on or after the effective date of this
7 Act. A suit filed before the effective date of this Act is governed
8 by the law in effect immediately before the effective date of this
9 Act, and that law is continued in effect for that purpose.

10 SECTION 5. This Act takes effect January 1, 2016.