

BILL ANALYSIS

Senate Research Center
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H.B. 62
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, a tenant may be evicted for nonpayment of rent or other lease violations in an eviction suit. Under the rules of civil procedure, if a tenant does not prevail in the suit, the tenant may appeal the judgment, which requires the payment of an appeal bond or a pauper's affidavit in lieu of an appeal bond.

Present statutes and court rules do not adequately address the procedures to be utilized in the eviction appeals process if the tenant claims to be a pauper. Both landlords and tenants often face problems in the appeals process because there are no guidelines for the justice of the peace and a county judge regarding what constitutes pauper status. In addition, there has been abuse of the pauper's affidavit by non-paupers who falsely claim to be a pauper simply to slow down the eviction process and make it more costly for the landlord. The abuse also unjustifiably consumes the time of justices of the peace and county court judges.

If the government has been paying rent and no government rent payments are received by the landlord, there is no statutory guidance on whether the tenant must tender the entire rent or only the portion that he or she has been paying, into the court registry during appeal. There is no statutory provision for the tenant to assert that the government's failure to pay rent was actually the landlord's fault (such as failing to make repairs or process required paperwork).

Additionally, making a motion to a county court for issuance of a writ of possession for the tenant's failure to tender rent into the court during the appeal process is both costly and protracted. There is no latitude for a tenant who mistakenly was a bit late in tendering or who tendered the wrong amount.

H.B. 62 establishes procedures for appealing a residential eviction suit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 24, Property Code, by adding Sections 24.0052, 24.0053, and 24.0054, as follows:

Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) Authorizes the tenant, 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, to 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. Requires the affidavit to contain certain information

(b) Requires the justice court to make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c) Requires the justice court to promptly notify the landlord if a pauper's affidavit is filed by the tenant.

(d) Authorizes a landlord to contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. Requires the justice court, if the landlord contests the affidavit, to notify the parties and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. Requires the hearing to be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. Provides that at the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e) Provides that the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a), if the justice court approves the pauper's affidavit of a tenant.

Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION. (a) Requires the court, if the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, to determine the amount of rent to be paid each rental pay period during the pendency of any appeal and to note that amount in the judgment. Requires the court, if a portion of the rent is payable by a government agency, to determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. Requires the court's determination to be in accordance with the terms of the rental agreement and applicable laws and regulations. Provides that this subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds other than nonpayment of rent.

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

(c) Authorizes either party, if an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, to contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. Requires the contest to be filed on or before the fifth day after the date the justice signs the judgment. Requires the justice court, if a contest is filed, not later than the fifth day after the date the contest is filed to notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. Requires the justice court, after hearing the evidence, to determine the portion of the rent that must be paid by the tenant under this section.

(d) Requires the tenant, if the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, to be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. Authorizes either party, during the pendency of the appeal, to file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

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

Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (a) Authorizes the landlord, during an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the justice court or county court registry in accordance with the Texas Rules of Civil Procedure and Section 24.0053, to file with the county court a sworn motion that the tenant failed to pay rent as required. Requires the landlord to notify the tenant of the motion and the hearing date.

(b) Requires the county court, if the county court finds that the tenant has not complied with the payment requirements of the Texas Rules of Civil Procedure and Section 24.0053, to immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry certain amounts.

(c) Provides that, if the court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees, if any; and the county court shall immediately issue a writ of possession.

(d) Prohibits a writ of possession issued under Subsection (c) from being executed before the sixth day after the date the writ is issued.

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

(f) Authorizes the landlord, during the appeal of an eviction case, if a government agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the justice court or county court registry, to file a motion with the county court requesting that the tenant be required to pay into the county court registry, as a condition of remaining in possession, the full amount of each rental period's rent, as it becomes due under the rental agreement. Requires the court, after notice and hearing, to grant the motion if the landlord proves by credible evidence that certain conditions exist.

SECTION 2. Effective date: September 1, 2005.