WEST VIRGINIA CODE: §55-3a-3

§55-3A-3. Proceedings in court; final order; disposition of abandoned personal property.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order granting immediate possession of the property to the landlord.

(b) In the case of a petition alleging arrearage in rent, if the tenant files an answer raising the defense of breach by the landlord of a material covenant upon which the duty to pay rent depends, the court shall proceed to a hearing on such issues.

(c) In the case of a petition alleging a breach by the tenant or damage to the property, if the tenant files an answer raising defenses to the claim or claims set forth in the petition, the court shall proceed to a hearing on such issues.

(d) Continuances of the hearing provided for in this section shall be for cause only and the judge or magistrate shall not grant a continuance to either party as a matter of right. If a continuance is granted upon request by a tenant, the tenant shall be required to pay into court any periodic rent becoming due during the period of such continuance.

(e) At the conclusion of a hearing held under the provisions of subsection (b) or (c) of this section, if the court finds that the tenant is in wrongful occupation of the rental property, the court shall make and enter an order granting immediate possession of the property to the landlord. In the case of a proceeding under subsection (a) of this section, the court may also make a written finding and include in its order such relief on the issue of arrearage in the payment of rent as the evidence may require. The court may disburse any moneys paid into court by the tenant in accordance with the provisions of this section.

(f) The court order shall specify the time when the tenant shall vacate the property, taking into consideration such factors as the nature of the property (i.e., furnished or unfurnished), the possibility of relative harm to the parties, and other material facts deemed relevant by the court in considering when the tenant might reasonably be expected to vacate the property. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time, the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of the landlord and the tenant.

(g) In the event an appeal is taken and the tenant prevails upon appeal, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession if the term of the lease has expired, absent an issue of title, retaliatory eviction, or breach of warranty. During the pendency of any such appeal, the tenant is not entitled to remain in possession of the property if the period of the tenancy has otherwise expired.

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(h) When an order is issued pursuant to this section granting possession of the property to the landlord, and the tenant fails to remove all personal property by the date and time specified by the order issued pursuant to subsection (f) of this section, the landlord may:

(1) Dispose of the tenant's personal property without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the personal property is abandoned or if the property is garbage;

(2) Remove and store the personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord's property and has not taken possession of the personal property.

(i) Notwithstanding the provisions of subsection (h) of this section, if the personal property is worth more than $300 and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (h) of this section, the landlord shall store the personal property for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the personal property pays the landlord the reasonable costs of storage and removal.

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