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OFFICE OF THE GOVERNOR

No. 1209

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Com. Sub. for
HOUSE BILL No. 1209

(By Mr. Whitlow)



Passed March 12, 1983

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1209
(By MR. WHITLOW)

[Passed March 12, 1983: in effect ninety days from passage.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to terminating a tenancy for wrongful occupation of residential property; petition for relief; defenses available; and proceedings in court.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

1 (a) A person desiring to remove a tenant from residential
2 rental property may apply for such relief to the magistrate
3 court or the circuit court of the county in which such property
4 is located, by verified petition, setting forth the following:

5 (1) That he is the owner or agent of the owner and as such
6 has a right to recover possession of the property;

7 (2) A brief description of the property sufficient to identify
8 it;

9 (3) That the tenant is wrongfully occupying such property
10 in that the tenant is in arrears in the payment of rent, has
11 breached a warranty or a leasehold covenant, or has deliber-
12 ately or negligently damaged the property or knowingly per-
13 mitted another person to do so, and describing such arrearage,
14 breach, or act or omission; and

15 (4) A prayer for possession of the property.

16 (b) Previous to the filing of the petition the person shall
17 request from the court the time and place at which the peti-
18 tioner shall be heard. The court shall fix a time for such
19 hearing, which time shall not be less than five nor more than
20 ten judicial days following such request.

21 (c) Immediately upon being apprised of the time and
22 place for hearing the petitioner shall cause a notice of the
23 same to be served upon the tenant in accordance with the
24 provisions of Rule 4 of the West Virginia Rules of Civil
25 Procedures or by certified mail, return receipt requested.
26 Such notice shall inform the tenant that any defense to the
27 petition must be submitted in writing to the petitioner within
28 five days of the receipt by the tenant of the notice, and in
29 no case later than the fifth day next preceding the date of
30 hearing. Upon receipt of the return of service or the return
31 receipt as the case may be, evidencing service upon the tenant,
32 the petitioner shall file with the court his petition and such
33 proof of service.

§55-3A-2. Defenses available.

1 In a proceeding under the provisions of this article, a
2 tenant against whom a petition has been brought may assert
3 any and all defenses which might be raised in an action for
4 ejectment or an action for unlawful detainer.

§55-3A-3. Proceedings in court; final order.

1 (a) If at the time of the hearing there has been no appear-
2 ance, answer or other responsive pleading filed by the tenant,

3 the court shall make and enter an order granting immediate
4 possession of the property to the petitioner.

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

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

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

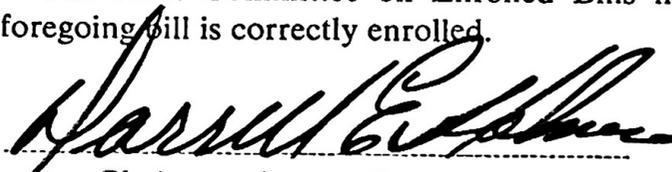
21 (e) At the conclusion of a hearing held under the pro-
22 visions of subsection (b) or (c) of this section if the court
23 shall find that the tenant is in wrongful occupation of the
24 rental property the court shall make and enter an order grant-
25 ing immediate possession of the property to the petitioner.
26 In the case of a proceeding under subsection (a) of this section
27 the court may also make a written finding and include in its
28 order such relief on the issue of arrearage in the payment of
29 rent as the evidence may require. Any moneys paid into court
30 by the tenant in accordance with the provisions of this section
31 may be ordered to be disbursed to the parties as may be
32 appropriate under the findings of the court.

33 (f) Taking into consideration such factors as the nature
34 of the property (i.e., furnished or unfurnished) the possibility
35 of relative harm to the parties and other material facts deemed
36 relevant by the court in considering the time in which the
37 tenant might reasonably be expected to vacate the premises,
38 the court shall in its order specify the time by which the
39 tenant must remove himself from the property. The order

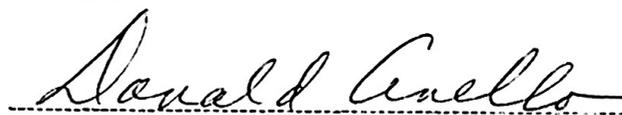
40 shall further provide that if the tenant still wrongfully oc-
41 cupies the property beyond such time the sheriff shall forth-
42 with remove him, taking such precautions as are necessary to
43 guard against damage to the property of the landlord and the
44 tenant.

45 (g) Absent an issue of title, retaliation, or breach of warran-
46 ty, and in the event of an appeal wherein the tenant prevails,
47 if the term of the lease has expired the relief ordered by the
48 appellate court shall be for monetary damages only and shall
49 not restore the tenant to possession. During the pendency of
50 any such appeal no tenant shall be entitled to remain in pos-
51 session of the leasehold if the period of the tenancy has other-
52 wise expired.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.



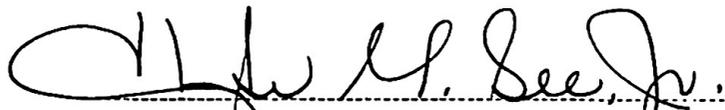
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within in approved this the 29
day of March, 1983.



Governor

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