

SB 198

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 198

(By Senator FANNING, ET AL)



PASSED MARCH 21, 1999
In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
WEST VIRGINIA SENATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 198

(SENATORS FANNING, BALL, KESSLER, ROSS, SCHOONOVER,
WOOTON, DEEM, SNYDER, SHARPE, LOVE, HUNTER, MITCHELL,
MCCABE, SPROUSE, ANDERSON, HELMICK AND PLYMALE,
original sponsors)

[Passed March 21, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article three-a, chapter fifty-five of said code, all relating to tenants' personal property left on leased property; allowing for entry and repossession of leased property by landlord or housing authority; allowing the landlord or housing authority to dispose of abandoned personal property upon repossession; requiring notice to the tenant of the disposal of personal property; allowing holders of security interests and tenants to claim valuable abandoned

personal property under certain circumstances; proceedings in court for wrongful occupation of residential rental property; allowing for the disposal of abandoned personal property after an order of possession; and requiring landlord to store personal property left on property for thirty days after order of possession under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article three-a, chapter fifty-five of said code be amended and reenacted, all to read as follows:

CHAPTER 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-6. Desertion of leased property; entry; recovery of rent, disposition of abandoned personal property; notice.

1 (a) If any tenant from whom rent is in arrears and
2 unpaid abandons the leased property, the landlord or his
3 or her agent shall post a notice in writing in a conspicuous
4 part of the property, requiring the tenant to pay the rent
5 within one month. If the rent is not paid within that time,
6 the landlord shall be entitled to possession of the property,
7 and may enter thereon, and the right of the tenant to the
8 leased property shall end. The landlord may recover the
9 rent owed up to the time when he or she became entitled
10 to possession.

11 (b) If any tenant of a housing development operated by
12 a housing authority abandons the leased property when
13 rent is not a condition of the lease agreement, the housing
14 authority shall post a notice in writing in a conspicuous
15 part of the property, requiring the tenant to respond in
16 writing within one month stating that he or she has not
17 abandoned the leased property. If the tenant does not
18 respond in writing within one month, stating that he or she
19 has not abandoned the leased property, the housing
20 authority shall be entitled to possession of the property,
21 and may enter thereon, and the right of the tenant to the
22 leased property shall end.

23 (c) Upon regaining possession of the property, the
24 landlord or his or her agent or housing authority may take,
25 dispose of or otherwise remove the tenant's personal
26 property without incurring any liability to the tenant or
27 any other person. To dispose of the tenant's property under
28 this section, the landlord or housing authority shall give a
29 written notice to the tenant that shall be:

30 (1) Posted in a conspicuous place on the property; and

31 (2) Sent by first-class mail with a certificate of mailing,
32 which provides a receipt of the date of mailing, in an
33 envelope endorsed "Please Forward", addressed and
34 mailed to the tenant at:

35 (A) The leased property;

36 (B) Any post office box held by the tenant and known to
37 the landlord or housing authority; and

38 (C) The most recent forwarding address if provided by
39 the tenant or known to the landlord or housing authority.

40 (d) The written notice required under subsection (c) of
41 this section shall state that:

42 (1) The leased property is considered abandoned;

43 (2) Any personal property left by the tenant must be
44 removed from the property or from the place of safekeep-
45 ing, if the landlord or housing authority has stored the
46 property, by a date specified in the written notice that is:

47 (A) Not less than thirty days after the date the written
48 notice was mailed; or

49 (B) Not less than sixty days after the date the written
50 notice was mailed if the tenant has notified the landlord or
51 housing authority that he or she is on active duty in the
52 armed forces of the United States.

53 (3) If the personal property is not removed within the
54 time provided for in this section, then the tenant forfeits
55 his or her ownership rights to the personal property, and
56 the personal property becomes the property of the landlord
57 or housing authority.

58 (e) Notwithstanding the provisions of subsection (c) of
59 this section, if the abandoned personal property is worth
60 more than three hundred dollars and was not removed
61 from the property or from the place of safekeeping within
62 the time period stated in the notice required in subsection
63 (d) of this section, the landlord shall store the personal
64 property for up to thirty additional days if the tenant or
65 any person holding a security interest in the abandoned
66 personal property informs the landlord of their intent to
67 remove the property: *Provided*, That the tenant or person
68 holding a security interest in the abandoned personal
69 property pays the landlord the reasonable costs of storage
70 and removal.

**CHAPTER 55. ACTIONS, SUITS AND ARBITRATION;
JUDICIAL SALE.**

**ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDEN-
TIAL RENTAL PROPERTY.**

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

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

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

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

15 (d) Continuances of the hearing provided for in this
16 section 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
19 tenant, the tenant shall be required to pay into court any

20 periodic rent becoming due during the period of such
21 continuance.

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

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

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

53 (h) When an order is issued pursuant to this section
54 granting possession of the property to the landlord, and
55 the tenant fails to remove all personal property by the date
56 and time specified by the order issued pursuant to subsec-
57 tion (f) of this section, the landlord may:

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

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

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

80 (i) Notwithstanding the provisions of subsection (h) of
81 this section, if the personal property is worth more than
82 three hundred dollars and was not removed from the
83 property or place of storage within thirty days with the
84 required fees paid as provided in subsection (h) of this
85 section, the landlord shall store the personal property for
86 up to thirty additional days if the tenant or any person
87 holding a security interest in the abandoned personal
88 property informs the landlord of their intent to remove the
89 property: *Provided*, That the tenant or person holding a
90 security interest in the personal property pays the landlord
91 the reasonable costs of storage and removal.

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

Randy Spencer

Chairman Senate Committee

Joe F. Latta

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Barrett Wilson

Clerk of the Senate

Buzz B. Soy

Clerk of the House of Delegates

Earl Ray Tomblin

President of the Senate

John H. Harman

Speaker House of Delegates

The within *approved* this the *2nd*
Day of *April*, 1999

Earl D. Anderson

Governor

PRESENTED TO TH.

GOVERNOR

Date 4/1/99

Time 10:25 am