House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 28

HOUSE BILL 2223

AN ACT

AMENDING SECTION 12-1179, ARIZONA REVISED STATUTES; RELATING TO FORCIBLE ENTRY AND DETAINER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 12-1179, Arizona Revised Statutes, is amended to read:

12-1179. Appeal to superior court; notice; bond

A. Either party may appeal from a justice court to the superior court in the county in which the judgment is given by giving notice as in other civil actions within five calendar days after rendition of the judgment pursuant to this section. The appeal shall be filed in accordance with this section, and the time to appeal shall not be extended or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion.

B. A party seeking to appeal a judgment shall file with the notice of appeal a bond for costs on appeal~~, which~~. THE JUSTICE OF THE PEACE shall ~~be~~ SET THE BOND in an amount ~~set by the justice of the peace~~ sufficient to cover the costs on appeal. The bond shall be payable to the clerk of the ~~superior~~ JUSTICE court. If a party is unable to file a bond for costs on appeal, the party shall file with the justice court a notice of appeal along with an affidavit stating that ~~he~~ THE PARTY is unable to give bond for costs on appeal and the reasons therefor. Within five court days after the filing of the affidavit, any other party may file, in the justice court, objections to the affidavit. The justice of the peace shall hold a hearing on the affidavit and objections within five court days thereafter. If the justice court sustains the objections, the appellant shall file, within five court days thereafter, a bond for costs on appeal as provided for in this section or in such lesser amount as ordered by the justice court.

C. A party seeking to appeal a judgment may stay the execution of either the judgment for possession or any judgment for money damages by filing a supersedeas bond. The justice court shall hold a hearing on the motion within five court days after the parties advise the justice court of their failure to stipulate on the amount of the bond. The stay is effective when the supersedeas bond or bonds are filed.

D. The party seeking to stay the execution of the judgment for possession shall file a supersedeas bond in the amount of rent accruing from the date of the judgment until the next periodic rental date, together with costs and ~~attorney's~~ ATTORNEY fees, if any. The tenant shall pay to the clerk of the ~~superior~~ JUSTICE court, on or before each periodic rental due date during the pendency of the appeal, the amount of rent due under the terms of the lease or rental agreement. Such amounts shall be made payable by the ~~superior~~ JUSTICE court to the owner, landlord or agent as they accrue to satisfy the amount of periodic rent due under the lease or rental agreement. In all cases where the rent due under the terms of the lease or rental agreement is paid through the ~~office of the clerk of the superior~~ JUSTICE court as set forth in this subsection, the order of the court may include a one-time handling fee in the amount of ten dollars to be paid by the party seeking to stay the execution of the judgment for possession. In

no event shall the amounts paid per month exceed the amount of monthly rent charged by the owner for the premises. ~~Where~~ IF THE TENANT RAISES habitability as provided for in sections 33-1324 and 33-1364 ~~has been raised~~ as an affirmative defense ~~by the tenant~~ to the nonpayment of rent or ~~when~~ the tenant has filed a counterclaim asserting a habitability issue, the ~~superior~~ JUSTICE court ~~will~~ SHALL retain all money paid under this subsection pending a final judgment.

E. If during the pendency of the appeal the party seeking to stay the execution of the judgment for possession fails to pay the rent on the periodic rental due date, the party in whose favor a judgment for possession was issued may move the ~~superior~~ JUSTICE court to lift the stay of the execution of the judgment for possession. The ~~superior~~ JUSTICE court shall hear the motion to lift the stay of the execution of the judgment for possession and release accrued monies, if any, within five court days from the failure of the party to pay the periodic rent due under the terms of the lease or rental agreement. If the judgment appealed from involves a finding of a material and irreparable breach pursuant to section 33-1368 or section 33-1476, subsection D, paragraph 3 the ~~superior~~ JUSTICE court shall treat it as an emergency matter and conduct a hearing on a motion to lift the stay of execution of the writ of restitution within three days. If the third day is a Saturday, Sunday or other legal holiday, the hearing shall be ~~heard~~ HELD on the next day thereafter.

F. The party seeking to stay the execution of the judgment for money damages shall file a supersedeas bond in the amount of the judgment, together with costs and ~~attorney's~~ ATTORNEY fees, if any. The amount of the bond shall be fixed by the court and payable to the clerk of the ~~superior~~ JUSTICE court.

APPROVED BY THE GOVERNOR APRIL 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2004.