ENGROSSED HOUSE
BILL NO. 1871

By: Phillips, Sullivan (Leonard) and Holt of the House

and

Douglass of the Senate

An Act relating to breach of lease agreements; amending 12 O.S. 1991, Sections 1148.10 and 1148.10A, which relate to forcible entry and detainer; amending 41 O.S. 1991, Sections 102, 117, 124, 130 and 131, which relate to the Oklahoma Residential Landlord and Tenant Act; modifying provisions related to writ of execution in certain actions; requiring writ to contain statement regarding time for compliance by defendant; modifying procedures for execution of writ; providing for copies of writ to be provided to certain persons; exempting copies from fees; authorizing execution of writ by certain persons; prescribing procedures related to execution; prescribing criminal penalty for refusal to surrender possession of premises; authorizing use of certain force; prohibiting breach of peace; authorizing assistance of certain officials for execution of writ; providing alternate method for execution of writ; prescribing procedures related to alternate method; modifying period of time for posting of supersedeas bond; adding definition for

purposes of Oklahoma Residential Landlord and Tenant Act; providing for certain limitations upon use of property; providing certain rights regarding occupants; requiring occupants to comply with certain demand; prescribing criminal penalty for failure to comply with demand; authorizing use of certain force; prohibiting breach of peace; authorizing assistance of certain officials; limiting availability of remedies in certain actions based upon execution of writ in prescribed manner; modifying period of time within which property treated as abandoned; modifying provision related to demand by landlord for payment of rent; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1148.10, is amended to read as follows:

Section 1148.10 If judgment be for plaintiff, the court shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in substantially the following form:

The State of Oklahoma, _____ County.

The State of Oklahoma to the Sheriff of _____ County:

Whereas, in a certain action for the forcible entry and detention (or for the forcible detention as the case may be) of the following described premises, to wit: _____ lately tried before me, wherein _____ was plaintiff, and _____ was defendant, judgment was rendered on the ____ day of _____, 19__, at _____ o'clock ___.m., that the plaintiff have restitution of said

premises; and also that he recover rent, attorney fees and costs in the sum of _____; you, therefore, are hereby commanded to cause the defendant to be forthwith removed from said premises after the expiration of twenty-four (24) hours from the date and time specified in this writ of execution and the said plaintiff to have restitution of the same immediately after the expiration of the twenty-four-hour period; also that you levy on the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ, make legal service and due return.

Witness my hand this _____ day of _____, 19__.

_____

A.B., Judge

A motion for a new trial may be filed only within three (3) days of judgment but shall not operate to stay execution.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1148.10A, is amended to read as follows:

Section 1148.10A ~~The officer shall immediately notify the defendant in person or by posting of said notice that the officer shall return in seventy-two (72) hours to restore the plaintiff possession of the premises by executing the writ prescribed in Section 1148.10 of this title and shall make levy to collect the amount of the judgment and all accruing costs.~~

A. The original writ of execution issued as provided by Section 1148.10 of this title shall be filed in the action in the manner provided for judgments in civil cases. Two certified copies of the writ of execution as provided by Section 1148.10 of this title shall be provided to the plaintiff at the conclusion of the proceeding. The district court clerk shall not charge the plaintiff or an agent of the plaintiff for providing the certified copies.

B. The plaintiff or agent of the plaintiff may execute the writ upon the defendant at the conclusion of the twenty-four-hour period

specified in the writ of execution by personally serving a certified copy of the writ upon the defendant or upon a person authorized to receive service of process as provided by Section 2004 of this title.

C. Any person who refuses to surrender possession of the premises described in the writ of execution upon service of the writ by the plaintiff or the agent of the plaintiff shall, upon conviction, be deemed guilty of trespassing and may be fined in an amount not to exceed Five Hundred Dollars ($500.00) or by confinement in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

D. The plaintiff or agent of the plaintiff may exercise such force as may be reasonably necessary to obtain possession and control of the premises described in the writ of execution. Neither the plaintiff nor any agent of the plaintiff may commit a breach of the peace by attempting to execute or by executing the writ. If the defendant refuses to surrender possession of the premises, the plaintiff or the agent of the plaintiff may summon either the sheriff of the county or the law enforcement agency of the city or town in which the premises are located for assistance in executing the writ.

E. The plaintiff may attempt to execute the writ as provided by this section or may summon the sheriff of the county or the law enforcement agency of the city or town in which the premises are located to execute the writ. If the plaintiff requests a sheriff or other law enforcement official to execute the writ, the officer shall immediately notify the defendant in person or by posting a notice that the officer shall return at a specified date and time, which shall not exceed twenty-four (24) hours, to restore the plaintiff to possession of the premises by executing the writ prescribed in Section 1148.10 of this title and shall make levy to collect the amount of the judgment and all accruing costs.

F. The officer's return shall be as upon other executions. Within ~~three (3) days~~ twenty-four (24) hours of the date of the judgment, the defendant may post supersedeas bond conditioned as provided by law. This time limit may be enlarged by a trial judge's order to not more than ~~ten (10)~~ three (3) days after the date of judgment. The posting of a supersedeas bond shall not be construed to relieve the defendant of his duty to pay current rent as it becomes due while the appeal is pending. The rent shall be paid into the court clerk's office together with poundage. If there be controversy as to the amount of rent, the judge shall determine by order how much shall be paid in what time intervals. Withdrawal by the plaintiff of rent deposited in the court clerk's office pending appeal shall not operate to estop him from urging on appeal his right to the possession of the premises. Failure to pay current rentals while the appeal is pending shall be considered as abandonment of the appeal.

SECTION 3. AMENDATORY 41 O.S. 1991, Section 102, is amended to read as follows:

Section 102. Unless the context otherwise requires:

1. "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit;

2. "Deposit" includes any money or other property required by a landlord from a tenant as a security and which is to be returned to the tenant upon termination of the rental agreement, less any deductions properly made and allowed by this act;

3. "Dwelling unit" means a structure, or that part of a structure, which is used as a home, residence or sleeping place by one or more persons;

4. "Good faith" means honesty in fact in the conduct of the transaction concerned;

5. "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to comply with the disclosure provisions of Section 16 of this act;

6. "Occupant" means any person who is present within a dwelling unit, but who is not a tenant, and who is not legally obligated by the terms of a rental agreement;

7. "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity;

~~7.~~ 8. "Owner" means one or more persons, jointly or severally, in whom is vested:

a. all or any part of the legal title to the property, or

b. all or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession;

~~8.~~ 9. "Person" includes an individual or organization;

~~9.~~ 10. "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas and facilities held out for the use of the tenant generally or the use of which is promised to the tenant;

~~10.~~ 11. "Rent" means all payments, except deposits and damages, to be made to the landlord under the rental agreement;

~~11.~~ 12. "Rental agreement" means all agreements and valid rules and regulations adopted under Section 26 of this act, which establish, embody or modify the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

~~12.~~ 13. "Roomer" or "boarder" is a tenant occupying a dwelling unit:

a. which lacks at least one major bathroom or kitchen facility, such as a toilet, refrigerator or stove,

b. in a building

(1) where one or more of such major facilities are supplied to be used in common by the occupants of the roomer or boarder's dwelling unit and one or more other dwelling units, and

(2) in which the landlord resides;

~~13.~~ 14. "Single-family residence" means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit; and

~~14.~~ 15. "Tenant" means any person entitled under a rental agreement to occupy a dwelling unit.

SECTION 4. AMENDATORY 41 O.S. 1991, Section 117, is amended to read as follows:

Section 117. A. At the commencement of the term a landlord shall deliver full possession of the premises to the tenant in compliance with the rental agreement and Section 18 of this act. Except as otherwise provided in this act, the landlord may bring an action for possession against any other person wrongfully in possession and may recover his damages.

B. A rental agreement may provide reasonable limitations upon use of a dwelling unit or premises by an occupant. A landlord shall have the right to demand that an occupant who breaches any condition of the rental agreement which would be enforceable against the tenant vacate the dwelling unit or the premises or both. If a landlord makes either a verbal or written request to the tenant or to the occupant for the occupant to depart from the dwelling unit or the premises or both, the occupant shall comply. If the occupant fails to comply within a reasonable time, the occupant shall, upon conviction, be deemed guilty of a trespass and may be punished by a

fine of not to exceed Five Hundred Dollars ($500.00) or by confinement in the county jail for a period not to exceed thirty (30) days or by both such fine and imprisonment.

C. The landlord or agent of the landlord may exercise such force as may be reasonably necessary to require an occupant who commits a trespass as defined by subsection B of this section to depart, including the right to enter the dwelling unit. Neither the landlord nor the agent of the landlord may commit a breach of the peace by attempting to require a trespassing occupant to depart. If the trespassing occupant refuses to depart, the landlord or the agent of the landlord may summon either the sheriff of the county or the law enforcement agency of the city or town in which the premises are located for assistance in requiring the trespassing occupant to depart.

SECTION 5. AMENDATORY 41 O.S. 1991, Section 124, is amended to read as follows:

Section 124. A. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case the tenant may recover actual damages.

B. Neither injunctive relief nor damages shall be available to a tenant if the basis for the action is execution of a writ in the manner prescribed by Section 1148.10A of Title 12 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 41 O.S. 1991, Section 130, is amended to read as follows:

Section 130. A. If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the

dwelling unit, the landlord may take possession of the property, and if, in the judgment of the landlord, the property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party. Any property left with the landlord for a period of ~~three (3) months~~ thirty (30) days or longer shall be conclusively determined to be abandoned and as such the landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the tenant or any other interested party. In any such case, the landlord has the option of complying with the provisions of subsection B of this section.

B. If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property of an ascertainable or apparent value in the dwelling unit including property classified as exempt from a landlord's lien pursuant to Section 133 of this title, the landlord may take possession of the property and give notice to the tenant, demanding that the property be removed within the dates set out in the notice but not less than fifteen (15) days after delivery or mailing of such notice, and that if the property is not removed within the time specified in the notice, the landlord may sell the property at a public sale. The landlord may dispose of perishable commodities in any manner the landlord considers fit. Payment by the tenant of all outstanding rent, damages, storage fees, court costs and attorneys' fees shall be a prerequisite to the return of the personal property. For purposes of this section, notice sent by certified mail to the tenant's last-known address with forwarding requested shall be deemed sufficient notice.

C. After notice is given as provided in subsection B of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care

of the property. The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the property in the dwelling unit that was abandoned or surrendered by the tenant, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

D. If the tenant makes timely response in writing of an intention to remove the personal property from the premises and does not do so within the later of the time specified in the notice provided for in subsection B of this section or within fifteen (15) days of the delivery or mailing of the tenant's written response, it shall be conclusively presumed that the tenant abandoned the property. If the tenant removes the personal property within the time limitations provided in this subsection, the landlord is entitled to the cost of storage for the period during which the property remained in the landlord's safekeeping plus all other costs that accrued under the rental agreement.

E. If the tenant fails to take possession of the personal property as prescribed in subsection D of this section and make payment of all amounts due and owing, the property shall be deemed abandoned and the landlord may thereupon sell the property in any reasonable manner without liability to the tenant.

F. Notice of sale shall be mailed to the owner and any other party claiming any interest in said property, if known, at their last-known post office address, by certified mail at least ten (10) days before the time specified therein for such sale. For purposes of this section, parties who claim an interest in the property include holders of security interests or other liens or encumbrances

as shown by the records in the office of the county clerk of the county where the lien would be foreclosed.

G. The landlord or any other person may in good faith become a purchaser of the property sold. The landlord may dispose of any property upon which no bid is made at the public sale.

H. The landlord may not be held to respond in damages in an action by a tenant claiming loss by reason of the landlord's election to destroy, sell or otherwise dispose of the property in compliance with the provisions of this section. If, however, the landlord deliberately or negligently violated the provisions of this section, the landlord shall be liable for actual damages.

I. Any proceeds from the sale or other disposition of the property, as provided in subsection B of this section, shall be applied by the landlord in the following order:

1. To the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof;

2. To the satisfaction of any properly recorded security interest;

3. To the satisfaction of any amount due from the tenant to the landlord for rent or otherwise; and

4. The balance, if any, shall be paid into court within thirty (30) days of the sale and held for six (6) months and, if not claimed by the owner of the property within that period, shall escheat to the county.

SECTION 7. AMENDATORY 41 O.S. 1991, Section 131, is amended to read as follows:

Section 131. A. If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter.

B. A landlord may terminate a rental agreement for failure to pay rent when due~~, if the tenant fails to pay the rent within five (5) days after written notice of landlord's demand for payment~~.

~~C.~~ Demand for past due rent is deemed a demand for possession of the premises and no further notice to quit possession need be given by the landlord to the tenant for any purpose.

SECTION 8. This act shall become effective November 1, 1995.

Passed the House of Representatives the 28th day of February, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate