

1 SB247
2 205847-1
3 By Senators Holley, Stutts, McClendon, Elliott, Givhan,
4 Gudger, Albritton, Whatley, Livingston, Roberts, Reed,
5 Chesteen, Sessions, Melson, Figures, Burkette and Beasley
6 RFD: Governmental Affairs
7 First Read: 27-FEB-20

SYNOPSIS: Under existing law, in an appeal of an eviction action to circuit or appellate court by a landlord against a tenant, the tenant is required to continue paying rent during the pendency of the action or the landlord may obtain a writ of restitution or possession of the premises.

This bill would provide that in an action by a tenant against a landlord, the tenant shall be required to continue paying rent, except the rent shall be paid to the clerk of the court.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Uniform and Residential Landlord and Tenant Act; to amend Section 35-9A-461, Code of Alabama 1975, to require the payment of rent during the pendency of an eviction action, with exception.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 35-9A-461, Code of Alabama 1975,
2 is amended to read as follows:

3 "§35-9A-461.

4 "(a) ~~A landlord's action~~ Actions by a landlord or a
5 tenant for eviction, rent, monetary damages, or other relief
6 relating to a tenancy subject to this chapter shall be
7 governed by the Alabama Rules of Civil Procedure and the
8 Alabama Rules of Appellate Procedure except as modified by
9 this chapter.

10 "(b) District courts and circuit courts, according
11 to their respective established jurisdictions, shall have
12 jurisdiction over eviction actions, and venue shall lie in the
13 county in which the leased property is located. Eviction
14 actions shall be entitled to precedence in scheduling over all
15 other civil cases.

16 "(c) Service of process shall be made in accordance
17 with the Alabama Rules of Civil Procedure. However, if a
18 sheriff, constable, or process server is unable to serve the
19 defendant personally, service may be had by delivering the
20 notice to any person who is sui juris residing on the
21 premises, or if ~~after reasonable effort~~ no person is found
22 residing on the premises, by posting a copy of the notice on
23 the door of the premises, and on the same day of posting or by
24 the close of the next business day, the sheriff, the
25 constable, the person filing the complaint, or anyone on
26 behalf of the person, shall mail notice of the filing of the
27 unlawful detainer action by enclosing, directing, stamping,

1 and mailing by first class a copy of the notice to the
2 defendant at the mailing address of the premises and if there
3 is no mailing address for the premises to the last known
4 address, if any, of the defendant and making an entry of this
5 action on the return filed in the case. Service of the notice
6 by posting shall be complete as of the date of mailing the
7 notice.

8 "(d) Unless substantial financial hardship is
9 demonstrated, upon initiation of an action under this section,
10 a tenant shall continue to pay all rent that becomes due under
11 the terms of the lease to the clerk of the court. Upon motion
12 by a landlord, when a tenant fails to pay rent that becomes
13 due under this subsection, the court shall issue a writ of
14 restitution or possession and the landlord shall be placed in
15 full possession of the premises. Except in the case of an
16 appeal under subsection (e), upon disposition of the action,
17 the court shall direct the clerk as to the disposition of the
18 funds paid to the clerk under this subsection.

19 ~~"(d)~~ (e) Notwithstanding subsection (a) of Section
20 12-12-70, any party may appeal from an eviction judgment
21 entered by a district court to the circuit court at any time
22 within seven days after the entry thereof. The filing of a
23 timely post-judgment motion pursuant to the Alabama Rules of
24 Civil Procedure shall suspend the running of the time for
25 filing a notice of appeal. In cases where post-judgment
26 motions are filed, the full time fixed for filing a notice of
27 appeal shall be computed from the date of the entry in the

1 civil docket of an order granting or denying such motion, or
2 the date of the denial of such motion by operation of law
3 pursuant to Rule 59.1 of the Alabama Rules of Civil Procedure.
4 Upon filing of an appeal by either party, the clerk of the
5 court shall schedule the action for trial as a preferred case,
6 and it shall be set for trial within 60 days from the date of
7 the filing of the appeal. In eviction actions, an appeal by a
8 tenant to circuit court or to an appellate court does not
9 prevent the issuance of a writ of restitution or possession
10 unless the tenant pays to the clerk of the circuit court all
11 rents ~~properly payable~~ under the terms of the lease since the
12 date of the filing of the action, and continues to pay all
13 rent that becomes due and ~~properly payable~~ under the terms of
14 the lease as they become due, during the pendency of the
15 appeal. In the event of dispute, the amounts properly payable
16 shall be ascertained by the court.

17 "(1) If the tenant should fail to make any payments
18 determined to be properly payable by the court as they become
19 due under this subsection, upon motion, the court shall issue
20 a writ of restitution or possession and the landlord shall be
21 placed in full possession of the premises.

22 "(2) Upon disposition of the appeal, the court shall
23 direct the clerk as to the disposition of the funds paid to
24 the clerk pursuant to this subsection.

25 ~~(e)~~(f) If an eviction judgment enters in favor of a
26 landlord, a writ of possession shall issue upon application by
27 the landlord. Notwithstanding Rule 62 of the Alabama Rules of

1 Civil Procedure, the automatic stay on the issuance of the
2 writ of possession or restitution shall be for a period of
3 seven calendar days. If a tenant without just cause re-enters
4 the premises, the tenant can be held in contempt and
5 successive writs may issue as are necessary to effectuate the
6 eviction judgment.

7 ~~"(f)~~ (g) In the event that the landlord is placed in
8 possession under a writ of restitution or possession, and on
9 appeal the judgment is reversed and one entered for the tenant
10 or the proceeding on appeal is quashed or dismissed, the
11 circuit court may award a writ of restitution or possession to
12 restore the tenant to possession as against the landlord, but
13 not as against a third party. The issuance of the writ rests
14 in the discretion of the appellate court, and the circuit
15 court, in all cases, may direct writs of restitution or
16 possession to be issued by the trial court when, in the
17 judgment of the circuit court, such writ is proper or
18 necessary."

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.