

HOUSE FLOOR SUBSTITUTE FOR
HOUSE BILL 65

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

AN ACT

RELATING TO HOUSING; CLARIFYING THE REQUIREMENT FOR A WRITTEN
STATEMENT OF DEDUCTIONS IN CERTAIN CIRCUMSTANCES; INCREASING
CERTAIN CIVIL PENALTIES; INCREASING THE TIME PERMITTED TO
REMEDY NONPAYMENT OF RENT FOR A RENTAL AGREEMENT; INCREASING
PERIODS OF TIME REQUIRED FOR NONPAYMENT NOTICES; REQUIRING THE
ISSUANCE OF A JUDGMENT OF RESTITUTION PRIOR TO A WRIT OF
RESTITUTION; CLARIFYING THAT ISSUANCE AND EXECUTION OF A WRIT
OF RESTITUTION ARE STAYED DURING AN APPEAL; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 47-8-1 NMSA 1978 (being Laws 1975,
Chapter 38, Section 1, as amended) is amended to read:

"47-8-1. SHORT TITLE.-- [~~Sections 47-8-1 through 47-8-51~~]
Chapter 47, Article 8 NMSA 1978 may be cited as the "Uniform

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1 Owner-Resident Relations Act".

2 SECTION 2. Section 47-8-15 NMSA 1978 (being Laws 1975,
3 Chapter 38, Section 15, as amended) is amended to read:

4 "47-8-15. PAYMENT OF RENT.--

5 A. The resident shall pay rent in accordance with
6 the rental agreement. In the absence of an agreement, the
7 resident shall pay as rent the fair rental value for the use of
8 the premises and occupancy of the dwelling unit.

9 B. Rent is payable without demand or notice at the
10 time and place agreed upon by the parties. Unless otherwise
11 agreed, rent is payable at the dwelling unit. Unless otherwise
12 agreed, periodic rent is payable at the beginning of any term
13 of one month or less and otherwise in equal monthly
14 installments at the beginning of each monthly period. The date
15 of one month to the same date of the following month shall
16 constitute a term of one month.

17 C. Unless the rental agreement fixes a definite
18 term, the residency is week-to-week in the case of a person who
19 pays weekly rent and in all other cases month-to-month.

20 D. If the rental agreement provides for the
21 charging of a late fee and if the resident does not pay rent in
22 accordance with the rental agreement, the owner may charge the
23 resident a late fee in an amount not to exceed ten percent of
24 the total rent payment for each rental period that the resident
25 is in default. If the resident's rent is subsidized by a

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1 government agency, the maximum late fee shall be ten percent of
2 the portion of the rent that the resident pays for the dwelling
3 unit and shall not include the portion paid by the government
4 agency. To assess a late fee, the owner shall provide notice
5 of the late fee charged no later than the last day of the next
6 rental period immediately following the period in which the
7 default occurred.

8 E. An owner may not assess a fee from the resident
9 for occupancy of the dwelling unit by a reasonable number of
10 guests for a reasonable length of time. This shall not
11 preclude charges for use of premises or facilities other than
12 the dwelling unit by guests.

13 F. An owner may increase the rent payable by the
14 resident in a month-to-month residency by providing written
15 notice to the resident of the proposed increase at least thirty
16 days prior to the periodic rental date specified in the rental
17 agreement or, in the case of a fixed term residency, at least
18 thirty days prior to the end of the term. In the case of a
19 periodic residency of less than one month, written notice shall
20 be provided at least one rental period in advance of the first
21 rental payment to be increased.

22 G. Unless agreed upon in writing by the owner and
23 the resident, a resident's payment of rent may not be allocated
24 to any deposits or damages.

25 H. For each cash or money order payment made by a

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1 resident or on a resident's behalf, an owner shall provide the
2 resident a written or electronic receipt that shall include the
3 amount of the payment, the date of payment and the resident's
4 name."

5 SECTION 3. Section 47-8-18 NMSA 1978 (being Laws 1975,
6 Chapter 38, Section 18, as amended) is amended to read:

7 "47-8-18. DEPOSITS.--

8 A. An owner is permitted to demand from the
9 resident a reasonable deposit to be applied by the owner to
10 recover damages, if any, caused to the premises by the resident
11 during ~~[his]~~ the term of residency. [~~1~~] Under the terms of
12 an annual rental agreement, if the owner demands or receives of
13 the resident ~~[such]~~ a deposit in an amount greater than one
14 month's rent, the owner shall be required to pay to the
15 resident annually an interest equal to the passbook interest
16 permitted to savings and loan associations in this state by the
17 federal home loan bank board on such deposit. [~~2~~] Under the
18 terms of a rental agreement of a duration less than one year,
19 an owner shall not demand or receive from the resident ~~[such]~~ a
20 deposit in an amount in excess of one month's rent.

21 B. It is not the intention of this section to
22 include the last month's prepaid rent, which may be required by
23 the rental agreement as a deposit as defined in Subsection ~~[D]~~
24 E of Section 47-8-3 NMSA 1978. Any deposit as defined in
25 ~~[Paragraph (1) of]~~ Subsection A of this section shall not be

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1 construed as prepaid rent.

2 C. Upon termination of the residency, property or
 3 money held by the owner as deposits may be applied by the owner
 4 to the payment of rent and the amount of damages ~~[which]~~ that
 5 the owner has suffered by reason of the resident's
 6 noncompliance with the rental agreement or Section 47-8-22 NMSA
 7 1978. No deposit shall be retained to cover normal wear
 8 and tear. In the event actual cause exists for retaining any
 9 portion of the deposit for nonpayment of rent, late fees,
 10 utilities, repairs, cleaning or other legitimate damages or
 11 charges, the owner shall provide the resident with an itemized
 12 written list of the deductions from the deposit and the balance
 13 of the deposit, if any, within thirty days of the date of
 14 termination of the rental agreement or resident departure,
 15 whichever is later. The owner is deemed to have complied with
 16 this section by mailing, emailing or hand delivering the
 17 statement and any payment required to the last known address of
 18 the resident. ~~[Nothing in this section shall preclude the~~
 19 ~~owner from retaining portions of the deposit for nonpayment of~~
 20 ~~rent or utilities, repair work or other legitimate damages]~~ If
 21 the statement and any payment are mailed but returned as
 22 undeliverable or if the last known address is the vacated
 23 dwelling unit, the owner shall mail, email or hand deliver at
 24 least one additional notice if an alternative address has been
 25 provided to the owner by the resident or the resident's

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1 representative.

2 D. If the owner fails to provide the resident with
3 a written statement of deductions from the deposit and the
4 balance shown by the statement to be due, within thirty days of
5 the termination of the tenancy, the owner:

6 (1) shall forfeit the right to withhold any
7 portion of the deposit;

8 (2) shall forfeit the right to assert [~~any~~] a
9 counterclaim in [~~any~~] an action brought to recover that
10 deposit;

11 (3) shall be liable to the resident for court
12 costs and reasonable [~~attorneys'~~] attorney fees; and

13 (4) shall forfeit the right to assert an
14 independent action against the resident for damages to the
15 rental property.

16 E. An owner who in bad faith retains a deposit in
17 violation of this section is liable to the resident for a civil
18 penalty in the amount of [~~two hundred fifty dollars (\$250)~~]
19 five hundred dollars (\$500) payable to the resident."

20 SECTION 4. Section 47-8-33 NMSA 1978 (being Laws 1975,
21 Chapter 38, Section 33, as amended) is amended to read:

22 "47-8-33. BREACH OF AGREEMENT BY RESIDENT AND RELIEF BY
23 OWNER.--

24 A. Except as provided in the Uniform Owner-Resident
25 Relations Act, if there is noncompliance with Section 47-8-22

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1 NMSA 1978 materially affecting health and safety or upon the
2 initial material noncompliance by the resident with the rental
3 agreement or [~~any~~] a separate agreement, the owner shall
4 deliver a written notice to the resident specifying the acts
5 and omissions constituting the breach, including the dates and
6 specific facts describing the nature of the alleged breach, and
7 stating that the rental agreement will terminate upon a date
8 not less than seven days after receipt of the notice if the
9 breach is not remedied in seven days.

10 B. Upon the second material noncompliance with the
11 rental agreement or any separate agreement by the resident,
12 within six months of the initial breach, the owner shall
13 deliver a written notice to the resident specifying the acts
14 and omissions constituting the breach, including the dates and
15 specific facts describing the nature of the alleged breach, and
16 stating that the rental agreement shall terminate upon a date
17 not less than seven days after receipt of the notice. If the
18 subsequent breach occurs more than six months after the initial
19 breach, it shall constitute an initial breach for purposes of
20 applying the provisions of this section.

21 C. The initial notice provided in this section
22 shall state that the rental agreement will terminate upon the
23 second material noncompliance with the rental agreement or any
24 separate agreement by the resident, within six months of the
25 initial breach. To be effective, [~~any~~] a notice pursuant to

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1 this subsection shall be given within thirty days of the breach
2 or knowledge thereof.

3 D. If rent is unpaid when due and the resident
4 fails to pay rent within [~~three~~] eleven days after written
5 notice from the owner of nonpayment, [~~and his~~] the owner may
6 terminate the rental agreement pursuant to this subsection.
7 The notice shall state the owner's intention to terminate the
8 rental agreement. The owner may terminate the rental agreement
9 and the resident shall immediately deliver possession of the
10 dwelling unit; provided that tender of the full amount due, in
11 the manner stated in the notice, prior to the expiration of the
12 [~~three-day~~] eleven-day notice shall bar any action for
13 nonpayment of rent.

14 E. In any court action for possession for
15 nonpayment of rent or other charges where the resident disputes
16 the amount owed because:

17 (1) the resident has abated rent pursuant to
18 Section 47-8-27.2 or 47-8-4 NMSA 1978; or

19 (2) the owner has allocated rent paid by the
20 resident as payment for damages to the premises, then, if the
21 owner is the prevailing party, the court shall enter a [~~writ of~~
22 ~~restitution~~] judgment conditioned upon the right of the
23 resident to remedy by depositing the judgment amount with the
24 court within [~~three~~] fourteen days of entry of judgment. If
25 the resident has satisfied the judgment within [~~three~~] fourteen

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1 days, the ~~[writ]~~ judgment shall be vacated and the petition as
 2 to that issue shall be dismissed. If the resident has not
 3 satisfied the judgment ~~[within three days, the owner may~~
 4 ~~execute upon the writ without further order of the court]~~ as
 5 set by the court, the court shall issue the writ of restitution
 6 without further order.

7 F. Except as provided in the Uniform Owner-Resident
 8 Relations Act, the owner may recover damages and obtain
 9 injunctive or other relief for ~~[any]~~ noncompliance by the
 10 resident with the rental agreement or this section or Section
 11 47-8-22 NMSA 1978.

12 G. In a judicial action to enforce a remedy for
 13 which prior written notice is required, relief may be granted
 14 based only upon the grounds set forth in the written notice
 15 served; provided, however, that this shall not bar a defendant
 16 from raising any and all defenses or counterclaims for which
 17 written notice is not otherwise required by the Uniform Owner-
 18 Resident Relations Act.

19 H. When the last day for remedying any breach
 20 pursuant to written notice required under the Uniform Owner-
 21 Resident Relations Act occurs on a weekend or federal holiday,
 22 the period to remedy shall be extended until the next day that
 23 is not a weekend or federal holiday.

24 I. If the resident knowingly commits or consents to
 25 another person in the dwelling unit or on the premises

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1 knowingly committing a substantial violation, the owner shall
2 deliver a written notice to the resident specifying the time,
3 place and nature of the act constituting the substantial
4 violation and that the rental agreement will terminate upon a
5 date not less than three days after receipt of the notice.

6 J. In any action for possession [~~under~~] pursuant to
7 Subsection I of this section, it shall be a defense that the
8 resident is a victim of domestic violence. If the resident has
9 filed for or secured a temporary domestic violence restraining
10 order as a result of the incident that is the basis for the
11 termination notice or as a result of a prior incident, the writ
12 of restitution shall not issue. In all other cases [~~where~~] in
13 which domestic violence is raised as a defense, the court shall
14 have the discretion to evict the resident accused of the
15 violation, while allowing the tenancy of the remainder of the
16 residents to continue undisturbed.

17 K. In any action for possession [~~under~~] pursuant to
18 Subsection I of this section, it shall be a defense that the
19 resident did not know of, and could not have reasonably known
20 of or prevented, the commission of a substantial violation by
21 any other person in the dwelling unit or on the premises.

22 L. In [~~an~~] any action for possession [~~under~~]
23 pursuant to Subsection I of this section, it shall be a defense
24 that the resident took reasonable and lawful actions in defense
25 of [~~himself~~] the resident, others or [~~his~~] the resident's

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1 property.

2 M. In any action for possession [~~under~~] pursuant to
 3 Subsection I of this section, if the court finds that the
 4 action was frivolous or brought in bad faith, the petitioner
 5 shall be subject to a civil penalty equal to two times the
 6 amount of the monthly rent, plus damages and costs."

7 SECTION 5. Section 47-8-37 NMSA 1978 (being Laws 1975,
 8 Chapter 38, Section 37) is amended to read:

9 "47-8-37. NOTICE OF TERMINATION AND DAMAGES.--

10 A. The owner or the resident may terminate a week-
 11 to-week residency by a written notice given to the other at
 12 least seven days prior to the termination date specified in the
 13 notice.

14 B. The owner or the resident may terminate a month-
 15 to-month residency by a written notice given to the other at
 16 least thirty days prior to the periodic rental date specified
 17 in the notice.

18 C. If the resident remains in possession without
 19 the owner's consent after expiration of the term of the rental
 20 agreement or its termination, the owner may bring an action for
 21 possession, and, if the resident's holdover is willful and not
 22 in good faith, the owner, in addition, may recover the damages
 23 sustained by [~~him~~] the owner and reasonable [~~attorney's~~]
 24 attorney fees. If the owner consents to the resident's
 25 continued occupancy, Subsection C of Section [~~15 of the Uniform~~

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1 ~~Owner-Resident Relations Act]~~ 47-8-15 NMSA 1978 applies."

2 SECTION 6. Section 47-8-39 NMSA 1978 (being Laws 1975,
3 Chapter 38, Section 39, as amended) is amended to read:

4 "47-8-39. OWNER RETALIATION PROHIBITED.--

5 A. An owner may not retaliate against a resident
6 who is in compliance with the rental agreement and not
7 otherwise in violation of any provision of the Uniform Owner-
8 Resident Relations Act by increasing rent, decreasing services
9 or by bringing or threatening to bring an action for possession
10 because the resident has within the previous six months:

11 (1) complained to a government agency charged
12 with responsibility for enforcement of a minimum building or
13 housing code of a violation applicable to the premises
14 materially affecting health and safety;

15 (2) organized or become a member of a
16 residents' union, association or similar organization;

17 (3) acted in good faith to exercise ~~[his]~~ the
18 resident's rights provided ~~[under]~~ pursuant to the Uniform
19 Owner-Resident Relations Act or any other law, order or
20 regulation governing owner-resident relations, including when
21 the resident makes a written request or complaint to the owner
22 to make repairs to comply with the owner's obligations ~~[under]~~
23 pursuant to Section 47-8-20 NMSA 1978 or any other law, order
24 or regulation governing owner-resident relations;

25 (4) made a fair housing complaint to a

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1 government agency charged with authority for enforcement of
 2 laws or [~~regulations~~] rules prohibiting discrimination in
 3 rental housing;

4 (5) prevailed in a lawsuit as either plaintiff
 5 or defendant or has a lawsuit pending against the owner
 6 relating to the residency;

7 (6) testified on behalf of another resident;
 8 [~~or~~]

9 (7) abated rent in accordance with the
 10 provisions of Section 47-8-27.1 or 47-8-27.2 NMSA 1978; or

11 (8) requested a reasonable accommodation for
 12 disability under the federal Fair Housing Act, Section 504 of
 13 the federal Rehabilitation Act of 1973, the federal Americans
 14 with Disabilities Act of 1990, the Human Rights Act or any
 15 other applicable federal, state or local fair housing or human
 16 rights law.

17 B. If the owner acts in violation of Subsection A
 18 of this section, the resident [~~is~~] shall be entitled to the
 19 remedies provided in Section 47-8-48 NMSA 1978 and the
 20 violation shall be a defense in [~~any~~] an action against [~~him~~]
 21 the resident for possession.

22 C. Notwithstanding the provisions of Subsection A
 23 of this section, the owner may increase the rent or change
 24 services upon appropriate notice at the end of the term of the
 25 rental agreement or as provided [~~under~~] pursuant to the terms

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1 of the rental agreement if the owner can establish that the
2 increased rent or changes in services are consistent with those
3 imposed on other residents of similar rental units and are not
4 directed at the particular resident, but are uniform."

5 SECTION 7. Section 47-8-40 NMSA 1978 (being Laws 1975,
6 Chapter 38, Section 40, as amended) is amended to read:

7 "47-8-40. ACTION FOR POSSESSION BY OWNER.--

8 A. Notwithstanding Subsections A, [~~and~~] B and C of
9 Section 47-8-39 NMSA 1978, an owner may bring an action for
10 possession, and dispute a claim of retaliation asserted by the
11 tenant, if:

12 (1) the violation of the applicable minimum
13 building or housing code was caused primarily by lack of
14 reasonable care by the resident or other person in [~~his~~] the
15 resident's household or upon the premises with the resident's
16 consent;

17 (2) the resident is in default in rent;

18 (3) there is a material noncompliance with the
19 rental agreement that would otherwise give rise to the owner's
20 right to terminate the rental agreement;

21 (4) a resident knowingly commits or consents
22 to any other person in the dwelling unit or on the premises
23 knowingly committing a substantial violation; or

24 (5) compliance with the applicable building or
25 housing code requires alteration, remodeling or demolition that

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1 would effectively deprive the resident of use of the dwelling
2 unit.

3 B. The maintenance of an action under Subsection A
4 of this section does not release the owner from liability under
5 Section 47-8-20 NMSA 1978.

6 C. Any right of an owner to bring an action under
7 this section shall be subject to the federal Fair Housing Act
8 and other applicable fair housing and human rights laws."

9 SECTION 8. Section 47-8-43 NMSA 1978 (being Laws 1975,
10 Chapter 38, Section 43, as amended) is amended to read:

11 "47-8-43. ISSUANCE OF SUMMONS AND TRIAL SETTING.--

12 A. The summons shall be issued and directed, with a
13 copy of the petition attached to the summons, and shall state
14 the cause of the complaint, the answer day for other causes of
15 action and notice that if the defendant fails to appear,
16 judgment shall be entered against ~~him~~ the defendant. The
17 summons may be served pursuant to the New Mexico rules of civil
18 procedure and returned as in other cases. Trial of the action
19 for possession shall be set as follows:

20 (1) for any matter brought by the owner for
21 possession, not less than seven or more than ~~ten~~ fourteen
22 days after the service of summons; or

23 (2) for ~~any~~ a matter brought by the resident
24 for possession, not less than three or more than five days
25 after the service of summons.

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1 B. Upon finding of good cause, the court may
2 continue the date of hearing on the action for possession [~~for~~
3 ~~up to seven days from the date of the initial hearing~~].

4 C. To the extent practicable, the court shall
5 maintain a resource list of nonprofit legal service providers
6 and state and local entities that provide rental assistance to
7 qualifying applicants. A copy of the resource list shall be
8 provided to the plaintiff at the time of filing of the petition
9 and shall be served by the plaintiff along with the summons and
10 copy of the complaint upon the defendant."

11 SECTION 9. Section 47-8-46 NMSA 1978 (being Laws 1975,
12 Chapter 38, Section 46, as amended) is amended to read:

13 "47-8-46. WRIT OF RESTITUTION.--

14 A. Upon petition for restitution filed by the owner
15 if judgment is rendered against the defendant for restitution
16 of the premises, the court shall declare the forfeiture of the
17 rental agreement and shall, at the request of the plaintiff or
18 [~~his~~] the plaintiff's attorney, issue a [~~writ~~] judgment of
19 restitution ordering the resident to vacate the premises by a
20 specified date; provided that the resident shall be allowed not
21 less than seven days nor more than fourteen days to vacate the
22 premises after entry of judgment and, upon good cause shown,
23 may be allowed additional time to vacate the premises, and for
24 good cause shown in a restitution case based upon grounds
25 involving dangerous or disruptive conduct by the resident, the

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1 time allowed the resident to vacate may be shortened to not
 2 less than seven days. If the resident does not vacate the
 3 premises within the time ordered by the judgment, the court
 4 shall issue a writ of restitution directing the sheriff to
 5 restore possession of the premises to the plaintiff [~~on a~~
 6 ~~specified date not less than three nor more than seven days~~
 7 ~~after entry of judgment~~].

8 B. Upon a petition for restitution filed by the
 9 resident, if judgment is rendered against the defendant for
 10 restitution of the premises, the court shall, at the request of
 11 the plaintiff or [~~his~~] the plaintiff's attorney, issue a writ
 12 of restitution directing the sheriff to restore possession of
 13 the premises to the plaintiff within twenty-four hours after
 14 entry of judgment."

15 SECTION 10. Section 47-8-47 NMSA 1978 (being Laws 1975,
 16 Chapter 38, Section 47, as amended) is amended to read:

17 "47-8-47. APPEAL STAYS EXECUTION.--

18 A. If either party feels aggrieved by the judgment,
 19 that party may appeal as in other civil actions. An appeal by
 20 the defendant shall, automatically and without further order of
 21 the court, stay the issuance and execution of any writ of
 22 restitution. [~~provided that~~] After a notice of appeal is
 23 filed, no writ of restitution shall be executed except on order
 24 of the court entered after the filing date of the appeal.

25 B. In cases in which the resident is the appellant,

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1 ~~[the execution of the writ of restitution shall not be stayed~~
2 ~~unless]~~ the resident shall, within five days of the filing of
3 the notice of appeal, ~~[pays]~~ pay to the owner or into an escrow
4 account with a professional escrow agent an amount equal to the
5 rental amount that shall come due from the day following the
6 judgment through the end of that rental period. The resident
7 shall continue to pay the monthly rent established by the
8 rental agreement at the time the complaint was filed, on a
9 monthly basis on the date rent would otherwise become due.
10 Payments pursuant to this subsection by a subsidized resident
11 shall not exceed the actual amount of monthly rent paid by that
12 resident. When the resident pays the owner directly, the owner
13 shall immediately provide a written or electronic receipt to
14 the resident upon demand. When the resident pays into an
15 escrow account the resident shall cause such amounts to be paid
16 over to the owner immediately upon receipt unless otherwise
17 ordered by the court. Upon the failure of the resident or the
18 escrow agent to make ~~[a]~~ the first partial payment within five
19 days of the filing of a notice of appeal or a monthly rent
20 payment on the first day rent would otherwise be due, the owner
21 may serve a three-day written notice on the resident pursuant
22 to Subsection D of Section 47-8-33 NMSA 1978. If the resident
23 or the resident's escrow agent fails to pay the rent within the
24 three days, a hearing on the issue shall be scheduled within
25 ten days from the date the court is notified of the failure to

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1 pay rent. In the case of an appeal de novo, the hearing shall
 2 be in the court in which the appeal will be heard. If, at the
 3 hearing, the court finds that rent has not been paid, the court
 4 shall immediately lift the stay and issue the writ of
 5 restitution unless the resident demonstrates a legal
 6 justification for failing to comply with the rent payment
 7 requirement.

8 C. If an owner refuses or is unavailable to accept
 9 a rent payment made pursuant to Subsection B of this section,
 10 the court shall permit the resident to pay the necessary amount
 11 to be held by the court.

12 [~~B.~~] D. In order to stay the execution of a money
 13 judgment, the trial court, within its discretion, may require
 14 an appellant to deposit with the clerk of the trial court the
 15 amount of judgment and costs or to give a supersedeas bond in
 16 the amount of judgment and costs with or without surety. Any
 17 bond or deposit shall not be refundable during the pendency of
 18 any appeal."

19 SECTION 11. EMERGENCY.--It is necessary for the public
 20 peace, health and safety that this act take effect immediately.