

GEORGIA CODE
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*** Current through the 2010 Regular Session ***

TITLE 44. PROPERTY
CHAPTER 7. LANDLORD AND TENANT
ARTICLE 3. DISPOSSESSORY PROCEEDINGS

O.C.G.A. § 44-7-49 (2010)

§ 44-7-49. "Writ of possession" defined

As used in this article, the term "writ of possession" means a writ issued to recover the possession of land or other property and such writ shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property.

§ 44-7-50. Demand for possession; procedure upon a tenant's refusal; concurrent issuance of federal lease termination notice

(a) In all cases where a tenant holds possession of lands or tenements over and beyond the term for which they were rented or leased to the tenant or fails to pay the rent when it becomes due and in all cases where lands or tenements are held and occupied by any tenant at will or sufferance, whether under contract of rent or not, when the owner of the lands or tenements desires possession of the lands or tenements, the owner may, individually or by an agent, attorney in fact, or attorney at law, demand the possession of the property so rented, leased, held, or occupied. If the tenant refuses or fails to deliver possession when so demanded, the owner or the agent, attorney at law, or attorney in fact of the owner may immediately go before the judge of the superior court, the judge of the state court, or the clerk or deputy clerk of either court, or the judge or the clerk or deputy clerk of any other court with jurisdiction over the subject matter, or a magistrate in the district where the land lies and make an affidavit under oath to the facts. The affidavit may likewise be made before a notary public, subject to the same requirements for judicial approval specified in Code Section 18-4-61, relating to garnishment affidavits.

(b) If issued by a public housing authority, the demand for possession required by subsection (a) of this Code section may be provided concurrently with the federally required notice of lease termination in a separate writing.

§ 44-7-51. Issuance of summons; service; time for answer; defenses and counterclaims

(a) When the affidavit provided for in Code Section 44-7-50 is made, the judge of the superior court, the state court, or any other court with jurisdiction over the subject matter or the judge, clerk, or deputy clerk of the magistrate court shall grant and issue a summons to the sheriff or his deputy or to any lawful constable of the county where the land is located. A copy of the summons and a copy of the affidavit shall be personally served upon the defendant. If the sheriff is unable to serve the defendant personally, service may be had by delivering the summons and the affidavit to any person who is sui juris residing on the premises or, if after reasonable effort no such person is found residing on the premises, by posting a copy of the summons and the affidavit on the door of the premises and, on the same day of such posting, by enclosing, directing, stamping, and mailing by first-class mail a copy of the summons and the affidavit to the defendant at his last known address, if any, and making an entry of this action on the affidavit filed in the case.

(b) The summons served on the defendant pursuant to subsection (a) of this Code section shall command and require the tenant to answer either orally or in writing within seven days from the date of the actual service unless the seventh day is a Saturday, a Sunday, or a legal holiday, in which case the answer may be made on the next day which is not a Saturday, a Sunday, or a legal holiday. If the answer is oral, the

substance thereof shall be endorsed on the dispossessory affidavit. The answer may contain any legal or equitable defense or counterclaim. The landlord need not appear on the date of the tenant's response. The last possible date to answer shall be stated on the summons.

(c) If service is by posting a copy of the summons and the affidavit on the door of the premises and mailing a copy of the summons and the affidavit to the defendant, as provided in subsection (a) of this Code section, the court shall have jurisdiction to enter a default judgment for possession of the premises in the absence of an answer being filed, but in such instance a default judgment for money owed may not be entered unless the defendant files an answer or otherwise makes an appearance in the case.

§ 44-7-52. When tender of payment by tenant serves as complete defense

(a) Except as provided in subsection (c) of this Code section, in an action for nonpayment of rent, the tenant shall be allowed to tender to the landlord, within seven days of the day the tenant was served with the summons pursuant to Code Section 44-7-51, all rents allegedly owed plus the cost of the dispossessory warrant. Such a tender shall be a complete defense to the action; provided, however, that a landlord is required to accept such a tender from any individual tenant after the issuance of a dispossessory summons only once in any 12 month period.

(b) If the court finds that the tenant is entitled to prevail on the defense provided in subsection (a) of this Code section and the landlord refused the tender as provided under subsection (a) of this Code section, the court shall issue an order requiring the tenant to pay to the landlord all rents which are owed by the tenant and the costs of the dispossessory warrant within three days of said order. Upon failure of the tenant to pay such sum, a writ of possession shall issue. Such payment shall not count as a tender pursuant to subsection (a) of this Code section.

(c) For a tenant who is not a tenant under a residential rental agreement as defined in Code Section 44-7-30, tender and acceptance of less than all rents allegedly owed plus the cost of the dispossessory warrant shall not be a bar nor a defense to an action brought under Code Section 44-7-50 but shall, upon proof of same, be considered by the trial court when awarding damages.

§ 44-7-53. When writ of possession issued; trial of issues; possession pending trial

(a) If the tenant fails to answer as provided in subsection (b) of Code Section 44-7-51, the court shall issue a writ of possession instantaneously notwithstanding Code Section 9-11-55 or Code Section 9-11-62. The court, without the intervention of a jury, shall not require any further evidence nor hold any hearings and the plaintiff shall be entitled to a verdict and judgment by default for all rents due as if every item and paragraph of the affidavit provided for in Code Section 44-7-50 were supported by proper evidence.

(b) If the tenant answers, a trial of the issues shall be had in accordance with the procedure prescribed for civil actions in courts of record except that if the action is tried in the magistrate court the trial shall be had in accordance with the procedures prescribed for that court. Every effort should be made by the trial court to expedite a trial of the issues. The defendant shall be allowed to remain in possession of the premises pending the final outcome of the litigation; provided, however, that, at the time of his answer, the tenant must pay rent into the registry of the court pursuant to Code Section 44-7-54.

§ 44-7-54. Payment of rent and utility payments into court; issuance of writ upon failure to pay; disposition of funds

(a) In any case where the issue of the right of possession cannot be finally determined within two weeks from the date of service of the copy of the summons and the copy of the affidavit, the tenant shall be required to pay into the registry of the trial court:

(1) All rent and utility payments which are the responsibility of the tenant payable to the landlord under terms of the lease which become due after the issuance of the dispossessory warrant, said rent and utility payments to be paid as such become due. If the landlord and the tenant disagree as to the amount of

rent, either or both of them may submit to the court any written rental contract for the purpose of establishing the amount of rent to be paid into the registry of the court. If the amount of rent is in controversy and no written rental agreement exists between the tenant and landlord, the court shall require the amount of rent to be a sum equal to the last previous rental payment made by the tenant and accepted by the landlord without written objection; and

(2) All rent and utility payments which are the responsibility of the tenant payable to the landlord under terms of the lease allegedly owed prior to the issuance of the dispossessory warrant; provided, however, that, in lieu of such payment, the tenant shall be allowed to submit to the court a receipt indicating that payment has been made to the landlord. In the event that the amount of rent is in controversy, the court shall determine the amount of rent to be paid into court in the same manner as provided in paragraph (1) of this subsection.

(b) If the tenant should fail to make any payment as it becomes due pursuant to paragraph (1) or (2) of subsection (a) of this Code section, the court shall issue a writ of possession and the landlord shall be placed in full possession of the premises by the sheriff, the deputy, or the constable.

(c) The court shall order the clerk of the court to pay to the landlord the payments claimed under the rental contracts paid into the registry of the court as said payments are made; provided, however, that, if the tenant claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the landlord without delay only that portion of the funds to which the tenant has made no claim in the proceedings or may make such other order as is appropriate under the circumstances. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the landlord to the tenant shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the landlord without delay the remaining funds in court and all payments of future rent made into court pursuant to paragraph (1) of subsection (a) of this Code section unless the tenant can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

§ 44-7-55. Judgment; writ of possession; landlord's liability for wrongful conduct; distribution of funds paid into court; personal property

(a) If, on the trial of the case, the judgment is against the tenant, judgment shall be entered against the tenant for all rents due and for any other claim relating to the dispute. The court shall issue a writ of possession, both of execution for the judgment amount and a writ to be effective at the expiration of seven days after the date such judgment was entered, except as otherwise provided in Code Section 44-7-56.

(b) If the judgment is for the tenant, he shall be entitled to remain in the premises and the landlord shall be liable for all foreseeable damages shown to have been caused by his wrongful conduct. Any funds remaining in the registry of the court shall be distributed to the parties in accordance with the judgment of the court.

(c) Any writ of possession issued pursuant to this article shall authorize the removal of the tenant or his or her personal property or both from the premises and permit the placement of such personal property on some portion of the landlord's property or on other property as may be designated by the landlord and as may be approved by the executing officer; provided, however, that the landlord shall not be a bailee of such personal property and shall owe no duty to the tenant regarding such personal property. After execution of the writ, such property shall be regarded as abandoned.

§ 44-7-56. Appeal; possession and payment of rent pending appeal

Any judgment by the trial court shall be appealable pursuant to Chapters 2, 3, 6, and 7 of Title 5, provided that any such appeal shall be filed within seven days of the date such judgment was entered and provided, further, that, after the notice of appeal is filed with the clerk of the trial court, the clerk shall

immediately notify the trial judge of the notice of appeal and the trial judge may, within 15 days, supplement the record with findings of fact and conclusions of law which will be considered as a part of the order of the judge in that case. If the judgment of the trial court is against the tenant and the tenant appeals this judgment, the tenant shall be required to pay into the registry of the court all sums found by the trial court to be due for rent in order to remain in possession of the premises. The tenant shall also be required to pay all future rent as it becomes due into the registry of the trial court pursuant to paragraph (1) of subsection (a) of Code Section 44-7-54 until the issue has been finally determined on appeal.

§ 44-7-57. Application of article to croppers and servants

This article shall apply to croppers and servants who continue to hold possession of lands and tenements after their employment as croppers or servants has terminated and in the same manner as it relates to tenants.

§ 44-7-58. False statements in affidavit or answer; penalty

Anyone who, under oath or affirmation, knowingly and willingly makes a false statement in an affidavit signed pursuant to Code Section 44-7-50 or in an answer filed pursuant to Code Section 44-7-51 shall be guilty of a misdemeanor.

§ 44-7-59. Removal of transportable housing from lands subject to writ of possession

If the court issues a writ of possession to property upon which the tenant has placed a manufactured home, mobile home, trailer, or other type of transportable housing and the tenant does not move the same within ten days after a final order is entered, the landlord shall be entitled to have such transportable housing moved from the property at the expense of the tenant by a motor common carrier licensed by the Public Service Commission for the transportation of manufactured housing. There shall be a lien upon such transportable housing to the extent of moving fees and storage expenses in favor of the person performing such services. Such lien may be claimed and foreclosed in the same manner as special liens on personality by mechanics under Code Sections 44-14-363 and 44-14-550, except that storage fees not to exceed \$4.00 per day shall be expressly allowed.