

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 524

An Act to amend and reenact §§ 55-248.15:1, 55-248.18, 55-248.27, and 55-248.35 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-225.3 and 55-225.4, relating to landlord and tenant law.

[S 1229]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.15:1, 55-248.18, 55-248.27, and 55-248.35 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-225.3 and 55-225.4 as follows:

§ 55-225.3. Landlord to maintain dwelling unit.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

4. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

C. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 2, 3 and 4 and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

§ 55-225.4. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;

6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;

8. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

9. Abide by all reasonable rules and regulations imposed by the landlord.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

§ 55-248.15:1. Security deposits.

A. A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money, plus any accrued interest thereon, held by the landlord as security as hereinafter provided may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the payment of the amount of damages which the landlord has suffered by reason of the tenant's

noncompliance with § 55-248.16, less reasonable wear and tear; or (iii) to other damages or charges as provided in the rental agreement. The security deposit, any accrued interest and any deductions, damages and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due the tenant within ~~thirty~~ *forty-five* days after termination of the tenancy and delivery of possession.

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the ~~thirty-day~~ *forty-five-day* time period.

The landlord shall notify the tenant in writing of any deductions provided by this subsection to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within thirty days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection B. Such notification shall not be required for deductions made less than thirty days prior to the termination of the rental agreement. *If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit and interest thereon to the tenant, together with actual damages and reasonable attorneys' fees.* In the event that damages to the premises exceed the amount of the security deposit and require the services of a third party contractor, the landlord shall give written notice to the tenant advising him of that fact within the ~~thirty-day~~ *forty-five-day* period. If notice is given as prescribed in this paragraph, the landlord shall have an additional fifteen-day period to provide an itemization of the damages and the cost of repair. ~~If the landlord willfully fails to comply with this section or if the landlord fails to return any security deposit and interest required to be paid to the tenant under this chapter, the tenant may recover such security deposit due him together with actual damages and reasonable attorney's fees.~~ This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

B. The landlord shall:

1. Accrue interest at an annual rate equal to one percentage point below the Federal Reserve Board discount rate as of January 1 of each year on all property or money held as a security deposit. However, no interest shall be due and payable unless the security deposit has been held by the landlord for a period exceeding thirteen months after the effective date of the rental agreement or after the effective date of any prior written or oral rental agreements with the same tenant, for continuous occupancy of the same dwelling unit, such security deposit earning interest which begins accruing from the effective date of the rental agreement, and such interest shall be paid only upon termination of the tenancy, delivery of possession and return of the security deposit as provided in subsection A;

2. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section which the landlord has made by reason of a tenant's noncompliance with § 55-248.16 during the preceding two years; and

3. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

C. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall make reasonable efforts to advise the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall so advise the landlord in writing who, in turn, shall notify the tenant of the time and date of the inspection, which must be made within seventy-two hours of delivery of possession. Upon completion of the inspection attended by the tenant, the landlord shall furnish the tenant with an itemized list of damages to the dwelling unit known to exist at the time of the inspection.

D. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

§ 55-248.18. Access; consent; notice to tenant for pesticide use.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant ~~reasonable~~ notice of his intent to enter and may enter only at reasonable times. *Unless impractical to do so, the landlord shall give the tenant at least twenty-four-hours notice of routine maintenance to be performed that has not been requested by the tenant.*

B. The landlord has no other right to access except by court order or that permitted by §§ 55-248.32 and 55-248.33 or if the tenant has abandoned or surrendered the premises.

C. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.

2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.

3. Upon termination of the tenancy the tenant shall, ~~upon request of the landlord, remove all such devices and repair all damages~~ *be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.*

§ 55-248.27. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection C.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable;

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter; and

3. ~~The tenant has not received more than three termination notices, or civil warrants or a combination thereof, from the landlord in accordance with § 55-248.31 for rent due and unpaid in the year immediately prior to the initiation of the action by the tenant or by the landlord. If the tenant has lived on the premises six months or less and has received two termination notices, or civil warrants or a combination thereof, for rent due and unpaid, the tenant shall not be entitled to make an assertion against the landlord as provided in subsection A.~~ It shall be sufficient answer or rejoinder to such a declaration if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

C. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement or ordering the premises surrendered to the landlord;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due

during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure;

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

§ 55-248.35. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees as provided in § 55-248.31, and the cost of service of any notice under § 55-225 or § 55-248.31 or process by a sheriff or private process server which cost shall not exceed the amount authorized by § 55-248.31:1, which claims may be enforced, without limitation, by the institution of an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for such rent as would have accrued until the expiration of the term thereof or until a tenancy pursuant to a new rental agreement commences, whichever first occurs; provided that nothing herein contained shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined herein, the landlord shall not be required to seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § 55-248.15:1.