

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 363

An Act to amend and reenact §§ 55-248.21 and 55-248.31 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; award of attorneys' fees.

[H 2392]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.21 and 55-248.31 of the Code of Virginia are amended and reenacted as follows:

§ 55-248.21. Noncompliance by landlord.

Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice if such breach is not remedied in ~~twenty-one~~ 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach, and stating that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice.

If the landlord has been served with a prior written notice which required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. ~~If the landlord's noncompliance is willful the tenant may recover reasonable attorney's fees. The tenant shall be entitled to recover reasonable attorneys' fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances.~~ If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55-248.15:1.

§ 55-248.31. Noncompliance with rental agreement.

Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice if the breach is not remedied in ~~twenty-one~~ 21 days, and that the rental agreement shall terminate as provided in the notice. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. The initial hearing on the landlord's action for immediate possession of the premises shall be held within ~~fifteen~~ 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than ~~thirty~~ 30 days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises.

If the tenant has been served with a prior written notice which required the tenant to remedy a

breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than ~~thirty~~ 30 days after receipt of the notice.

If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. ~~If the tenant's noncompliance is willful, The landlord may shall be entitled to recover reasonable attorney's attorneys' fees: Failure of the tenant either to pay the rent or to vacate the premises within five days after written notice of nonpayment given by the landlord shall be deemed willful noncompliance by the tenant, unless the failure to pay the rent or to vacate the premises is found by the court to be reasonable unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable.~~