

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 883

An Act to amend and reenact §§ 19.2-386.8 and 55-248.31 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; drug activities by tenants; forfeiture.

[H 2447]

Approved March 28, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.8 and 55-248.31 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-386.8. Exemptions.

The following exemptions shall apply to property otherwise subject to forfeiture:

1. No conveyance used by any person as a lawfully certified common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this section unless the owner of the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had reason to know of it.

2. No conveyance may be forfeited under the provisions of this section for any conduct committed by a person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof.

3. No owner's interest may be forfeited under this chapter if the court finds that:

a. He did not know and had no reason to know of the conduct giving rise to forfeiture;

b. He was a bona fide purchaser for value without notice; ~~and~~

c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied; *or*

d. The conduct giving rise to forfeiture was committed by a tenant of a residential or commercial property owned by a landlord, and the landlord did not know or have reason to know of the tenant's conduct.

4. No lien holder's interest may be forfeited under this chapter if the court finds that:

a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was granted;

b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the same in the manner prescribed by law prior to seizure of the property; and

c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied.

In the event the interest has been sold to a bona fide purchaser for value in order to avoid the provisions of this chapter, the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale.

§ 55-248.31. Noncompliance with rental agreement.

A. 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 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. 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.

C. 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 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. *For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees, shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction*

terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 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 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.

D. 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 30 days after receipt of the notice.

E. 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.

F. 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. The landlord shall be entitled to recover reasonable attorneys' fees 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. If the rental agreement provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement and the tenant fails to prove by a preponderance of the evidence that the failure to pay rent or vacate the premises was due to (i) the breach of the lease by the landlord, or (ii) unlawful actions on the part of the landlord, the court shall award such reasonable attorneys' fees.