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HOUSE BILL NO. 2147

House Amendments in [] - February 1, 2007

A *BILL to amend and reenact § 55-248.31 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; noncompliance with rental agreement.*

Patron Prior to Engrossment—Delegate Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

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

§ 55-248.31. Noncompliance with rental agreement; monetary penalty.

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 [*or such period as the landlord may determine, not to exceed 30 days*] ; 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. [*Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.*]

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the

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59 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a
60 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the
61 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the
62 tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions
63 of this subsection are not applicable, the tenant shall remain responsible for the acts of the other
64 co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to
65 termination of the tenancy pursuant to the lease and this chapter.

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

72 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
73 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
74 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
75 agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for
76 rent is delivered to the landlord drawn on an account with insufficient funds and the tenant fails to pay
77 rent within five days after written notice is served on him notifying the tenant of his nonpayment and of
78 the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check
79 or certified check within the five-day period, the landlord may terminate the rental agreement and
80 proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to
81 prevent a landlord from seeking an award of costs or attorneys' fees under § 8.01-27.1 or civil recovery
82 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to
83 § 8.01-126.

84 G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief
85 for any noncompliance by the tenant with the rental agreement or § 55-248.16. The landlord shall be
86 entitled to recover reasonable attorneys' fees unless the tenant proves by a preponderance of the evidence
87 that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement
88 provides for the payment of reasonable attorneys' fees in the event of a breach of the agreement or
89 noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award
90 reasonable attorneys' fees in any action based upon the tenancy in which the landlord prevails, including
91 but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of
92 any previous action to obtain possession or rent, unless in any such action, the tenant proves by a
93 preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable.