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HOUSE BILL NO. 2188

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 14, 2007)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend and reenact §§ 55-222, 55-248.4, 55-248.13, 55-248.15:1, and 55-248.15:2 of the Code of Virginia, relating to landlord termination of leases; update of the interest on security deposits.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-222, 55-248.4, 55-248.13, 55-248.15:1, and 55-248.15:2 of the Code of Virginia are amended and reenacted as follows:

§ 55-222. Notice to terminate a tenancy; on whom served; when necessary.

A tenancy from year to year may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A tenancy from month to month may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate the same. ~~However, 120 days' written notice is required if the termination is~~ In addition to the termination rights set forth above, and notwithstanding the terms of the lease, the landlord may terminate the lease due to rehabilitation or a change in the use of all or any part of a building containing at least four residential units, upon 120 days' prior written notice to the tenant. Changes shall include but not be limited to conversion to hotel, motel, apartment hotel or other commercial use, planned unit development, substantial rehabilitation, demolition or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived; however, a period of less than 120 days may be agreed upon by both the landlord and tenant in a written agreement separate from the rental agreement or lease executed after such notice is given and applicable only to the 120-day notice period. When such notice is to the tenant it may be served upon him or upon anyone holding under him the leased premises, or any part thereof. When it is by the tenant it may be served upon anyone who, at the time, owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply when, by special agreement, no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain time.

The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing.

§ 55-248.4. Definitions.

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application fee" means any deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord, lessor, or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of

60 § 16.1-88.03.

61 "Managing agent" means a person authorized by the landlord to act on behalf of the landlord under a
62 management agreement.

63 "Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners
64 who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the
65 entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered
66 limited liability partnerships or limited liability companies, or any lawful combination of natural persons
67 permitted by law.

68 "Organization" means a corporation, government, governmental subdivision or agency, business trust,
69 estate, trust, partnership or association, two or more persons having a joint or common interest, or any
70 combination thereof, and any other legal or commercial entity.

71 "Owner" means one or more persons, jointly or severally, in whom is vested:

72 1. All or part of the legal title to the property, or

73 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises,
74 and the term includes a mortgagee in possession.

75 "Person" means any individual, group of individuals, corporation, partnership, business trust,
76 association or other legal entity, or any combination thereof.

77 "Premises" means a dwelling unit and the structure of which it is a part and facilities and
78 appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose
79 use is promised to the tenant.

80 "*Processing fee for payment of rent with bad check*" means the processing fee specified in the rental
81 agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check
82 drawn by the tenant on which payment has been refused by the payor bank because the drawer had no
83 account or insufficient funds.

84 "Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental
85 agreement, including prepaid rent paid more than one month in advance of the rent due date.

86 "Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and
87 regulations adopted under § 55-248.17 embodying the terms and conditions concerning the use and
88 occupancy of a dwelling unit and premises.

89 "Rental application" means the written application or similar document used by a landlord to
90 determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may
91 charge an application fee as provided in this chapter and may request a prospective tenant to provide
92 information that will enable the landlord to make such determination. The landlord may photocopy each
93 applicant's driver's license or other similar photo identification, containing either the applicant's social
94 security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
95 The landlord may require that each applicant provide a social security number issued by the U.S. Social
96 Security Administration or an individual taxpayer identification number issued by the U.S. Internal
97 Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in
98 the landlord's dwelling unit.

99 "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility,
100 in a structure where one or more major facilities are used in common by occupants of the dwelling unit
101 and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or
102 shower, and in the case of a kitchen means refrigerator, stove or sink.

103 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
104 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
105 to the leased premises, or as a pet deposit. However, such money shall be deemed an application fee
106 until the effective date of the rental agreement. Security deposit shall not include a commercial
107 insurance policy purchased by a landlord on behalf of a tenant to secure the performance by the tenant
108 of the terms and conditions of a rental agreement, generally known as damage insurance. Further,
109 security deposit shall not include a commercial insurance policy purchased by a landlord to provide
110 property and casualty insurance coverage for a tenant, generally known as renter's insurance.

111 "Single-family residence" means a structure, other than a multi-family residential structure,
112 maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or
113 thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or
114 service with any other dwelling unit.

115 "Sublease" means the transfer by any tenant of any but not all interests created by a rental
116 agreement.

117 "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion
118 of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or
119 invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental
120 agreement but has no right to occupy a dwelling unit.

121 "Utility" means electricity, natural gas, water and sewer provided by a public service corporation or

such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

§ 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 45 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 45-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 30 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 30 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, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to the security deposit and interest thereon credited against the rent due to the landlord. 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 45-day period. If notice is given as prescribed in this paragraph, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. 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~~ *four* percentage ~~point~~ *points* 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 13 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 72 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.

183 § 55-248.13. Landlord to maintain fit premises.

184 A. The landlord shall:

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

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

189 3. Keep all common areas shared by two or more dwelling units of the premises in a clean and
190 structurally safe condition;

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

194 5. ~~Use reasonable efforts to maintain~~ *Maintain* the premises in such a condition as to prevent the
195 accumulation of moisture and the growth of mold, and to promptly respond to any written notices from
196 a tenant as provided in subdivision A 8 of § 55-248.16;

197 6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the
198 collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy
199 of two or more dwelling units and arrange for the removal of same; and

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

204 B. *The landlord shall perform the duties imposed by subsection A in accordance with law; however,*
205 *the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's*
206 *failure to exercise ordinary care.*

207 C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any
208 other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision
209 1.

210 ~~C.D.~~ The landlord and tenant may agree in writing that the tenant perform the landlord's duties
211 specified in subdivisions 3, 6 and 7 of subsection A and also specified repairs, maintenance tasks,
212 alterations and remodeling, but only if the transaction is entered into in good faith and not for the
213 purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the
214 obligation of the landlord to other tenants in the premises.

215 § 55-248.15:2. Schedule of interest rates on security deposits.

216 A. The interest rate established by § 55-248.15:1 varies annually with the annual rate being equal to
217 ~~one~~ *four* percentage point below the Federal Reserve Board discount rate as of January 1 of each year.
218 The purpose of this section is to set out the interest rates applicable under this chapter.

219 B. The rates are as follows:

220 1. July 1, 1975, through December 31, 1979, 3.0%.

221 2. January 1, 1980, through December 31, 1981, 4.0%.

222 3. January 1, 1982, through December 31, 1984, 4.5%.

223 4. January 1, 1985, through December 31, 1994, 5.0%.

224 5. January 1, 1995, through December 31, 1995, 4.75%.

225 6. January 1, 1996, through December 31, 1996, 5.25%.

226 7. January 1, 1997, through December 31, 1998, 5.0%.

227 8. January 1, 1999, through June 30, 1999, 4.5%.

228 9. July 1, 1999, through December 31, 1999, 3.5%.

229 10. January 1, 2000, through December 31, 2000, 4.0%.

230 11. January 1, 2001, through December 31, 2001, 5.0%.

231 12. January 1, 2002, through December 31, 2002, 0.25%.

232 13. January 1, 2003, through December 31, 2003, 0%.

233 14. January 1, 2004, through December 31, 2004, 1.0%.

234 15. January 1, 2005, through December 31, 2005, 2.25%.

235 16. January 1, 2006, through December 31, 2006, 4.25%.

236 17. *January 1, 2007, through December 31, 2007, 5.25%.*

237 Thereafter, the interest rate shall be determined in accordance with subsection B of § 55-248.15:1.