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SENATE BILL NO. 829

Offered January 12, 2011

Prefiled January 6, 2011

A *BILL to amend the Code of Virginia by adding sections numbered 55-225.11, 55-225.12, and 55-225.13, relating to tenant assertions; rent escrow.*

Patron—Locke

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 55-225.11, 55-225.12, and 55-225.13 as follows:

§ 55-225.11. *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 a lack of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or 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 is 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 30 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. *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*

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59 and report. When such a continuance is granted, the tenant shall deposit with the court rent payments
60 within five days of the date due under the rental agreement, subject to any abatement under this section,
61 which become due during the period of the continuance, to be held by the court pending its further
62 order;

63 7. In the court's discretion, ordering escrow funds disbursed to pay a mortgage on the property in
64 order to stay a foreclosure; or

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

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

73 D. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15
74 calendar days from the date of service of process on the landlord as authorized by § 55-248.12, except
75 that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the
76 premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition
77 which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises.
78 The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial
79 proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow
80 moneys may only occur by order of the court after a hearing of which both parties are given notice as
81 required by law or upon motion of both the landlord and tenant or upon certification by the appropriate
82 inspector that the work required by the court to be done has been satisfactorily completed. If the tenant
83 proceeds under this subsection, he may not proceed under any section of Article 4 (§ 55-248.21 et seq.)
84 of Chapter 13.2 as to that breach.

85 § 55-225.12. Noncompliance by landlord.

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

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

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

100 If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the
101 date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a
102 condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or
103 other person on the premises with his consent whether known by the tenant or not. In addition, the
104 tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the
105 provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable
106 attorney fees unless the landlord proves by a preponderance of the evidence that the landlord's actions
107 were reasonable under the circumstances.

108 § 55-225.13 Rent escrow required for continuance of tenant's case.

109 A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as
110 provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a
111 contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to
112 the rent that is due as of the initial court date into the court escrow account prior to granting the
113 tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the
114 court so finds, the court shall not require the rent to be escrowed. If the landlord requests a
115 continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed.

116 B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be
117 required to pay an amount determined by the court to be proper into the court escrow account in order
118 for the case to be continued or set for contested trial. To meet the ends of justice, however, the court
119 may grant the tenant a continuance of no more than one week to make full payment of the
120 court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount

121 *ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an*
122 *order of possession of the premises.*

123 *C. The court shall further order that should the tenant fail to pay future rents due under the rental*
124 *agreement into the court escrow account, the court shall, upon the request of the landlord, enter*
125 *judgment for the landlord and enter an order of possession of the premises.*

126 *D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account*
127 *to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.*

128 *E. Except as provided in subsection D, no rent required to be escrowed under this section shall be*
129 *disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an*
130 *appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit*
131 *court to be held in such court escrow account pending the outcome of the appeal.*

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