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SENATE BILL NO. 377

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 25, 2016)

(Patron Prior to Substitute—Senator Vogel)

A BILL to amend and reenact §§ 55-225.12 and 55-248.27 of the Code of Virginia, relating to landlord and tenant law; tenant remedies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.12 and 55-248.27 of the Code of Virginia are amended and reenacted as follows:

§ 55-225.12. Tenant's assertion; rent escrow; dwelling units.

A. The tenant may assert that there exists upon the dwelling unit, 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; 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 dwelling unit 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; *and*

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. C. It shall be sufficient answer or rejoinder to ~~such~~ a declaration *pursuant to subsection A* 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 dwelling unit for the purpose of correcting such conditions.

~~C. D.~~ 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 *upon the request of the tenant* or ordering the dwelling unit surrendered to the landlord *if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court*;

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 and report. When such a continuance is granted, the tenant shall deposit with the court rent payments within five days of the date due under the rental agreement, subject to any abatement under this section, which

become due during the period of the continuance, to be held by the court pending its further order;

7. In the court's discretion, ordering escrow funds disbursed to pay a mortgage on the property upon which the dwelling unit is located in order to stay a foreclosure; or

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

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

~~D.~~ E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the dwelling unit. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed.

§ 55-248.27. 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 of light, electricity or adequate sewage disposal facilities; or an infestation of rodents, except if the property is a one-family dwelling; or of 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 are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection ~~C~~ D.

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 thirty days from receipt of the notification by the landlord is unreasonable; *and*

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.~~ C. It shall be sufficient answer or rejoinder to ~~such~~ a declaration *pursuant to subsection A* 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.~~ D. 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 *upon the request of the tenant* or ordering the premises surrendered to the landlord *if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court*;

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;

122 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord
123 refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the
124 landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in
125 its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or
126 effecting a remedy;

127 6. Referring any matter before the court to the proper state or municipal agency for investigation and
128 report and granting a continuance of the action or complaint pending receipt of such investigation and
129 report. When such a continuance is granted, the tenant shall deposit with the court rents within five days
130 of date due under the rental agreement, subject to any abatement under this section, which become due
131 during the period of the continuance, to be held by the court pending its further order;

132 7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to
133 stay a foreclosure; *or*

134 8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to
135 enforce a mechanic's or materialman's lien.

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

142 *D. E.* The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within
143 fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12,
144 except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon
145 the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition
146 which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises.
147 The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial
148 proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow
149 moneys may only occur by order of the court after a hearing of which both parties are given notice as
150 required by law or upon motion of both the landlord and tenant or upon certification by the appropriate
151 inspector that the work required by the court to be done has been satisfactorily completed. If the tenant
152 proceeds under this subsection, he may not proceed under any other section of this article as to that
153 breach.