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SENATE BILL NO. 1438

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 8.01-126, 55-248.4, 55-248.7, 55-248.31, and 55-248.34:1 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act.*

Patrons—McClellan, Ebbin and Surovell; Delegate: Hope

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-126, 55-248.4, 55-248.7, 55-248.31, and 55-248.34:1 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.

A. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable, *but in no event later than 30 days after the date of the filing*. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

B. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or paper printout of an electronically stored document including a copy of the original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. An attorney or agent of the landlord or managing agent may present such affidavit into evidence.

C. 1. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may submit into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. The plaintiff or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a variance reducing the amount due the plaintiff as of the day of the hearing.

2. a. If the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the evidence and in accordance with the amounts contracted for in the rental agreement and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises. *Notwithstanding any rule of court or provision of law to the contrary, no order of possession shall be entered unless the plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admits into evidence.*

b. *Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of the date of the hearing. If additional amounts become due and owing prior to the final disposition of a pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to include such additional amounts. In such a case, such plaintiff shall not subsequently file an additional summons for unlawful detainer against the defendant for such additional amounts if such additional amounts could have been included in such amendment. If another unlawful detainer is filed, the court shall dismiss the subsequent unlawful detainer. Nothing herein shall be construed to preclude a plaintiff from filing an unlawful detainer for a non-rent violation during the pendency of an unlawful detainer*

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59 *for nonpayment of rent.*

60 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement
61 or lease provides that rent is due and payable on the first of the month in advance for the entire month,
62 at the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the
63 hearing shall include the rent due for the entire month in which the hearing is held, and rent shall not
64 be prorated as of the actual court date. Otherwise, the rent shall be prorated as of the date of the
65 hearing. However, nothing herein shall be construed to permit a landlord to collect rent in excess of the
66 amount stated in such rental agreement or lease. If a money judgment has been granted for the amount
67 due for the month of the hearing pursuant to this section and the landlord re-rents such dwelling unit
68 and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect
69 the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

70 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner
71 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such
72 tenancy may be terminated by a written termination notice from the successor owner given to such
73 tenant at least three days prior to the effective date of termination. Upon the expiration of the three-day
74 period, the successor owner may file an unlawful detainer under this section. Such tenant shall be
75 responsible for payment of fair market rental from the date of such foreclosure until the date the tenant
76 vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court
77 costs.

78 **§ 55-248.4. Definitions.**

79 When used in this chapter, unless expressly stated otherwise:

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

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

86 "Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing
87 agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not
88 exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party
89 performing background, credit, or other pre-occupancy checks on the applicant. However, where an
90 application is being made for a dwelling unit which is a public housing unit or other housing unit
91 subject to regulation by the Department of Housing and Urban Development, an application fee shall not
92 exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord
93 performing background, credit, or other pre-occupancy checks on the applicant.

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

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

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

102 "Commencement date of rental agreement" means the date upon which the tenant is entitled to
103 occupy the dwelling unit as a tenant.

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

106 "Effective date of rental agreement" means the date upon which the rental agreement is signed by the
107 landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

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

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

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

113 "Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls,
114 floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

115 "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such
116 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose
117 the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of
118 § 16.1-88.03. Landlord shall not, however, include a community land trust as defined in § 55-221.1.

119 "Managing agent" means a person authorized by the landlord to act on behalf of the landlord under
120 an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

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

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

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

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

1. All or part of the legal title to the property, or
2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

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

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

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

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

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

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

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility,

182 in a structure where one or more major facilities are used in common by occupants of the dwelling unit
183 and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or
184 shower, and in the case of a kitchen means refrigerator, stove, or sink.

185 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
186 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
187 to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit
188 until the commencement date of the rental agreement. Security deposit shall not include a damage
189 insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 purchased by a
190 landlord to provide coverage for a tenant.

191 "Single-family residence" means a structure, other than a multi-family residential structure,
192 maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has
193 direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor
194 any other essential facility or service with any other dwelling unit.

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

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

201 "Tenant records" means all information, including financial, maintenance, and other records about a
202 tenant or prospective tenant, whether such information is in written or electronic form or other medium.
203 A tenant may request copies of his tenant records pursuant to § 55-248.9:1.

204 "Utility" means electricity, natural gas, water and sewer provided by a public service corporation or
205 such other person providing utility services as permitted under § 56-1.2. If the rental agreement so
206 provides, a landlord may use submetering equipment or energy allocation equipment as defined in
207 § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

208 "Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the
209 naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at
210 the time of the move-in inspection.

211 "Written notice" means notice given in accordance with § 55-248.6, including any representation of
212 words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or
213 (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of
214 whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is affixed.
215 The landlord may, in accordance with a written agreement, delegate to a managing agent or other third
216 party the responsibility of providing any written notice required by this chapter.

217 **§ 55-248.7. Terms and conditions of rental agreement; copy for tenant; accounting of rental**
218 **payments.**

219 A. A landlord and tenant may include in a rental agreement, terms and conditions not prohibited by
220 this chapter or other rule of law, including rent, charges for late payment of rent, term of the agreement,
221 automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the
222 rental agreement, and other provisions governing the rights and obligations of the parties.

223 B. ~~In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use~~
224 ~~and occupancy of the dwelling unit~~*The landlord shall offer the tenant a written rental agreement*
225 *containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions*
226 *of the landlord-tenant relationship. Such written rental agreement shall be effective upon the date signed*
227 *by the parties.*

228 C. ~~Rent~~ *If a landlord does not offer a written rental agreement, the tenancy shall exist by operation*
229 *of law consisting of the following terms and conditions:*

230 1. *The provisions of this chapter shall be applicable to the dwelling unit that is being rented;*

231 2. *The duration of the rental agreement shall be for 12 months and shall not be subject to automatic*
232 *renewal, except in the event of a month-to-month lease as otherwise provided under subsection C of*
233 *§ 55-248.37;*

234 3. *Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord*
235 *and the tenant, and if no amount is agreed upon, the installments shall be at fair market rent;*

236 4. *Rent payments shall be due on the first day of each month during the tenancy and shall be*
237 *considered late if not paid by the fifth of the month;*

238 5. *If the rent is by paid by the tenant after the fifth day of any given month, the landlord shall be*
239 *entitled to charge a late charge as provided in the Virginia Residential Landlord and Tenant Act*
240 *(§ 55-248.2 et seq.);*

241 6. *The landlord may collect a security deposit not to exceed an amount equal to two months of rent;*
242 *and*

243 7. *The parties may enter into a written rental agreement at any time during the 12-month tenancy*

created by this subsection.

D. Except as provided in the written rental agreement or, if no written agreement is offered, in subsection C, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed Except as provided in the written rental agreement, rent is payable at the place designated by the landlord and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, E. Except as provided in the written rental agreement or, if no written agreement is offered, in subsection C, the tenancy shall be week to week in case of a roomer who pays weekly rent, and in all other cases month to month. Terminations of tenancies shall be governed by § 55-248.37 unless the rental agreement provides for a different notice period.

E. F. If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days shall be deemed evidence of his approval.

F. G. A copy of any written rental agreement signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. H. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

H. I. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

§ 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.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, 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 activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such activities 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

305 scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall
306 order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial
307 shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim
308 period between the date of the initial hearing and the date of any subsequent hearing or contested trial,
309 the court may afford any further remedy or relief as is necessary to protect the interests of parties to the
310 proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold
311 either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

312 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling
313 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01
314 based upon information provided by the tenant to the landlord, or by a protective order from a court of
315 competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall
316 not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not
317 be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a
318 victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days
319 from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation
320 of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the
321 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a
322 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the
323 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the
324 tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions
325 of this subsection are not applicable, the tenant shall remain responsible for the acts of the other
326 co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to
327 termination of the tenancy pursuant to the lease and this chapter.

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

334 F. If rent is unpaid when due, and the tenant fails to pay rent within ~~five~~ 4 days after written notice
335 is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
336 rental agreement if the rent is not paid within the ~~five-day~~ 14-day period, the landlord may terminate
337 the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a
338 check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an
339 electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has
340 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within ~~five~~ 14 days
341 after written notice is served on him notifying the tenant of his nonpayment and of the landlord's
342 intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified
343 check, or a completed electronic funds transfer within the ~~five-day~~ 14-day period, the landlord may
344 terminate the rental agreement and proceed to obtain possession of the premises as provided in
345 § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or
346 attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested
347 on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in
348 accordance with § 55-248.6, which notice may be included in the ~~five-day~~ 14-day termination notice
349 provided in accordance with this section.

350 G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief
351 for any noncompliance by the tenant with the rental agreement or § 55-248.16. In the event of a breach
352 of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from
353 the tenant the following, regardless of whether or not a lawsuit is filed or an order obtained from a
354 court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as
355 contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv)
356 reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the
357 proceeding as contracted for in the rental agreement or as provided by law only if court action has been
358 filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

359 *The tenant shall be entitled to reasonable attorney fees in any case where an action brought by the*
360 *landlord to enforce the terms of the rental agreement is dismissed at the request of the tenant or*
361 *tenant's attorney, or judgment is entered in favor of the tenant.*

362 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
363 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
364 landlord and against the tenant for the relief requested, which may include the following: (i) rent due
365 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as
366 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv)

reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

I. Notwithstanding any other provision of law, no landlord shall be permitted to terminate a rental agreement and proceed to obtain possession of the premises as provided for in § 55-225.48 or Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 solely because a tenant owes fees to the landlord incurred as a result of the tenant's previous late payment of rent, provided that such tenant is current on all rental payments.

§ 55-248.34:1. Landlord's acceptance of rent with reservation.

A. The landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55-248.38:2, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55-248.31, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, nothing herein shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

B. However, the tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

D. In cases of unlawful detainer, a tenant may pay the landlord or ~~his attorney~~ *the landlord's attorney*, or pay into court, all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. *If such payment has not been made as of the return date for the unlawful detainer, the tenant may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late fees, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer to whom the writ of eviction has been delivered to be executed. Any payments made by the tenant shall be by cashier's check, certified check, or money order. If full payment is made no less than two business days before the date scheduled for the execution of the writ of eviction, no eviction shall occur and the underlying judgement for possession shall be vacated as a matter of law without further order of the court.* A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof.