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SENATE BILL NO. 1438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 21, 2019)

(Patron Prior to Substitute—Senator McClellan)

*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.*

Be it enacted by the General Assembly of Virginia:

1. That § 55-248.31 of the Code of Virginia are 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.), 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 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 calendar 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 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~~ 14 days after written
73 notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to
74 terminate the rental agreement if the rent is not paid within the ~~five-day~~ 14-day period, the landlord
75 may terminate the rental agreement and proceed to obtain possession of the premises as provided in
76 § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds,
77 or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order
78 has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within ~~five~~ 14
79 days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's
80 intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified
81 check, or a completed electronic funds transfer within the ~~five-day~~ 14-day period, the landlord may
82 terminate the rental agreement and proceed to obtain possession of the premises as provided in
83 § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or
84 attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested
85 on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in
86 accordance with § 55-248.6, which notice may be included in the ~~five-day~~ 14-day termination notice
87 provided in accordance with this section.

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

97 *The tenant shall be entitled to reasonable attorney fees in any case where an action brought by the*
98 *landlord to enforce the terms of the rental agreement is dismissed at the request of the tenant or*
99 *tenant's attorney without the landlord's consent, or judgment is entered in favor of the tenant.*

100 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
101 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
102 landlord and against the tenant for the relief requested, which may include the following: (i) rent due
103 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as
104 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv)
105 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any
106 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or
107 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as
108 provided by law; and (vi) damages to the dwelling unit or premises.

109 *I. Notwithstanding any other provision of law, no landlord shall be permitted to terminate a rental*
110 *agreement and proceed to obtain possession of the premises as provided for in § 55-225.48 or Article*
111 *13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 solely because a tenant owes fees to the landlord*
112 *incurred as a result of the tenant's previous late payment of rent, provided that such tenant is current*
113 *on all rental payments.*