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SENATE BILL NO. 1627

Offered January 9, 2019

Prefiled January 9, 2019

A *BILL to amend and reenact § 8.01-126 of the Code of Virginia, relating to unlawful detainer; initial hearing; subsequent filings; termination notice.*

Patron—Barker

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-126 of the Code of Virginia is 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. *For the purposes of this section, "termination notice" means a notice given under § 55-248.31 or other notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises.*

B. 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. C. 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. D. 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. If the plaintiff requests to amend the amount alleged to be due and owing in an unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful detainer, such plaintiff shall not subsequently file an additional summons for unlawful detainer against*

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59 *the defendant for such additional amounts if such additional amounts could have been included in such*
60 *amendment. If another unlawful detainer is filed, the court shall dismiss the subsequent unlawful*
61 *detainer. Nothing herein shall be construed to preclude a plaintiff from filing an unlawful detainer for a*
62 *non-rent violation during the pendency of an unlawful detainer for nonpayment of rent.*

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

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