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SENATE BILL NO. 1676

Offered January 11, 2019

A *BILL to amend and reenact §§ 55-248.4 and 55-248.7 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; provisions made applicable to rental tenancy by operation of law in absence of written rental agreement.*

Patron—Stanley

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-248.4 and 55-248.7 of the Code of Virginia are amended and reenacted as follows:****§ 55-248.4. Definitions.**

When used in this chapter, unless expressly stated otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under 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

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59 American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard
60 Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration
61 and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial
62 hygienist consistent with said guidance documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

115 "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility,
116 in a structure where one or more major facilities are used in common by occupants of the dwelling unit
117 and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or
118 shower, and in the case of a kitchen means refrigerator, stove, or sink.

119 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
120 to secure the performance of the terms and conditions of a rental agreement, as a security for damages

to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. Security deposit shall not include a damage insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 purchased by a landlord to provide coverage for a tenant.

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

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

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

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

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

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

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

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

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

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

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

1. *The provision of this chapter shall be applicable to the dwelling unit that is being rented;*
 2. *The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of § 55-248.37;*

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

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

5. *If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;*

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

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

~~Rent~~ D. *Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, 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*

182 the landlord receives from a tenant a written request for a written statement of charges and payments, he
183 shall provide the tenant with a written statement showing all debits and credits over the tenancy or the
184 past 12 months, whichever is shorter. The landlord shall provide such written statement within 10
185 business days of receiving the request.

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

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

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

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

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