

20200860D

SENATE BILL NO. 5088

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on August 19, 2020)

(Patrons Prior to Substitute—Senators Ebbin and Bell [SB 5086])

*A BILL to amend and reenact § 55.1-1245 of the Code of Virginia, relating to the Virginia Residential
Landlord and Tenant Act; landlord remedies; noncompliance with rental agreement; payment plan.*

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1245 of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1245. Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 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 that 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, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that 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, an authorized occupant, or a guest or invitee of the tenant 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 an authorized occupant or a guest or invitee of the tenant, 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 that 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 in this section 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 § 55.1-1246 on the basis of 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 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due 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 to promptly notify the landlord within 24 hours 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 later than seven days. If the provisions of this
63 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants,
64 authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the
65 tenancy pursuant to the lease and this chapter.

66 E. If the tenant has been served with a prior written notice that 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 days after written notice is
73 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
74 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
75 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for
76 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds
77 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad
78 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is
79 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the
80 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed
81 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and
82 proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to
83 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery
84 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to
85 § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice
86 may be included in the five-day termination notice provided in accordance with this section.

87 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain
88 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the
89 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled
90 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained
91 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and
92 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement,
93 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of
94 the proceeding as contracted for in the rental agreement or as provided by law only if court action has
95 been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

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

105 I. *The provisions of this subsection shall not be enforceable unless activated by executive order*
106 *during a declared state of emergency pursuant to § 44-146.17. Notwithstanding the provisions of*
107 *subsection F:*

108 1. *For a landlord who owns four or fewer rental dwelling units in the Commonwealth, if rent is*
109 *unpaid when due and the tenant fails to pay rent within five days after written notice is served on him*
110 *notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement*
111 *if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and*
112 *proceed to obtain possession of the premises as provided in § 55.1-1251.*

113 2. *For a landlord who owns more than four rental dwelling units or more than a 10 percent interest*
114 *in more than four rental dwelling units, whether individually or through a business entity, in the*
115 *Commonwealth, if rent is unpaid when due, the landlord shall serve upon the tenant a written notice*
116 *informing the tenant of the total amount due and owed. The written notice shall also inform the tenant*
117 *that if the tenant provides to the landlord a signed statement certifying that the tenant has experienced*
118 *expenses or a loss of income due to the declared state of emergency, the tenant may enter into a*
119 *payment plan under which the tenant shall be required to pay the total amount due and owed in equal*
120 *monthly installments over a period of the lesser of six months or the time remaining under the rental*
121 *agreement. The total amount due and owed under a payment plan shall not include any late fees, and*

122 no late fees shall be assessed during any time period in which a tenant is making timely payments under
123 a payment plan. The written notice shall also inform the tenant that if the tenant fails to either pay the
124 total amount due and owed or enter into the payment plan offered, or an alternative payment
125 arrangement acceptable to the landlord, within five days of receiving the written notice from the
126 landlord, the landlord may terminate the rental agreement and proceed to obtain possession of the
127 premises as provided in § 55.1-1251. If the tenant fails to pay in full or enter into a payment plan with
128 the landlord within five days of when the notice is served on him, the landlord may terminate the rental
129 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If the tenant
130 enters into a payment plan and, after the plan becomes effective, fails to pay any installment required by
131 the plan within five days of its due date, the landlord may terminate the rental agreement and proceed
132 to obtain possession of the premises as provided in § 55.1-1251, provided that he has sent the tenant a
133 new notice advising the tenant that the rental agreement will terminate unless the tenant pays the total
134 amount due and owed as stated on the notice within five days of receipt. The option of entering into a
135 payment plan or alternative payment arrangement pursuant to this subdivision may only be utilized once
136 during the time period of the rental agreement. Nothing in this subsection shall preclude a tenant from
137 availing himself of any other rights or remedies available to him under the law, nor shall the tenant's
138 eligibility to participate or participation in any rent relief program offered by a nonprofit organization
139 or under the provisions of any federal, state, or local law, regulation, or action prohibit the tenant from
140 taking advantage of the provisions of this subsection.