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SENATE BILL NO. 941

Offered January 11, 2023

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A BILL to amend and reenact §§ 55.1-1204, 55.1-1206, 55.1-1208, and 55.1-1226 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; security deposits.

Patrons—Hashmi, Boysko, McClellan, Rouse and Spruill

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1204, 55.1-1206, 55.1-1208, and 55.1-1226 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.

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, the 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. A landlord shall offer a prospective tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord-tenant relationship and shall provide with it the statement of tenant rights and responsibilities developed by the Department of Housing and Community Development and posted on its website pursuant to § 36-139. The parties to a written rental agreement shall sign the form developed by the Department of Housing and Community Development and posted on its website pursuant to § 36-139 acknowledging that the tenant has received from the landlord the statement of tenant rights and responsibilities. The 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 § 55.1-1253;

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 in an amount that does not exceed a total amount equal to ~~two months~~ *one month* 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.

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. 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.

E. A landlord shall not charge a tenant for late payment of rent unless such charge is provided for in the written rental agreement. No such late charge shall exceed the lesser of 10 percent of the periodic rent or 10 percent of the remaining balance due and owed by the tenant.

F. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

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59 G. If the rental agreement contains any provision allowing the landlord to approve or disapprove a
60 sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written
61 application of the prospective sublessee or assignee on a form to be provided by the landlord, approve
62 or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is
63 evidence of his approval.

64 H. The landlord shall provide a copy of any written rental agreement and the statement of tenant
65 rights and responsibilities to the tenant within one month of the effective date of the written rental
66 agreement. The failure of the landlord to deliver such a rental agreement and statement shall not affect
67 the validity of the agreement. However, the landlord shall not file or maintain an action against the
68 tenant in a court of law for any alleged lease violation until he has provided the tenant with the
69 statement of tenant rights and responsibilities.

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

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

75 **§ 55.1-1206. Landlord may obtain certain insurance for tenant.**

76 A. A landlord may require as a condition of tenancy that a tenant have damage insurance and pay
77 for the cost of premiums. As provided in § 55.1-1200, such payments shall not be deemed a security
78 deposit, but shall be rent. However, as provided in § 55.1-1208, the landlord shall not require a tenant to
79 pay both a security deposit and the cost of damage insurance premiums if the total amount of any
80 security deposit and damage insurance premiums exceeds the amount of ~~two months'~~ *one month's*
81 periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a
82 separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate
83 policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such
84 coverage at all times during the term of the rental agreement. Where a landlord obtains damage
85 insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as
86 an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and
87 may recover administrative or other fees associated with administration of a damage insurance policy,
88 including a tenant opting out of the insurance coverage provided by the landlord pursuant to this
89 subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each
90 tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate
91 evidencing the coverage being provided and upon request of the tenant make available a copy of the
92 insurance policy. For a tenant that opts out of the landlord's damage insurance program, the landlord
93 shall allow such tenant to either provide ~~their~~ *his* own damage insurance policy or pay the full security
94 deposit.

95 B. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified
96 in the rental agreement. A landlord may require a tenant to pay for the cost of premiums for such
97 renter's insurance obtained by the landlord, in order to provide such coverage for the tenant as part of
98 rent or as otherwise provided in this section. As provided in § 55.1-1200, such payments shall not be
99 deemed a security deposit but shall be rent. The landlord shall notify a tenant in writing that the tenant
100 has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant
101 elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage
102 and shall maintain such coverage at all times during the term of the rental agreement. If a tenant allows
103 his renter's insurance policy required by the rental agreement to lapse for any reason, the landlord may
104 provide any landlord's renter's insurance coverage to such tenant. The tenant shall be obligated to pay
105 for the cost of premiums for such insurance as rent or as otherwise provided herein until the tenant has
106 provided written documentation to the landlord showing that the tenant has reinstated his own renter's
107 insurance coverage.

108 C. If the landlord requires that such premiums be paid to the landlord prior to the commencement of
109 the tenancy, the total amount of all security deposits, insurance premiums for damage insurance, and
110 insurance premiums for renter's insurance shall not exceed the amount of ~~two months'~~ *one month's*
111 periodic rent. However, the landlord shall be permitted to add a monthly amount as additional rent to
112 recover additional costs of renter's insurance premiums.

113 D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy
114 shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual
115 costs of such insurance coverage and may recover administrative or other fees associated with the
116 administration of a renter's insurance program, including a tenant opting out of the insurance coverage
117 provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants,
118 the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the
119 insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon
120 request of the tenant make available a copy of the insurance policy. Such summary or certificate shall

include a statement regarding whether the insurance policy contains a waiver of subrogation provision. Any failure of the landlord to provide such summary or certificate, or to make available a copy of the insurance policy, shall not affect the validity of the rental agreement.

If the rental agreement does not require the tenant to obtain renter's insurance, the landlord shall provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverage does not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System to obtain information regarding whether the property is located in a special flood hazard area. Any failure of the landlord to provide such notice shall not affect the validity of the rental agreement. If the tenant requests translation of the notice from the English language to another language, the landlord may assist the tenant in obtaining a translator or refer the tenant to an electronic translation service. In doing so, the landlord shall not be deemed to have breached any of his obligations under this chapter or otherwise become liable for any inaccuracies in the translation. The landlord shall not charge a fee for such assistance or referral.

E. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

§ 55.1-1208. Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forgo rights or remedies under this chapter;
2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or any associated costs;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation;

7. Agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of ~~two months'~~ one month's periodic rent; or

8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act; however, upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies as to that dispute in order to facilitate a resolution.

B. Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by him and reasonable attorney fees.

§ 55.1-1226. Security deposits.

A. No landlord may demand or receive a security deposit, however denominated, in an amount or value in excess of ~~two months'~~ one month's periodic rent. Upon termination of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last, such security deposit, whether it is property or money held by the landlord as security as provided in this section, ~~may~~ shall be applied by the landlord, in order of priority, solely to (i) the payment of accrued rent, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with § 55.1-1227, less reasonable wear and tear; (iii) other damages or charges as provided in the rental agreement; or (iv) actual damages for breach of the rental agreement pursuant to § 55.1-1251. The tenant may request to be present at a final inspection of the dwelling unit on or immediately before the date the tenant vacates the dwelling unit. If the tenant is present for such final inspection and, based upon that inspection, there are no damages to the dwelling unit beyond normal wear and tear and the tenant does not owe any rent to the landlord as of the date of the inspection, the landlord shall refund the entirety of the security deposit to

182 *the tenant electronically, in-person, or by mail at a forwarding address provided by the tenant within*
183 *five days of the date of the inspection. If the tenant is not present for the final inspection of the dwelling*
184 *unit, the security deposit and any deductions, damages, and charges shall be itemized by the landlord in*
185 *a written notice given to the tenant, together with any amount due to the tenant, within 45 days after the*
186 *termination date of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last.*
187 *As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit,*
188 *whichever occurs last, the tenant shall be required to deliver possession of the dwelling unit to the*
189 *landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof,*
190 *or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be*
191 *liable for actual damages pursuant to § 55.1-1251, in which case, the landlord shall give written notice*
192 *of security deposit disposition within the 45-day period but may retain any security balance to apply*
193 *against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental*
194 *agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the*
195 *landlord may file an unlawful detainer action pursuant to § 8.01-126.*

196 B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in
197 writing by each of the tenants, disposition of the security deposit shall be made with one check being
198 payable to all such tenants and sent to a forwarding address provided by one of the tenants. The
199 landlord shall make the security deposit disposition within the 45-day time period required by subsection
200 A, but if no forwarding address is provided to the landlord, the landlord may continue to hold such
201 security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the
202 landlord to make a refund of the security deposit, upon the expiration of one year from the date of the
203 end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed
204 property on a form prescribed by the administrator that includes the name; social security number, if
205 known; and last known address of each tenant on the rental agreement. If the landlord or managing
206 agent is a real estate licensee, compliance with this subsection shall be deemed compliance with
207 § 54.1-2108 and corresponding regulations of the Real Estate Board.

208 C. Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant,
209 upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account
210 in the amount of the security deposit. The landlord shall apply the security deposit in accordance with
211 this section within the 45-day time period required by subsection A. However, provided that the landlord
212 has given prior written notice in accordance with this section, the landlord may withhold a reasonable
213 portion of the security deposit to cover an amount of the balance due on the water, sewer, or other
214 utility account that is an obligation of the tenant to a third-party provider under the rental agreement for
215 the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation
216 to the tenant within 10 days, along with payment to the tenant of any balance otherwise due to the
217 tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord
218 shall have so advised the tenant of his rights and obligations under this section in (i) a termination
219 notice to the tenant in accordance with this chapter, (ii) a written notice to the tenant confirming the
220 vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15
221 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in
222 accordance with § 55.1-1202.

223 The tenant may provide the landlord with written confirmation of the payment of the final water,
224 sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security
225 deposit, unless there are other authorized deductions, within the 45-day period required by subsection A.
226 If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord
227 shall refund any remaining balance of the security deposit held to the tenant within 10 days following
228 the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives
229 confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord
230 shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

231 D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of
232 the security deposit prior to the 45-day period required by subsection A and charging an administrative
233 fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant
234 requests expedited processing in a separate written document.

235 E. The landlord shall notify the tenant in writing of any deductions provided by this section to be
236 made from the tenant's security deposit during the course of the tenancy. Such notification shall be made
237 within 30 days of the date of the determination of the deduction and shall itemize the reasons in the
238 same manner as provided in subsection F. No such notification shall be required for deductions made
239 less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to
240 comply with this section, the court shall order the return of the security deposit to the tenant, together
241 with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which
242 case the court shall order an amount equal to the security deposit credited against the rent due to the
243 landlord. In the event that damages to the premises exceed the amount of the security deposit and

require the services of a third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period required by subsection A. If notice is given as prescribed in this subsection, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

F. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section that the landlord has made by reason of a tenant's noncompliance with § 55.1-1227, or for any other reason set out in this section, during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall, in writing, so advise the landlord, who in turn shall notify the tenant of the date and time of the inspection, which must be made within 72 hours of delivery of possession. Following the move-out inspection, the landlord shall provide the tenant with a written security deposit disposition statement, including an itemized list of damages. If additional damages are discovered by the landlord after the security deposit disposition has been made, nothing in this section shall be construed to preclude the landlord from recovery of such damages against the tenant, provided, however, that the tenant may present into evidence a copy of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection.

H. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

I. The landlord may permit a tenant to provide damage insurance coverage in lieu of the payment of a security deposit. Such damage insurance in lieu of a security deposit shall conform to the following criteria:

1. The provider of damage insurance is licensed or approved by the Virginia State Corporation Commission;

2. The coverage is effective upon the payment of the first premium and remains effective for the entire lease term;

3. The coverage provided per claim is no less than the amount the landlord requires for security deposits;

4. The provider of damage insurance agrees to approve or deny payment of a claim; and

5. The provider of damage insurance shall notify the landlord within 10 days if the damage policy lapses or is canceled.

J. A tenant who initially opts to provide damage insurance in lieu of a security deposit may, at any time without consent of the landlord, opt to pay the full security deposit to the landlord in lieu of maintaining a damage insurance policy. The landlord shall not alter the terms of the lease in the event a tenant opts to pay the full amount of the security deposit pursuant to this subsection.