

1995 SESSION

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HOUSE BILL NO. 836

Offered January 25, 1994

A BILL to amend and reenact §§ 8.01-126, 8.01-129 and 55-248.31 of the Code of Virginia, relating to expedited possession of unlawfully detained property.

Patron—Giesen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-126, 8.01-129 and 55-248.31 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-126. Summons for unlawful detainer issued by magistrate, clerk or judge of a general district court.

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, 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 of a general district court 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 and 8.01-296 or § 8.01-299. When issued by a magistrate it may and shall be returned to and the case heard and determined by the judge of a general district court within ten business days of the return day thereof. Such summons shall be served at least five days before the such return day thereof.

§ 8.01-129. Appeal from judgment of general district court.

An appeal shall lie from the judgment of a general district court, in any proceeding under this article, to the circuit court in the same manner and with like effect and upon like security as appeals taken under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal shall be taken within ten seven days and the security approved by the court from which the appeal is taken. Notwithstanding the provisions of § 16.1-106 et seq. the bond shall be posted and the writ tax paid within ten seven days of the date of the judgment. Unless otherwise specifically provided in the court's order, no writ of execution shall issue on a judgment for possession until the expiration of this ten-day seven-day period. When the appeal is taken by the defendant, he shall be required to give security also for all rent which has accrued and may accrue upon the premises, but for not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months. Trial by jury shall be had upon application of any party.

§ 55-248.31. Noncompliance with rental agreement; failure to pay rent.

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 thirty twenty-one days after receipt of the notice if the breach is not remedied in twenty-one fourteen days, and that the rental agreement shall terminate as provided in the notice. 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. 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 thirty days twenty-one 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 as provided in § 55-248.35.

If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than thirty twenty-one days after receipt of the notice.

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60 If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
61 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
62 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
63 agreement and proceed to obtain possession of the premises as provided in § 55-248.35 of this chapter.
64 If a check for rent is delivered to the landlord drawn on an account with insufficient funds and the
65 tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his
66 nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by
67 cash, cashier's check or certified check within the five-day period, the landlord may terminate the rental
68 agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Except as
69 provided in this chapter, the landlord may recover damages and obtain injunctive relief for any
70 noncompliance by the tenant with the rental agreement or § 55-248.16. If the tenant's noncompliance is
71 willful, the landlord may recover reasonable attorney's fees. Failure of the tenant either to pay the rent
72 or to vacate the premises within five days after written notice of nonpayment given by the landlord shall
73 be deemed willful noncompliance by the tenant, unless the failure to pay the rent or to vacate the
74 premises is found by the court to be reasonable.