

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 123

An Act to amend and reenact §§ 55-222, 55-248.4, and 55-248.37 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-248.7:2, relating to landlord and tenant law; termination of tenancies; security deposit.

[H 153]

Approved March 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-222, 55-248.4, and 55-248.37 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-248.7:2 as follows:

§ 55-222. Notice to terminate a tenancy; on whom served; when necessary.

A tenancy from year to year may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A tenancy from month to month may be terminated by either party giving ~~thirty~~ 30 days' notice in writing, prior to the ~~end of the month next rent due date~~, of his intention to terminate the same. However, 120 days' written notice is required if the termination is due to rehabilitation or a change in the use of all or any part of a building containing at least four residential units. Changes shall include but not be limited to conversion to hotel, motel, apartment hotel or other commercial use, planned unit development, rehabilitation, demolition or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived; however, a period of less than 120 days may be agreed upon by both the landlord and tenant in a written agreement separate from the rental agreement or lease executed after such notice is given and applicable only to the 120-day notice period. When such notice is to the tenant it may be served upon him or upon anyone holding under him the leased premises, or any part thereof. When it is by the tenant it may be served upon anyone who, at the time, owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply when, by special agreement, no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain time.

The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing.

§ 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 fee" means any 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, lessor, or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit.

"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 rights and 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.

"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.

"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.

"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.

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

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

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

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

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

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

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

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

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

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

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

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord 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 fee until the effective date of the rental agreement. Security deposit shall not include a ~~bond or~~ commercial insurance policy purchased by a landlord on behalf of a tenant to secure the performance by the tenant of the terms and conditions of a rental agreement, generally known as damage insurance. Further, security deposit shall not include a commercial insurance policy purchased by a landlord to provide property and casualty insurance coverage for a tenant, generally known as renter's insurance.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which 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 under 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.

"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.

§ 55-248.7:2. Landlord may obtain certain insurance for tenant.

A. *Damage Insurance.* A landlord may require as a condition of tenancy that a tenant pay for the cost of premiums for commercial insurance coverage, obtained by the landlord, to secure the performance by the tenant of the terms and conditions of the rental agreement, generally known as "damage insurance." As provided in § 55-248.4, such payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55-248.9, the landlord cannot require a tenant to pay both

security deposits and the cost of damage insurance premiums, if the amount of any security deposits and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

B. Renter's Insurance. A landlord may require as a condition of tenancy that a tenant pay for the cost of premiums for property and casualty insurance, obtained by the landlord, to provide liability coverage for the tenant and property coverage for the tenant's personal property in the dwelling unit, which is generally known as "renter's insurance." As provided in § 55-248.4, such payments shall not be deemed a security deposit, but shall be rent. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

C. A landlord's authority under this section to obtain for a tenant either damage insurance or renter's insurance shall be limited to the purchase of a rider on the landlord's property and casualty insurance contract, and the landlord shall name the tenant as a "co-insured," so that the tenant will have privity of contract with the insurance company. Further, the landlord shall only be reimbursed for the actual costs of such insurance coverage and shall not be entitled to recover administrative or other fees associated with the insurance coverage provided to the tenant pursuant to this section. If a landlord obtains either damage insurance or renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a copy of the insurance policies, and a summary prepared by the insurer explaining the coverage being provided.

§ 55-248.37. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least ~~thirty~~ 30 days prior to the next rent due date.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if ~~the tenant's holdover is willful the landlord~~ may also recover ~~the actual damages by him and~~, reasonable attorney's fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a liquidated damage penalty, not to exceed an amount equal to the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. If the landlord consents to the tenant's continued occupancy, § 55-248.7 applies.