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HOUSE BILL NO. 638

Offered January 8, 2014

Prefiled January 7, 2014

A *BILL to amend and reenact §§ 55-248.2, 55-248.25, 55-248.25:1, 55-248.31, 55-248.34:1, and 55-248.38:3 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; tenant's noncompliance; death of tenant.*

 Patron—Miller

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.2, 55-248.25, 55-248.25:1, 55-248.31, 55-248.34:1, and 55-248.38:3 of the Code of Virginia are amended and reenacted as follows:

§ 55-248.2. Short title.

This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Provider Act."

§ 55-248.25. Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent was served a written notice of the aforesaid condition or conditions by the tenant or was notified by a violation or condemnation notice from an appropriate state or municipal agency, but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of thirty days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C. *The tenant shall provide prompt written notice to the landlord of any rent payments into the court escrow account.*

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes the conditions alleged in the defense do not in fact exist; or such conditions have been removed or remedied; or such conditions have been caused by the tenant or members of the family of such tenant or of his or their guests; or the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and, thereafter, shall pass such order as may be required including any one or more of the following:

1. An order to set-off to the tenant as determined by the court in such amount as may be equitable to represent the existence of any condition set forth in subsection A which is found by the court to exist;

2. Terminate the rental agreement or order surrender of the premises to the landlord; or

3. Refer any matter before the court to the proper state or municipal agency for investigation and report and grant a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents which will become due during the period of continuance, to be held by the court pending its further order or in its discretion the court may use such funds to pay a mortgage on the property in order to stay a foreclosure, to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or to remedy any condition set forth in subsection A which is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the

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59 violation, and reasonable attorney's fees.

60 **§ 55-248.25:1. Rent escrow required for continuance of tenant's case.**

61 A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as
62 provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a
63 contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to
64 the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's
65 request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so
66 finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set
67 the case for a contested trial, the court shall not require the rent to be escrowed.

68 B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required
69 to pay an amount determined by the court to be proper into the court escrow account in order for the
70 case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant
71 the tenant a continuance of no more than one week to make full payment of the court-ordered amount
72 into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon
73 request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

74 C. The court shall further order that should the tenant fail to pay future rents due under the rental
75 agreement into the court escrow account, the court shall, upon the request of the landlord, enter
76 judgment for the landlord and enter an order of possession of the premises.

77 D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account
78 to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

79 E. Except as provided in subsection D, no rent required to be escrowed under this section shall be
80 disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an
81 appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit
82 court to be held in such court escrow account pending the outcome of the appeal.

83 *F. The tenant shall provide prompt written notice to the landlord of any rent payments into the court*
84 *escrow account if such payment occurs prior to a court date.*

85 **§ 55-248.31. Noncompliance with rental agreement; monetary penalty.**

86 A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the
87 rental agreement or a violation of § 55-248.16 materially affecting health and safety, the landlord may
88 serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating
89 that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if
90 the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the
91 notice.

92 B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant
93 adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not
94 terminate.

95 C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice
96 on the tenant specifying the acts and omissions constituting the breach and stating that the rental
97 agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding
98 anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations
99 under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not
100 remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement
101 immediately and proceed to obtain possession of the premises. For purposes of this subsection, any
102 illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§
103 54.1-3400 et seq.), by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees,
104 shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate
105 the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out
106 of the same actions. In order to obtain an order of possession from a court of competent jurisdiction
107 terminating the tenancy for illegal drug activity or for any other action that involves or constitutes a
108 criminal or willful act, the landlord shall prove any such violations by a preponderance of the evidence.
109 However, where the illegal drug activity is engaged in by a tenant's authorized occupants, or guests or
110 invitees, the tenant shall be presumed to have knowledge of such illegal drug activity unless the
111 presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action
112 for immediate possession of the premises shall be held within 15 calendar days from the date of service
113 on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged
114 to exist upon the premises which constitute an immediate threat to the health or safety of the other
115 tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested
116 trial, the court, to the extent practicable, shall order that the matter be given priority on the court's
117 docket. Such subsequent hearing or contested trial shall be heard no later than 30 days from the date of
118 service on the tenant. During the interim period between the date of the initial hearing and the date of
119 any subsequent hearing or contested trial, the court may afford any further remedy or relief as is
120 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 herein 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 § 55-248.31:01 based upon 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, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely 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 promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16, and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. 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 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16. ~~The If the rental agreement so provides, in the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover reasonable attorney fees unless the tenant proves by a preponderance of the evidence that the failure of the tenant to pay rent or vacate the premises was reasonable. If the rental agreement provides for the payment of reasonable attorney fees in the event of a breach of the agreement or noncompliance by the tenant, the landlord shall be entitled to recover and the court shall award reasonable attorney fees in any action based upon the tenancy in which the landlord prevails, including but not limited to actions for damages to the dwelling unit or premises, or additional rent, regardless of any previous action to obtain possession or rent, unless in any such action, the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable from the tenant the following: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises, or additional rent, regardless of whether or not a lawsuit is filed or an order obtained from a court.~~

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the following: (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as

182 *contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as provided by*
183 *law, and (vi) damages to the dwelling unit or premises, or additional rent, regardless of any previous*
184 *action to obtain possession or rent, unless in any such action the tenant proves by a preponderance of*
185 *the evidence that the tenant's failure to pay rent or vacate was reasonable.*

186 **§ 55-248.34:1. Landlord's acceptance of rent with reservation.**

187 A. Provided the landlord has given written notice to the tenant that the rent will be accepted with
188 reservation, the landlord may accept full or partial payment of all rent and receive an order of
189 possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under
190 Chapter 13 (§ 8.01-374 et seq.) of Title 8.01 and proceed with eviction under § 55-248.38:2. Such notice
191 shall be included in a written termination notice given by the landlord to the tenant in accordance with
192 § 55-248.31 or in a separate written notice given by the landlord to the tenant within five business days
193 of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance
194 with § 55-248.31, the landlord shall continue to give a separate written notice to the tenant within five
195 business days of receipt of the rent that the landlord continues to accept the rent with reservation in
196 accordance with this section until such time as the violation alleged in the termination notice has been
197 remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is
198 a public housing unit or other housing unit subject to regulation by the Department of Housing and
199 Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this
200 subsection if the landlord gives the tenant the written notice required herein for the portion of the rent
201 paid by the tenant.

202 B. Subsequent to the entry of an order of possession by a court of competent jurisdiction but prior to
203 eviction pursuant to § 55-248.38:2, the landlord may accept all amounts owed to the landlord by the
204 tenant, including full payment of any money judgment, award of attorney fees and court costs, and all
205 subsequent rents that may be paid prior to eviction, and proceed with eviction provided that the landlord
206 has given the tenant written notice that any such payment would be accepted with reservation and would
207 not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. However, if a
208 landlord enters into a new written rental agreement with the tenant prior to eviction, an order of
209 possession obtained prior to the entry of such new rental agreement is not enforceable. Such notice shall
210 be given in a separate written notice given by the landlord within five business days of receipt of
211 payment of such money judgment, attorney fees and court costs, and all subsequent rents that may be
212 paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject to
213 regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have
214 accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written
215 notice required herein for the portion of the rent paid by the tenant.

216 C. However, the tenant may pay or present to the court a redemption tender for payment of all rent
217 due and owing as of the return date, including late charges, attorney fees and court costs, at or before
218 the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender"
219 means a written commitment to pay all rent due and owing as of the return date, including late charges,
220 attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return
221 date.

222 D. If the tenant presents a redemption tender to the court at the return date, the court shall continue
223 the action for unlawful detainer for 10 days following the return date for payment to the landlord of all
224 rent due and owing as of the return date, including late charges, attorney fees, and court costs and
225 dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due
226 and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of
227 the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts
228 due and immediate possession of the premises.

229 E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all
230 (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges
231 and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental
232 agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law,
233 and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall
234 be dismissed. A tenant may invoke the rights granted in this section no more than one time during any
235 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental
236 agreement or any renewal term thereof.

237 **§ 55-248.38:3. Disposal of property of deceased tenants.**

238 If a tenant, who is the sole occupant of the dwelling unit, dies, and there is no person authorized by
239 order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of
240 the personal property left in the dwelling unit or upon the premises, ~~or in a storage area provided by the~~
241 ~~landlord, provided.~~ However, the landlord ~~has given~~ shall give at least 10 days' written notice to (i) the
242 person identified in the rental application, lease agreement, or other landlord document as the authorized
243 person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance

with § 55-248.6 if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55-248.38:1, if not claimed within 10 days.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § 55-248.35, and the landlord shall mitigate damages as provided thereunder.