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## HOUSE BILL NO. 1923

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on January 24, 2019)

(Patron Prior to Substitute—Delegate Bourne)

A BILL to amend and reenact §§ 55-248.25 and 55-248.27 of the Code of Virginia, relating to the Virginia Residential Landlord and Tenant Act; noncompliance with rental agreement; tenant's right to reasonable attorney fees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-248.25 and 55-248.27 of the Code of Virginia are amended and reenacted as follows:  
§ 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.

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 violation, and reasonable attorney's attorney fees.

E. If the court finds that the tenant has successfully raised a defense under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

§ 55-248.27. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or

60 safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water,  
61 except if the tenant is responsible for payment of the utility charge and where the lack of such heat or  
62 hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light,  
63 electricity or adequate sewage disposal facilities; or an infestation of rodents; or of the existence of paint  
64 containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such  
65 paint. The tenant may file such an assertion in a general district court wherein the premises are located  
66 by a declaration setting forth such assertion and asking for one or more forms of relief as provided for  
67 in subsection D.

68 B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

69 1. Prior to the commencement of the action the landlord was served a written notice by the tenant of  
70 the conditions described in subsection A, or was notified of such conditions by a violation or  
71 condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or  
72 having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this  
73 subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the  
74 court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt  
75 of the notification by the landlord is unreasonable; and

76 2. The tenant has paid into court the amount of rent called for under the rental agreement, within  
77 five days of the date due thereunder, unless or until such amount is modified by subsequent order of the  
78 court under this chapter.

79 C. It shall be sufficient answer or rejoinder to a declaration pursuant to subsection A if the landlord  
80 establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist,  
81 or such conditions have been removed or remedied, or such conditions have been caused by the tenant  
82 or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused  
83 entry to the landlord to the premises for the purpose of correcting such conditions.

84 D. Any court shall make findings of fact on the issues before it and shall issue any order that may  
85 be required. Such an order may include, but is not limited to, any one or more of the following:

86 1. Terminating the rental agreement upon the request of the tenant or ordering the premises  
87 surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful  
88 detainer properly filed with the court;

89 2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in  
90 accordance with this chapter;

91 3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

92 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be  
93 abated as determined by the court in such an amount as may be equitable to represent the existence of  
94 the condition or conditions found by the court to exist. In all cases where the court deems that the  
95 tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why  
96 there should not be an abatement of rent;

97 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord  
98 refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the  
99 landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in  
100 its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or  
101 effecting a remedy;

102 6. Referring any matter before the court to the proper state or municipal agency for investigation and  
103 report and granting a continuance of the action or complaint pending receipt of such investigation and  
104 report. When such a continuance is granted, the tenant shall deposit with the court rents within five days  
105 of date due under the rental agreement, subject to any abatement under this section, which become due  
106 during the period of the continuance, to be held by the court pending its further order;

107 7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to  
108 stay a foreclosure; or

109 8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to  
110 enforce a mechanic's or materialman's lien.

111 Notwithstanding any provision of this subsection, where an escrow account is established by the  
112 court and the condition or conditions are not fully remedied within six months of the establishment of  
113 such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall  
114 award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be  
115 terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the  
116 condition or conditions have not been remedied.

117 E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within  
118 fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12,  
119 except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon  
120 the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition  
121 which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises.

122 The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial  
 123 proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow  
 124 moneys may only occur by order of the court after a hearing of which both parties are given notice as  
 125 required by law or upon motion of both the landlord and tenant or upon certification by the appropriate  
 126 inspector that the work required by the court to be done has been satisfactorily completed. If the tenant  
 127 proceeds under this subsection, he may not proceed under any other section of this article as to that  
 128 breach.

129 *F. In cases where the court deems that the tenant is entitled to relief under this section and enters*  
 130 *judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs*  
 131 *of the tenant, including court costs, and reasonable attorney fees.*