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HOUSE BILL NO. 1333

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

(Patron Prior to Substitute—Delegate Keam)

House Amendments in [] - February 5, 2020

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 landlord and tenant, damage insurance in lieu of security deposit.

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. The landlord shall offer the 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. Such 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, or require damage insurance coverage for an amount, or any combination thereof*, not to exceed ~~an~~ a total amount equal to two months 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. 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.

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

G. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

H. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as

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60 otherwise required by law and (ii) both parties consent in writing to the change.

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

63 **§ 55.1-1206. Landlord may obtain certain insurance for tenant.**

64 A. A landlord may require as a condition of tenancy that a tenant have commercial insurance
65 coverage as specified in the rental agreement to secure the performance by the tenant of the terms and
66 conditions of the rental agreement and pay for the cost of premiums for such insurance coverage
67 obtained by the landlord, generally known as "damage insurance." As provided in § 55.1-1200, such
68 payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55.1-1208,
69 the landlord shall not require a tenant to pay both a security deposit and the cost of damage insurance
70 premiums, if the total amount of any security deposit and damage insurance ~~premiums coverage~~ exceeds
71 the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has
72 the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to
73 obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall
74 maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains
75 damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the
76 tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance
77 coverage and may recover administrative or other fees associated with administration of a damage
78 insurance policy, including a tenant opting out of the insurance coverage provided by the landlord
79 pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall
80 provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or
81 certificate evidencing the coverage being provided and upon request of the tenant make available a copy
82 of the insurance policy.

83 B. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified
84 in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property,
85 and personal liability coverage insuring personal property located in dwelling units not occupied by the
86 owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by
87 the landlord, in order to provide such coverage for the tenant as part of rent or as otherwise provided in
88 this section. As provided in § 55.1-1200, such payments shall not be deemed a security deposit but shall
89 be rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate
90 policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the
91 tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at
92 all times during the term of the rental agreement. If a tenant allows his renter's insurance policy required
93 by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's
94 insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for
95 such insurance as rent or as otherwise provided herein until the tenant has provided written
96 documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

97 C. If the landlord requires that such premiums be paid prior to the commencement of the tenancy,
98 the total amount of all security deposits ~~and~~, insurance ~~premiums coverage~~ for damage insurance, and
99 ~~insurance premiums for~~ renter's insurance shall not exceed the amount of two months' periodic rent.
100 Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such
101 insurance coverage.

102 D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy
103 shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual
104 costs of such insurance coverage and may recover administrative or other fees associated with the
105 administration of a renter's insurance program, including a tenant opting out of the insurance coverage
106 provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants,
107 the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the
108 insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon
109 request of the tenant make available a copy of the insurance policy. Such summary or certificate shall
110 include a statement regarding whether the insurance policy contains a waiver of subrogation provision.
111 Any failure of the landlord to provide such summary or certificate, or to make available a copy of the
112 insurance policy, shall not affect the validity of the rental agreement.

113 If the rental agreement does not require the tenant to obtain renter's insurance, the landlord shall
114 provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the
115 landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverage does
116 not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he
117 should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance
118 obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal
119 Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance
120 Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information
121 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; or
7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance ~~premium~~ coverage exceeds the amount of two months' periodic rent.

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' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as provided in this section, may be applied by the landlord 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 security deposit and any deductions, damages, and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due to the tenant, within 45 days after the termination date of the tenancy. As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to § 55.1-1251, in which case, the landlord shall give written notice of security deposit disposition within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to § 8.01-126.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period required by subsection A, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name; social security number, if known; and last known address of each tenant on the rental agreement. If the landlord or managing

183 agent is a real estate licensee, compliance with this subsection shall be deemed compliance with
184 § 54.1-2108 and corresponding regulations of the Real Estate Board.

185 C. Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant,
186 upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account
187 in the amount of the security deposit. The landlord shall apply the security deposit in accordance with
188 this section within the 45-day time period required by subsection A. However, provided that the landlord
189 has given prior written notice in accordance with this section, the landlord may withhold a reasonable
190 portion of the security deposit to cover an amount of the balance due on the water, sewer, or other
191 utility account that is an obligation of the tenant to a third-party provider under the rental agreement for
192 the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation
193 to the tenant within 10 days, along with payment to the tenant of any balance otherwise due to the
194 tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord
195 shall have so advised the tenant of his rights and obligations under this section in (i) a termination
196 notice to the tenant in accordance with this chapter, (ii) a written notice to the tenant confirming the
197 vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15
198 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in
199 accordance with § 55.1-1202.

200 The tenant may provide the landlord with written confirmation of the payment of the final water,
201 sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security
202 deposit, unless there are other authorized deductions, within the 45-day period required by subsection A.
203 If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord
204 shall refund any remaining balance of the security deposit held to the tenant within 10 days following
205 the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives
206 confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord
207 shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

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

212 E. The landlord shall notify the tenant in writing of any deductions provided by this section to be
213 made from the tenant's security deposit during the course of the tenancy. Such notification shall be made
214 within 30 days of the date of the determination of the deduction and shall itemize the reasons in the
215 same manner as provided in subsection F. No such notification shall be required for deductions made
216 less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to
217 comply with this section, the court shall order the return of the security deposit to the tenant, together
218 with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which
219 case the court shall order an amount equal to the security deposit credited against the rent due to the
220 landlord. In the event that damages to the premises exceed the amount of the security deposit and
221 require the services of a third-party contractor, the landlord shall give written notice to the tenant
222 advising him of that fact within the 45-day period required by subsection A. If notice is given as
223 prescribed in this subsection, the landlord shall have an additional 15-day period to provide an
224 itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant
225 from recovering other damages to which he may be entitled under this chapter. The holder of the
226 landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the
227 interest is acquired or transferred, is bound by this section and shall be required to return any security
228 deposit received by the original landlord that is duly owed to the tenant, whether or not such security
229 deposit is transferred with the landlord's interest by law or equity, regardless of any contractual
230 agreements between the original landlord and his successors in interest.

231 F. The landlord shall:

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

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

237 G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by
238 the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the
239 tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of
240 determining the amount of security deposit to be returned. If the tenant desires to be present when the
241 landlord makes the inspection, he shall, in writing, so advise the landlord, who in turn shall notify the
242 tenant of the date and time of the inspection, which must be made within 72 hours of delivery of
243 possession. Following the move-out inspection, the landlord shall provide the tenant with a written
244 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.

1. 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 insurance provider is licensed by the Virginia State Corporation Commission;

2. The insurance permits the payment of premiums on a monthly basis, unless the tenant selects a different payment schedule;

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

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

5. The insurance provider agrees to approve or deny payment of a claim within two business days of receiving notice of a claim.

[6. The insurance provider shall notify the landlord immediately if the damage policy lapses or is canceled.]

J. Each landlord may designate one or more damage insurance providers from which the landlord will accept damage insurance in lieu of a security deposit. Such insurers shall be identified in the written lease agreement.

[K. 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.]

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