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HOUSE BILL NO. 99

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws on February 4, 2020)

(Patron Prior to Substitute—Delegate Rasoul)

A BILL to amend and reenact §§ 55.1-1203 and 55.1-1209 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; status as a victim of domestic or sexual violence; evidence of eligibility to become a tenant; confidentiality of tenant records.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1203 and 55.1-1209 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1203. Application; deposit, fee, and additional information.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. 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. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, 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.

C. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

D. A landlord shall consider evidence of an applicant's status as a victim of domestic or sexual violence to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In order to establish the applicant's status as a victim of domestic or sexual violence, an applicant may submit to the landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a law-enforcement incident report; or (iii) a court order. If a landlord does not comply with this section, the applicant may recover actual damages, including all amounts paid to the landlord as an application fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were charged to the prospective tenant, along with attorney fees.

§ 55.1-1209. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord or managing agent to a third party unless:

- 1. The tenant or prospective tenant has given prior written consent;
- 2. The information is a matter of public record as defined in § 2.2-3701;
- 3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;
- 4. The information is a copy of a material noncompliance notice that has not been remedied or a termination notice given to the tenant under § 55.1-1245 and the tenant did not remain in the premises after such notice was given;
- 5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;
- 6. The information is requested pursuant to a subpoena in a civil case;
- 7. The information is requested by a local commissioner of the revenue in accordance with

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60 § 58.1-3901;

61 8. The information is requested by a contract purchaser of the landlord's property, provided that the
62 contract purchaser agrees in writing to maintain the confidentiality of such information;

63 9. The information is requested by a lender of the landlord for financing or refinancing of the
64 property;

65 10. The information is requested by the commanding officer, military housing officer, or military
66 attorney of the tenant;

67 11. The third party is the landlord's attorney or the landlord's collection agency;

68 12. The information is otherwise provided in the case of an emergency;

69 13. The information is requested by the landlord to be provided to the managing agent or a successor
70 to the managing agent; or

71 14. The information is requested by an employee or independent contractor of the United States to
72 obtain census information pursuant to federal law.

73 *B. Any information received by a landlord pursuant to § 55.1-1203 shall remain a confidential tenant*
74 *record and shall not be released to any person except in response to a subpoena.*

75 *C. A tenant may designate a third party to receive duplicate copies of a summons that has been*
76 *issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where*
77 *such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any*
78 *summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the*
79 *summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed*
80 *to grant standing to any third party designated by the tenant to challenge actions of the landlord in*
81 *which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third*
82 *party designated by the tenant shall not affect the validity of any judgment entered against the tenant.*

83 ~~*C. D.*~~ *A landlord or managing agent may enter into an agreement with a third-party service provider*
84 *to maintain tenant records in electronic form or other medium. In such case, the landlord and managing*
85 *agent shall not be liable under this section in the event of a breach of the electronic data of such*
86 *third-party service provider, except in the case of gross negligence or intentional act. Nothing in this*
87 *section shall be construed to require a landlord or managing agent to indemnify such third-party service*
88 *provider.*

89 ~~*D. E.*~~ *A tenant may request a copy of his tenant records in paper or electronic form. If the rental*
90 *agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the*
91 *actual costs of preparing copies of such records. However, if the landlord makes available tenant records*
92 *to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.*