

20200742D

HOUSE BILL NO. 5106

Offered August 21, 2020

A BILL to amend and reenact § 55.1-1245 of the Code of Virginia, relating to landlord and tenant, noncompliance with rental agreement; prohibition on reporting negative credit information arising from the COVID-19 pandemic; penalty; emergency.

Patrons—Cole, J.G., Convirs-Fowler, Askew, Adams, D.M., Aird, Ayala, Bagby, Bourne, Carr, Carroll Foy, Carter, Guzman, Hayes, Helmer, Hope, Hurst, Jenkins, Keam, Kory, Levine, Lindsey, McQuinn, Plum, Price, Rasoul, Samirah, Scott and Watts

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1245 of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1245. Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

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

C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is 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 in this section 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 § 55.1-1246 on the basis of 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 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions

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HB5106

57 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's
58 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later
59 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises,
60 in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the
61 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a
62 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the
63 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the
64 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this
65 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants,
66 authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the
67 tenancy pursuant to the lease and this chapter.

68 E. If the tenant has been served with a prior written notice that required the tenant to remedy a
69 breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent
70 breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant
71 specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach
72 of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days
73 after receipt of the notice.

74 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
75 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
76 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
77 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for
78 rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds
79 transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad
80 faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is
81 served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the
82 rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed
83 electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and
84 proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to
85 prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery
86 under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to
87 § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice
88 may be included in the five-day termination notice provided in accordance with this section.

89 G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain
90 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the
91 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled
92 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained
93 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and
94 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement,
95 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of
96 the proceeding as contracted for in the rental agreement or as provided by law only if court action has
97 been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

98 H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
99 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
100 landlord and against the tenant for the relief requested, which may include the following: (i) rent due
101 and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as
102 contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv)
103 reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any
104 such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or
105 vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as
106 provided by law; and (vi) damages to the dwelling unit or premises.

107 I. *A landlord shall not furnish to any consumer reporting agency, as defined by the federal Fair*
108 *Credit Reporting Act, 15 U.S.C. § 1681 et seq., any adverse item of information relating to a tenant that*
109 *was the result of any action or inaction that occurred during the period beginning on February 11,*
110 *2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the*
111 *Governor related to the COVID-19 pandemic. A landlord who violates the provisions of this subsection*
112 *is guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of the tenant's*
113 *monthly rent, whichever is greater, but not more than \$10,000, or he may be imprisoned for not more*
114 *than six months, or both, for each offense.*

115 **2. That the provisions of this act shall not apply to any adverse item of information reported to a**
116 **consumer reporting agency prior to enactment.**

117 **3. That an emergency exists and this act is in force from its passage.**