

23102857D

HOUSE BILL NO. 1732

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; landlord remedies; noncompliance with rental agreement; payment plan.

Patrons—Bennett-Parker, Price, Kory and Lopez

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19 pandemic state of emergency expires) 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

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

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

77 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is
78 served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the
79 rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental
80 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251.

81 *For a landlord who owns more than four rental dwelling units or more than a 10 percent interest in*
82 *more than four rental dwelling units, whether individually or through a business entity, in the*
83 *Commonwealth, if rent is unpaid when due and the exact amount of rent owed is less than or equal to*
84 *one month's rent plus any late charges contracted for in the rental agreement or as provided by law, the*
85 *landlord shall serve upon the tenant a written notice informing the tenant of the exact amount due and*
86 *owed. The written notice shall also offer the tenant a payment plan under which the tenant shall be*
87 *required to pay the exact amount due and owed in equal monthly installments over a period of six*
88 *months; however, the tenant may repay the balance due and owed at any time during the payment plan*
89 *period without incurring a penalty. This notice shall also inform the tenant that if the tenant fails to*
90 *either pay the exact amount due and owed or enter into the payment plan offered within five days of*
91 *receiving the written notice from the landlord, the landlord may terminate the rental agreement and*
92 *proceed to obtain possession of the premises as provided in § 55.1-1251. If the tenant fails to pay in full*
93 *or enter into a payment plan with the landlord within five days of when the notice is served on him, the*
94 *landlord may terminate the rental agreement and proceed to obtain possession of the premises as*
95 *provided in § 55.1-1251. If the tenant enters into a payment plan and after the plan becomes effective,*
96 *fails to pay any installment required by the plan within five days of its due date, the landlord may*
97 *terminate the rental agreement and proceed to obtain possession of the premises as provided in*
98 *§ 55.1-1251, provided that he has sent the tenant a new notice advising the tenant that the rental*
99 *agreement will terminate unless the tenant pays the exact amount due and owed as stated on the notice*
100 *within five days of receipt. The option of entering into a payment plan pursuant to this subsection may*
101 *only be utilized once during the time period of the rental agreement.*

102 G. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if
103 an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has
104 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after
105 written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to
106 terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a
107 completed electronic funds transfer within the five-day period, the landlord may terminate the rental
108 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall
109 be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or
110 civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed
111 pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202,
112 which notice may be included in the five-day termination notice provided in accordance with this
113 section.

114 ~~G.~~ H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain
115 injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the
116 event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled
117 to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained
118 from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and
119 fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement,
120 (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of

the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. I. 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 relief requested, which may include 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 contracted for in the rental agreement or as provided by law, 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; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

I. J. 1. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely on payment history or an eviction for nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic.

2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant written notice of the denial and of the applicant's right to assert that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic. The written notice of denial shall include the statewide legal aid telephone number and website address and shall inform the applicant that he must assert his right to challenge the denial within seven days of the postmark date. If the landlord does not receive a response from the applicant within seven days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord provides notice to the applicant by electronic or telephonic means using an email address, telephone number, or other contact information provided by the applicant informing the applicant of his denial and right to assert that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to the COVID-19 pandemic and the tenant does not make such assertion that the failure to qualify was the result of such payment history or eviction prior to the close of business on the next business day, the landlord may proceed. The landlord must be able to validate the date and time that any communication sent by electronic or telephonic means was sent to the applicant. If a landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the report to ascertain whether such determination was due solely to the applicant for tenancy's payment history or an eviction for nonpayment that occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the Governor related to the COVID-19 pandemic. If the landlord does not receive a response from the generator of the report within three business days of requesting the information, the landlord may proceed with using the information from the report without additional action.

3. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may recover statutory damages of \$1,000, along with attorney fees.

§ 55.1-1245. (Effective the later of July 1, 2028, or seven years after the COVID-19 pandemic state of emergency expires) 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

182 of the premises. For purposes of this subsection, any illegal drug activity involving a controlled
183 substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that
184 involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the
185 tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate
186 nonremediable violation for which the landlord may proceed to terminate the tenancy without the
187 necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In
188 order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for
189 illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that
190 also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance
191 of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a
192 criminal or willful act that also poses a threat to health and safety is engaged in by an authorized
193 occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such
194 activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on
195 the landlord's action for immediate possession of the premises shall be held within 15 calendar days
196 from the date of service on the tenant; however, the court shall order an earlier hearing when emergency
197 conditions are alleged to exist upon the premises that constitute an immediate threat to the health or
198 safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing
199 or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority
200 on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar
201 days from the date of service on the tenant. During the interim period between the date of the initial
202 hearing and the date of any subsequent hearing or contested trial, the court may afford any further
203 remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of
204 any other tenant residing on the premises. Failure by the court to hold either of the hearings within the
205 time limits set out in this section shall not be a basis for dismissal of the case.

206 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling
207 unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on
208 the basis of information provided by the tenant to the landlord, or by a protective order from a court of
209 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease
210 shall not terminate solely due to an act of family abuse against the tenant. However, these provisions
211 shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's
212 status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later
213 than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises,
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215 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a
216 preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the
217 bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the
218 tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this
219 subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants,
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221 tenancy pursuant to the lease and this chapter.

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246 provided in § 55.1-1251. If the tenant enters into a payment plan and after the plan becomes effective,
247 fails to pay any installment required by the plan within five days of its due date, the landlord may
248 terminate the rental agreement and proceed to obtain possession of the premises as provided in
249 § 55.1-1251, provided that he has sent the tenant a new notice advising the tenant that the rental
250 agreement will terminate unless the tenant pays the exact amount due and owed as stated on the notice
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254 an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has
255 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after
256 written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to
257 terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a
258 completed electronic funds transfer within the five-day period, the landlord may terminate the rental
259 agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall
260 be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or
261 civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed
262 pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202,
263 which notice may be included in the five-day termination notice provided in accordance with this
264 section.

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

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