

23102217D

## HOUSE BILL NO. 1830

Offered January 11, 2023

Prefiled January 10, 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 the Virginia Residential Landlord and Tenant Act; landlord remedies; noncompliance with rental agreement.*

Patron—Torian

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~~ 14 days after written notice  
78 is 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~~ 14-day period, the landlord may terminate the  
80 rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a  
81 check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an  
82 electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has  
83 been placed in bad faith by the authorizing party, and the tenant fails to pay rent within ~~five~~ 14 days  
84 after written notice is served on him notifying the tenant of his nonpayment and of the landlord's  
85 intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified  
86 check, or a completed electronic funds transfer within the ~~five-day~~ 14-day period, the landlord may  
87 terminate the rental agreement and proceed to obtain possession of the premises as provided in  
88 § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or  
89 attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested  
90 on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in  
91 accordance with § 55.1-1202, which notice may be included in the ~~five-day~~ 14-day termination notice  
92 provided in accordance with this section.

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

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

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

117 2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant  
118 written notice of the denial and of the applicant's right to assert that his failure to qualify was based  
119 upon payment history or an eviction based on nonpayment of rent that occurred during the period  
120 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.

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