

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 55.1-1244 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; material noncompliance by landlord; rent escrow; relief.

[H 1251]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1244 of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1244. Tenant's assertion of material noncompliance; relief.

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water, except where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (iv) the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court in which the premises is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D E.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

~~1. Prior~~ *prior* to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; ~~and~~

~~2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due under the rental agreement, unless or until such amount is modified by subsequent order of the court under this chapter.~~

C. During the pendency of the action, the tenant shall pay into a court escrow account the amount of rent that becomes due subsequent to the initial court date called for under the rental agreement within five days of the date due under such rental agreement, unless or until such amount is modified by subsequent order of the court pursuant to this chapter. The tenant shall not be required, however, to pay the amount of any outstanding rent, late charges, attorney fees, or other charges or damages due in order to file a tenant's assertion under this section.

Failure of the tenant to timely make payments into the court escrow account in accordance with this subsection shall not be grounds for dismissal of the underlying action but may be considered by the court when issuing an order pursuant to subsection E. Nothing herein shall prevent a landlord from (i) proceeding to obtain possession pursuant to subsection F of § 55.1-1245 if the tenant fails to timely make a rent payment into the court escrow account in accordance with this subsection and the rental agreement or (ii) obtaining a money judgment for any and all amounts due to the landlord under the rental agreement.

D. It shall be sufficient answer or rejoinder to an assertion made pursuant to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions alleged by the tenant do not in fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

~~D. E.~~ Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include ~~any one or more of the following~~:

1. Terminating the rental agreement upon the request of the tenant or ordering the surrender of the premises to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

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3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of *any* rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of any condition found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court, within five days of date due under the rental agreement, subject to any abatement under this section, rents that become due during the period of the continuance, to be held by the court pending its further order;

7. Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

E. F. Notwithstanding any provision of subsection *D E*, where an escrow account is established by the court and the condition is not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end of the period, the condition has not been remedied.

F. G. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord as authorized by § 55.1-1216, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage disposal facilities, or any other condition that constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

G. H. In cases where the court deems that the tenant is entitled to relief under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.