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HOUSE BILL NO. 86

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 26, 2024)

(Patron Prior to Substitute—Delegate Hope)

*A BILL to amend and reenact §§ 8.01-126 and 8.01-454 of the Code of Virginia, relating to summons for unlawful detainer; hearing date; amendments to amount due; subsequent filings.***Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-126 and 8.01-454 of the Code of Virginia are amended and reenacted as follows:****§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.**

A. For the purposes of this section, "termination notice" means a notice given under § 55.1-1245 or other notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises.

B. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable, but in no event later than 30 days after the date of the filing. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

C. Any summons issued pursuant to the provisions of this section shall contain a notice to the tenant that, pursuant to the provisions of § 18.2-465.1, it is unlawful for his employer to discharge him from employment or take any adverse personnel action against him as a result of his absence from employment due to appearing at any initial or subsequent hearing on such summons, provided that he has given reasonable notice of such hearing to his employer.

~~D. Notwithstanding any other rule of court or provision of law to the contrary~~ *The court shall not enter an order of possession unless the plaintiff, plaintiff's attorney, or agent has presented a copy of a proper termination notice issued to the defendant and the court has entered such notice into evidence.*

E. Notwithstanding any rule of court or provision of law to the contrary, the plaintiff, plaintiff's attorney, or agent in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or paper printout of an electronically stored document including a copy of the original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. An attorney or agent of the landlord or managing agent may present such affidavit into evidence. If the defendant fails to appear in court, the plaintiff, plaintiff's attorney, or agent may introduce into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, costs, and any other charges or damages as contracted for in the rental agreement that are due and owing as of the date of the hearing. The plaintiff, plaintiff's attorney, or agent shall advise the court of any payments made by or on behalf of the defendant that result in a reduction of the amount due and owing to the plaintiff.

F. 1. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may submit into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. The plaintiff or the plaintiff's attorney or agent shall advise the court of any payments by the defendant that result in a variance reducing the amount due the plaintiff as of the day of the hearing. The plaintiff may include on the summons for unlawful detainer a request for all amounts due and owing as of the date of the hearing and the approximate amount the defendant may owe as of the date of the hearing if the defendant makes no payments prior to the date of such hearing. Notwithstanding any rule of court or provision of law to the contrary, if such request is made on the summons for unlawful detainer, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in

60 court in accordance with the evidence and the amounts contracted for in the rental agreement. If the
61 plaintiff makes such a request and additional amounts become due and owing prior to the final
62 disposition of a pending unlawful detainer, a plaintiff may amend the amount in an unlawful detainer to
63 request all amounts due and owing as of the date of final disposition.

64 If, however, the plaintiff has not included on the summons for unlawful detainer a request for all
65 amounts due and owing as of the date of the hearing, the court may permit the plaintiff to amend the
66 amount requested on the summons for unlawful detainer upon finding that (i) the evidence accurately
67 sets forth the amount due and owing to the plaintiff, (ii) the plaintiff provided the defendant with a
68 separate written notice of additional amounts due and owing as of the date of the hearing and of the
69 plaintiff's intent to amend the amount requested on the summons, and (iii) the defendant had the
70 opportunity at court to object to any additional amounts claimed.

71 2. a. If the unlawful detainer summons served upon the defendant requests judgment for all amounts
72 due as of the date of the hearing, the court shall permit amendment of the amount requested on the
73 summons for unlawful detainer filed in court in accordance with the evidence and in accordance with
74 the amounts contracted for in the rental agreement and shall enter a judgment for such amount due as of
75 the date of the hearing in addition to entering an order of possession for the premises. Notwithstanding
76 any rule of court or provision of law to the contrary, no order of possession shall be entered unless the
77 plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court
78 admits into evidence.

79 b. Notwithstanding any rule of court or provision of law to the contrary, a plaintiff may amend the
80 amount alleged to be due and owing in an unlawful detainer to request all amounts due and owing as of
81 the date of the hearing. If additional amounts become due and owing prior to the final disposition of a
82 pending unlawful detainer, the plaintiff may also amend the amount alleged to be due and owing to
83 include such additional amounts. If the plaintiff requests to amend the amount alleged to be due and
84 owing in an unlawful detainer, the judge shall grant such amendment. Upon amendment of the unlawful
85 detainer, such plaintiff shall not subsequently file an additional summons for unlawful detainer against
86 the defendant for such additional amounts if such additional amounts could have been included in such
87 amendment. If another unlawful detainer is filed, the court shall dismiss the subsequent unlawful
88 detainer. Nothing herein shall be construed to preclude a plaintiff from filing an unlawful detainer for a
89 non-rent violation during the pendency of an unlawful detainer for nonpayment of rent. If the plaintiff
90 requests on the summons for unlawful detainer all amounts due and owing as of the date of the hearing
91 or if the court grants an amendment of the amounts requested on the summons for unlawful detainer,
92 the plaintiff shall not subsequently file additional unlawful detainers or warrants in debt against the
93 defendant for such additional amounts if those amounts could have been included in the amended
94 amount. Any such subsequent unlawful detainers or warrants in debt filed for amounts that were
95 included in the amended amount shall be dismissed. Nothing in this section shall preclude the plaintiff
96 from filing an unlawful detainer for a non-rent lease violation during the pendency of an unlawful
97 detainer for nonpayment of rent or from filing a warrant in debt for amounts unrelated to the unlawful
98 detainer against the defendant.

99 3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement
100 or lease provides that rent is due and payable on the first of the month in advance for the entire month,
101 at the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the
102 hearing shall include the rent due for the entire month in which the hearing is held, and rent shall not
103 be prorated as of the actual court date. Otherwise, the rent shall be prorated as of the date of the
104 hearing. However, nothing herein shall be construed to permit a landlord to collect rent in excess of the
105 amount stated in such rental agreement or lease. If a money judgment has been granted for the amount
106 due for the month of the hearing pursuant to this section and the landlord re-rents such dwelling unit
107 and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect
108 the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

109 4. If, on the date of a foreclosure sale of a single-family residential dwelling unit, the former owner
110 remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such
111 tenancy may be terminated by a written termination notice from the successor owner given to such
112 tenant at least three days prior to the effective date of termination. Upon the expiration of the three-day
113 period, the successor owner may file an unlawful detainer under this section. Such tenant shall be
114 responsible for payment of fair market rental from the date of such foreclosure until the date the tenant
115 vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court
116 costs.

117 **§ 8.01-454. Judgment, when satisfied, to be so noted by creditor.**

118 In all cases in which satisfaction of any judgment so docketed is made, which is not required to be
119 certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor, himself, or by his
120 agent or attorney, to cause such satisfaction by the defendant, and if there is more than one defendant,
121 by which defendant it was satisfied, to be entered within 30 days after the same is made, on such

122 judgment docket. If the judgment has not been docketed, then the entry shall be made on the execution
123 book in the office of the clerk from which the execution issued. For any failure to do so within 90 days,
124 or after 10 days' notice to do so by the judgment debtor or his agent or attorney, the judgment creditor
125 shall be liable to a fine of \$100 and shall pay the filing cost of the release. The entry of satisfaction
126 shall be signed by the creditor or his duly authorized attorney or other agent and be attested by the clerk
127 in whose office the judgment is docketed, or when not docketed, by the clerk from whose office the
128 execution issued; however, the cost of the release shall be paid by the judgment debtor. For any money
129 judgment marked as satisfied pursuant to this section, nothing herein shall satisfy an unexecuted order of
130 possession entered pursuant to § 8.01-126, *provided that (i) the time period for issuing writs of eviction*
131 *in unlawful entry and detainer provided by § 8.01-471 has not lapsed and (ii) the defendant has not*
132 *exercised his right of redemption in accordance with § 55.1-1250.*