

HOUSE BILL NO. 379
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)
(Patron Prior to Substitute—Delegate Bennett-Parker)

A BILL to amend and reenact §§ 55.1-1200 and 55.1-1203 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; application; notice, deposit, fee, and additional information.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1200 and 55.1-1203 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Action" means any recoupment, counterclaim, setoff, or other civil action and any other proceeding in which rights are determined, including actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Adverse action" means (i) to evict, fail or refuse to enter into a rental agreement, fail or refuse to renew a rental agreement, or fail or refuse to add an individual to an existing rental agreement or (ii) a negative change in the terms and conditions of the rental agreement, including an increase in the security deposit or rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, that is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee that is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that part of a structure that is used as a home, residence, or sleeping place by one person who maintains a

31 household or by two or more persons who maintain a common household.

32 "Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the
33 dwelling unit as a tenant.

34 "Community land trust" means a community housing development organization whose board of directors
35 is composed of tenants, corporate members who are not tenants, and any other category of persons specified
36 in the bylaws of the organization and that:

37 1. Is not sponsored by a for-profit organization;

38 2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

39 3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and

40 4. Retains a preemptive option to purchase any such structural improvement at a price determined by
41 formula that is designed to ensure that the improvement remains affordable to low-income and moderate-
42 income families in perpetuity.

43 "Damage insurance" means a bond or commercial insurance coverage as specified in the rental agreement
44 to secure the performance by the tenant of the terms and conditions of the rental agreement and to replace all
45 or part of a security deposit.

46 "Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more
47 persons who maintain a household, including a manufactured home, as defined in § 55.1-1300.

48 "Effective date of rental agreement" means the date on which the rental agreement is signed by the
49 landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

50 "Essential service" includes heat, running water, hot water, electricity, and gas.

51 "Facility" means something that is built, constructed, installed, or established to perform some particular
52 function.

53 "Good faith" means honesty in fact in the conduct of the transaction concerned.

54 "Guest or invitee" means a person, other than the tenant or an authorized occupant, who has the
55 permission of the tenant to visit but not to occupy the premises.

56 "Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and
57 ceiling, that enclose the dwelling unit as conditioned space from the outside air.

58 "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such
59 dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the

name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. "Landlord" does not include a community land trust.

"Managing agent" means the person authorized by the landlord to act as the property manager on behalf of the landlord pursuant to the written property management agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the American Conference of Governmental Industrial Hygienists (Bioaerosols: Assessment and Control); Standard and Reference Guides of the Institute of Inspection, Cleaning and Restoration Certification (IICRC) for Professional Water Damage Restoration and Professional Mold Remediation; or any protocol for mold remediation prepared by an industrial hygienist consistent with such guidance documents.

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any other lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice in the form of a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person, whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association; two or more persons having a joint or common interest; any

89 combination thereof; and any other legal or commercial entity.

90 "Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession,
91 in whom is vested:

92 1. All or part of the legal title to the property; or

93 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

94 "Person" means any individual, group of individuals, corporation, partnership, business trust, association,
95 or other legal entity, or any combination thereof.

96 "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances
97 contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is
98 promised to the tenant.

99 "Processing fee for payment of rent with bad check" means the processing fee specified in the rental
100 agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check drawn
101 by the tenant on which payment has been refused by the payor bank because the drawer had no account or
102 insufficient funds.

103 "Readily accessible" means areas within the interior of the dwelling unit available for observation at the
104 time of the move-in inspection that do not require removal of materials, personal property, equipment, or
105 similar items.

106 "Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental
107 agreement, including prepaid rent paid more than one month in advance of the rent due date.

108 "Rental agreement" or "lease agreement" means all rental agreements, written or oral, and valid rules and
109 regulations adopted under § 55.1-1228 embodying the terms and conditions concerning the use and
110 occupancy of a dwelling unit and premises.

111 "Rental application" means the written application or similar document used by a landlord to determine if
112 a prospective tenant is qualified to become a tenant of a dwelling unit.

113 "Renter's insurance" means insurance coverage specified in the rental agreement that is a combination
114 multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal
115 property located in dwelling units not occupied by the owner.

116 "Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant
117 for a dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. "Major facility" in the case of a bathroom means a toilet and either a bath or shower and in the case of a kitchen means a refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. "Security deposit" does not include a damage insurance policy or renter's insurance policy, as those terms are defined in § 55.1-1206, purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multifamily residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or essential service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and includes a roomer. "Tenant" does not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or any other medium.

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2 or a ratio utility billing system as defined in § 55.1-1212.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55.1-1202, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii)

stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) is affixed.

§ 55.1-1203. Application; notice, deposit, fee, and additional information.

A. ~~Any~~ Prior to requesting or collecting any payment or information about a prospective tenant, a landlord shall first notify the prospective tenant in writing or by posting in a manner accessible to a prospective tenant (i) the amount and purpose of each pre-tenancy fee or deposit that may be charged to an applicant and whether such fee or deposit is refundable; (ii) the types of information that will be used to determine whether the applicant may become a tenant; (iii) criteria that will result in an automatic denial of the application; (iv) additional criteria that may result in the denial of the application; (v) if the landlord uses a consumer report in his determination, the name and address of the consumer reporting agency; and (vi) the applicant's right to obtain a free copy of the consumer report in the event of a denial or other adverse action and right to dispute the accuracy of information appearing in the consumer report.

B. No landlord shall request or collect any pre-tenancy fee prior to signing the rental agreement, except that the landlord may require an application fee and a refundable application deposit ~~in addition to a nonrefundable application fee~~. An application fee shall not exceed the actual out-of-pocket expenses the landlord paid to a third party performing background, credit, or other pre-occupancy check on the applicant. If a landlord fails to review an application for any reason, the landlord shall refund any application fee paid by or on behalf of the applicant within 14 days. A refundable application deposit shall not exceed 10 percent of one month of periodic rent. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within ~~20~~ 15 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums ~~in excess of the landlord's~~, less the actual expenses and damages the landlord incurred in the application process that are directly attributable to the applicant, together with an itemized list of such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. ~~If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.~~

~~B.~~ C. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. A landlord shall use the information contained in the application to evaluate an applicant for eligibility for all dwelling units that the landlord owns in the Commonwealth. The landlord may photocopy each applicant's driver's license or other similar photo

identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in *any of the* landlord's dwelling ~~unit~~ *units*, that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

~~C. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.~~

Nothing in this subsection shall prevent a landlord from requesting updated or supplemental information from an applicant if more than 60 days have elapsed since the original application was submitted, provided that the landlord does not charge the applicant an additional fee for such update. If more than one year has elapsed since the original application, the landlord may request that the applicant submit a new application.

D. A landlord shall consider evidence of an applicant's status as a victim of family abuse, as defined in § 16.1-228, to mitigate any adverse effect of an otherwise qualified applicant's low credit score. In order to establish the applicant's status as a victim of family abuse, an applicant may submit to the landlord (i) a letter from a sexual and domestic violence program, a housing counselor certified by the U.S. Department of Housing and Urban Development, or an attorney representing the applicant; (ii) a law-enforcement incident report; or (iii) a court order.

E. If a landlord takes adverse action against an applicant, including denying an applicant's application, the landlord shall, within three business days, provide the applicant with a written notice stating the reasons for the adverse action and a copy of any consumer reports on which the landlord relied in whole or in part in making his determination.

F. If a landlord does not comply with this section, ~~the applicant~~ *a prospective tenant* may recover actual damages, including all amounts paid to the landlord as an application fee, application deposit, or reimbursement for any of the landlord's out-of-pocket expenses that were charged to the prospective tenant, ~~along with~~ *and reasonable costs of the applicant, including court costs and attorney fees.*