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HOUSE BILL NO. 1093

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws)

on _____)

(Patron Prior to Substitute—Delegate Hernandez)

A BILL to amend and reenact § 55.1-1250 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; landlord remedies; tenant's right of redemption; attorney fees.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-1250 of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1250. Landlord's acceptance of rent with reservation; tenant's right of redemption.

A. No landlord may accept full payment of rent, as well as any damages, money judgment, award of attorney fees, and court costs, and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55.1-1245, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.

However, a landlord may accept partial payment of rent and other amounts owed by the tenant to the landlord and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction for nonpayment of rent under § 55.1-1245, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55.1-1245, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. Such notice shall include the following language: "Any partial payment of rent made before or after a judgment of possession is ordered will not prevent your landlord from taking action to evict you. However, full payment of all amounts you owe the landlord, including all rent as contracted for in the rental agreement that is owed to the landlord as of the date payment is made, as well as any damages, money judgment, award of attorney fees, and court costs made at least 48 hours before the scheduled eviction will cause the eviction to be canceled, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord."

If the landlord elects to seek possession of the dwelling unit pursuant to § 8.01-126, the landlord shall provide a copy of this notice to the court for service to the tenant, along with the summons for unlawful detainer. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, nothing in this section shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

Notwithstanding the requirements of this section, a landlord with four or fewer rental dwelling units, or up to a 10 percent interest in four or fewer rental dwelling units, may limit a tenant's use of the right of redemption to once per ~~lease~~ *rental agreement* period, provided that the landlord provides written notice of such limitation to the tenant.

B. If the tenant makes full payment of all money due for rent as of the date of payment, late fees authorized by law and agreed to in the rental agreement, any damages, and court costs prior to the initial court date on the action for unlawful detainer, the landlord shall not require the tenant to pay more than \$100 toward the landlord's attorney fees. The unlawful detainer action shall be dismissed once payment of the amounts listed in this subsection is made by the tenant.

C. The tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer.

If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, and dismiss the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of such return date.

60 *C. D.* In cases of unlawful detainer, ~~where the tenant has not paid in full pursuant to subsection B, the~~ tenant, or any third party on behalf of ~~the~~ the tenant, may pay the landlord or the landlord's attorney or pay into court all (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 and as provided by law, (iv) reasonable attorney fees as contracted for in the rental agreement and as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.

61 *D. E.* If such payment has not been made as of the return date for the unlawful detainer, the tenant, or any third party on behalf of the tenant, may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late charges, costs of court, any civil recovery, attorney fees, and sheriff fees, including the sheriff fees for service of the writ of eviction if payment is made after issuance of the writ, no less than 48 hours before the date and time scheduled by the officer to whom the writ of eviction has been delivered to be executed. Upon receipt of such payment, the landlord, or the landlord's attorney or managing agent, shall promptly notify the officer to whom the writ of eviction has been delivered to be executed that the execution of the writ of eviction shall be canceled. If the landlord has actual knowledge that the tenant has made such payment and willfully fails to provide such notification, such act may be deemed to be a violation of § 55.1-1243.1. In addition, the landlord shall transmit to the court a notice of satisfaction of any money judgment in accordance with § 8.01-454.

62 *E. F.* Upon receiving a written request from the tenant, the landlord, or the landlord's attorney or managing agent, shall provide to the tenant a written statement of all amounts owed by the tenant to the landlord so that the tenant may pay the exact amount necessary for the tenant to exercise his right of redemption pursuant to this section. Any payments made by the tenant shall be by cashier's check, certified check, or money order. A court shall not issue a writ of eviction on any judgment for possession that has expired or has been marked as satisfied.