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SENATE BILL NO. 373  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on General Laws  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Boysko)

*A BILL to amend and reenact § 55.1-1241 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; noncompliance as defense to action for possession for nonpayment of rent.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55.1-1241 of the Code of Virginia is amended and reenacted as follows:**

**§ 55.1-1241. Landlord's noncompliance as defense to action for possession for nonpayment of rent.**

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises a condition that constitutes, or will constitute, a fire hazard or a serious threat to the life, health, or safety of the occupants of the dwelling unit, including (i) a lack of heat, running water, light, electricity, or adequate sewage disposal facilities; (ii) an infestation of rodents; or (iii) a condition that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. ~~The assertion of any defense provided for in this section shall be conditioned upon the following:~~

~~1. Prior~~ A tenant may assert a defense as provided for in this section if, prior to the commencement of the action for rent or possession, 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~~ as defined in § 55.1-1200 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~~ the 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, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.~~

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes that (i) the conditions alleged in the defense 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

32 the landlord to the premises for the purposes of correcting such conditions.

33 C. The court shall make findings of fact upon any defense raised under this section or the answer to any  
34 defense and shall issue any order as may be required, including any one or more of the following:

35 1. Reducing rent in such amount as the court determines to be equitable to represent the existence of any  
36 condition set forth in subsection A;

37 2. Terminating the rental agreement ~~or ordering the surrender of the premises to the landlord at the~~  
38 ~~request of the tenant;~~ or

39 3. Referring any matter before the court to the proper state or local agency for investigation and report and  
40 granting a continuance of the action or complaint pending receipt of such investigation and report. When such  
41 a continuance is granted, the tenant shall deposit with the court any rents that will become due during the  
42 period of continuance; to be held by the court pending its further order; or, in its discretion, the court may use  
43 such funds to (i) pay a mortgage on the property in order to stay a foreclosure; (ii) pay a creditor to prevent or  
44 satisfy a bill to enforce a mechanic's or materialman's lien; or (iii) remedy any condition set forth in  
45 subsection A that is found by the court to exist. *Ordering the landlord to remedy the condition that resulted*  
46 *from the landlord's material noncompliance.*

47 D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the  
48 violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving  
49 rise to the violation, the court may impose upon the tenant the reasonable costs of the landlord, including  
50 court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable  
51 attorney fees.

52 E. If the court finds that the tenant has successfully raised a defense under this section and enters  
53 judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the  
54 tenant, including court costs, and reasonable attorney fees.

55 F. *Nothing in this section alters the right of a landlord to amend the amount requested at trial based on*  
56 *all amounts due and owing on the trial date, including ongoing rent.*