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SENATE BILL NO. 313
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on _____)

(Patron Prior to Substitute—Senator Ebbin)

A BILL to amend and reenact §§ 55.1-1204 and 55.1-1208 of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; rental payment methods; prohibited fees.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-1204 and 55.1-1208 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.

A. A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, the term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. A landlord shall offer a prospective tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord-tenant relationship and shall provide with it the statement of tenant rights and responsibilities developed by the Department of Housing and Community Development and posted on its website pursuant to § 36-139. The parties to a written rental agreement shall sign the form developed by the Department of Housing and Community Development and posted on its website pursuant to § 36-139 acknowledging that the tenant has received from the landlord the statement of tenant rights and responsibilities. The written rental agreement shall be effective upon the date signed by the parties.

If a tenant fails to sign the form available pursuant to this subsection, the landlord shall record the date or dates on which he provided the form to the tenant and the fact that the tenant failed to sign such form. Subsequent to the effective date of the tenancy, a landlord may, but shall not be required to, provide a tenant with and allow such tenant an opportunity to sign the form described pursuant to this subsection. The form shall be current as of the date of delivery.

C. If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The ~~provision~~ provisions of this chapter shall be applicable to the dwelling unit that is being rented;

2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection D of § 55.1-1253;

3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant, and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit in an amount that does not exceed a total amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

D. Except as provided in the written rental agreement, or as provided in subsection C if no written agreement is offered, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Except as provided in the written rental agreement, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

E. A landlord shall not charge a tenant for late payment of rent unless such charge is provided for in the written rental agreement. No such late charge shall exceed the lesser of 10 percent of the periodic rent or 10 percent of the remaining balance due and owed by the tenant.

F. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

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60 G. If the rental agreement contains any provision allowing the landlord to approve or disapprove a
61 sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written
62 application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or
63 disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is evidence of his
64 approval.

65 H. The landlord shall provide a copy of the signed written rental agreement and the statement of tenant
66 rights and responsibilities to the tenant within 10 business days of the effective date of the written rental
67 agreement. The failure of the landlord to deliver such a rental agreement and statement shall not affect the
68 validity of the agreement. However, the landlord shall not file or maintain an action, including any summons
69 for unlawful detainer, against the tenant in a court of law for any alleged lease violation until he has provided
70 the tenant with the statement of tenant rights and responsibilities.

71 The landlord shall provide the tenant with an additional hard copy of such tenant's rental agreement once
72 per year upon request or shall maintain such rental agreement in an electronic format that can be easily
73 accessed by or shared with the tenant upon request. Any additional electronic copy of a tenant's rental
74 agreement provided pursuant to this subsection shall be provided by the landlord at no charge to the tenant.

75 I. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i)
76 notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by
77 law and (ii) both parties consent in writing to the change.

78 J. 1. *Except as provided in subdivision 2, the landlord shall accept payment of periodic rent and any*
79 *security deposit by check, electronic funds transfer, debit or credit card, and money order.* The landlord shall
80 provide the tenant with a written receipt; ~~upon request from the tenant,~~ whenever the tenant pays rent in the
81 form of cash or money order. No landlord shall charge a tenant any fee for the collection or processing of any
82 payment of rent, security deposit, or any other fees, unless the landlord offers an alternative method of
83 payment that does not include additional fees.

84 2. A landlord with four or fewer rental dwelling units, or up to a 10 percent interest in four or fewer rental
85 dwelling units, shall not be required to accept payment of periodic rent and any security deposit by debit or
86 credit card.

87 K. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more
88 than four rental dwelling units, whether individually or through a business entity, in the Commonwealth shall
89 ~~be required to~~ provide written notice to any tenant who has the option to renew a rental agreement or whose
90 rental agreement contains an automatic renewal provision of any increase in rent during the subsequent rental
91 agreement term. Such landlord shall also provide written notice of nonrenewal to any tenant. Such notices
92 shall be provided to the tenant no less than 60 days prior to the end of the rental agreement term. This
93 subsection shall not apply to any periodic tenancy created pursuant to subsection C of § 55.1-1253.

94 **§ 55.1-1208. Prohibited provisions in rental agreements.**

95 A. A rental agreement shall not contain provisions that the tenant:

96 1. Agrees to waive or forgo rights or remedies under this chapter;

97 2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation
98 notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate
99 Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

100 3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

101 4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

102 5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or
103 to indemnify the landlord for that liability or any associated costs;

104 6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful
105 possession of a firearm within individual dwelling units unless required by federal law or regulation;

106 7. Agrees to the payment of a security deposit, insurance premiums for damage insurance, and insurance
107 premiums for renter's insurance prior to the commencement of the tenancy that exceed the amount of two
108 months' periodic rent; or

109 8. Agrees to waive remedies or rights under the Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et
110 seq., prior to the occurrence of a dispute between landlord and tenant. Execution of leases shall not be
111 contingent upon the execution of a waiver of rights under the Servicemembers Civil Relief Act; however,
112 upon the occurrence of any dispute, the landlord and tenant may execute a waiver of such rights and remedies
113 as to that dispute in order to facilitate a resolution.

114 B. Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a
115 landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by
116 him and reasonable attorney fees.

117 C. ~~If the landlord is a public housing authority, the landlord shall not require a tenant to pay any fee for~~
118 ~~the maintenance or repair of any dwelling unit unless the repair is necessitated by the tenant's action or~~
119 ~~omission~~ *Unless necessitated by the tenant's violation of a requirement of this chapter, no landlord shall*
120 *require a tenant to pay any fee for the maintenance or repair of any dwelling unit.*