

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to Virginia Residential Landlord and Tenant Act; landlord remedies; noncompliance with rental agreement; victim of family abuse.

[H 1408]

Approved

Be it enacted by the General Assembly of Virginia:
1. That § 55.1-1245, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 55.1-1245. (Effective until the later of July 1, 2028, or seven years after the COVID-19 pandemic state of emergency expires) Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse, as defined in § 16.1-228, that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit by the landlord pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 ~~or~~, subsection B of § 20-103, or as part of a criminal action, the lease shall not terminate solely due to an act of family abuse against the tenant. ~~However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises,~~

57 in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the
 58 perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of
 59 the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not
 60 possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify
 61 the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the
 62 tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees
 63 pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter. *The*
 64 *provisions of this section shall only apply if the tenant provides the landlord with a copy of such protective*
 65 *order or the perpetrator is barred from the dwelling unit by the landlord pursuant to § 55.1-1246 or by a*
 66 *court of competent jurisdiction.*

67 E. If the tenant has been served with a prior written notice that required the tenant to remedy a breach, and
 68 the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature
 69 as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions
 70 constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the
 71 rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

72 F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served
 73 on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental
 74 agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement
 75 and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is delivered
 76 to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been
 77 rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing
 78 party, and the tenant fails to pay rent within five days after written notice is served on him notifying the
 79 tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not
 80 paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day
 81 period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as
 82 provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or
 83 attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on
 84 the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance
 85 with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance
 86 with this section.

87 G. If a public housing authority issues a notice of nonpayment of rent to a tenant, such public housing
 88 authority shall also provide to the tenant along with the notice of nonpayment written information printed on
 89 pink or orange paper explaining how the tenant may recertify the tenant's income, including how the tenant
 90 can, in accordance with federal law and policy, report changes in income, request a minimum rent hardship
 91 exemption, and file grievances. Such information shall be posted by the public housing authority in
 92 conspicuous locations in each public housing community under its authority.

93 H. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive
 94 relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach
 95 of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the
 96 tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due
 97 and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental
 98 agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted
 99 for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental
 100 agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or
 101 premises as contracted for in the rental agreement.

102 I. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or
 103 noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the
 104 landlord and against the tenant for the relief requested, which may include the following: (i) rent due and
 105 owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted
 106 for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney
 107 fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant
 108 proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v)
 109 costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to
 110 the dwelling unit or premises.

111 J. 1. A landlord who owns more than four rental dwelling units or more than a 10 percent interest in more
 112 than four rental dwelling units, whether individually or through a business entity, in the Commonwealth, shall
 113 not take any adverse action, as defined in 15 U.S.C. § 1681a(k), against an applicant for tenancy based solely
 114 on payment history or an eviction for nonpayment of rent that occurred during the period beginning on March
 115 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency declared by the
 116 Governor related to the COVID-19 pandemic.

117 2. If such a landlord denies an applicant for tenancy, then the landlord shall provide to the applicant
 118 written notice of the denial and of the applicant's right to assert that his failure to qualify was based upon

119 payment history or an eviction based on nonpayment of rent that occurred during the period beginning on
 120 March 12, 2020, and ending 30 days after the expiration or revocation of any state of emergency related to
 121 the COVID-19 pandemic. The written notice of denial shall include the statewide legal aid telephone number
 122 and website address and shall inform the applicant that he must assert his right to challenge the denial within
 123 seven days of the postmark date. If the landlord does not receive a response from the applicant within seven
 124 days of the postmark date, the landlord may proceed. If, in addition to the written notice, the landlord
 125 provides notice to the applicant by electronic or telephonic means using an email address, telephone number,
 126 or other contact information provided by the applicant informing the applicant of his denial and right to assert
 127 that his failure to qualify was based upon payment history or an eviction based on nonpayment of rent that
 128 occurred during the period beginning on March 12, 2020, and ending 30 days after the expiration or
 129 revocation of any state of emergency related to the COVID-19 pandemic and the tenant does not make such
 130 assertion that the failure to qualify was the result of such payment history or eviction prior to the close of
 131 business on the next business day, the landlord may proceed. The landlord must be able to validate the date
 132 and time that any communication sent by electronic or telephonic means was sent to the applicant. If a
 133 landlord does receive a response from the applicant asserting such a right, and the landlord relied upon a
 134 consumer or tenant screening report, the landlord shall make a good faith effort to contact the generator of the
 135 report to ascertain whether such determination was due solely to the applicant for tenancy's payment history
 136 or an eviction for nonpayment that occurred during the period beginning on March 12, 2020, and ending 30
 137 days after the expiration or revocation of any state of emergency declared by the Governor related to the
 138 COVID-19 pandemic. If the landlord does not receive a response from the generator of the report within three
 139 business days of requesting the information, the landlord may proceed with using the information from the
 140 report without additional action.

141 3. If such a landlord does not comply with the provisions of this subsection, the applicant for tenancy may
 142 recover statutory damages of \$1,000, along with attorney fees.

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 144 **of emergency expires) Noncompliance with rental agreement; monetary penalty.**

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 151 adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not
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181 dismissal of the case.

182 D. If the tenant is a victim of family abuse, as defined in § 16.1-228, that occurred in the dwelling unit or
183 on the premises and the perpetrator is barred from the dwelling unit by *the landlord* pursuant to § 55.1-1246
184 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of
185 competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or, subsection B of § 20-103, *or as part of a*
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