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SENATE BILL NO. 284

Offered January 12, 2022

Prefiled January 11, 2022

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

Patron—Ebbin

Referred to Committee on General Laws and Technology

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 any defense provided for in this subsection 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 of which he had notice or for which he was served a written notice of the condition 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 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 14 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 the landlord to the premises for the purposes of correcting such conditions.

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

1. Reducing an order that reduces rent in such by an amount as the court determines to be equitable to represent in consideration of the existence of any condition set forth in subsection A. If appropriate, the court may refer any matter before it to the proper state or local agency for investigation and report and continue the action or complaint pending completion of such investigation and receipt of any resulting report;

2. Terminating the rental agreement or ordering the surrender of the premises to the landlord; or

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

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

E. If the court finds that the tenant has successfully raised a defense under this section and enters

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59 judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs
60 of the tenant, including court costs, and reasonable attorney fees.