

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3202**

4 (By Delegates Miley, Caputo, Skaff, Fleischauer
5 Manchin, Lawrence, Poore, Lane, Sobonya and Pasdon)

6
7 (Originating in the Committee on the Judiciary)

8 [February 24, 2011]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §37-6A-1, §37-6A-2,
12 §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all relating to
13 residential rental security deposits; relevant definitions;
14 security deposits; maintenance of records; prohibited
15 provisions in rental agreements; remedies upon landlord's
16 noncompliance; application of article; security deposits prior
17 to effective date of article.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §37-6A-1, §37-6A-2,
21 §37-6A-3, §37-6A-4, §37-6A-5 and §37-6A-6, all to read as follows:

22 **ARTICLE 6A. RESIDENTIAL RENTAL SECURITY DEPOSITS.**

23 **§37-6A-1. Definitions.**

24 When used in this article, unless expressly stated otherwise:

25 (1) "Action" means recoupment, counterclaim, set off or other
26 civil suit and any other proceeding in which rights are determined,
27 including without limitation actions for possession, rent, unlawful

1 detainer, unlawful entry and distress for rent.

2 (2) "Application fee" means any deposit of money, however
3 denominated, which is paid by a tenant to a landlord, lessor or
4 agent of a landlord for the purpose of being considered as a tenant
5 for a dwelling unit.

6 (3) "Dwelling unit" means a structure or part of a structure
7 that is used as a home or residence by one or more persons who
8 maintain a household, including, but not limited to, a manufactured
9 home.

10 (4) "Facility" means something that is built, constructed,
11 installed or established to perform some particular function.

12 (5) "Landlord" means the owner or lessor of the dwelling unit
13 or the building of which such dwelling unit is a part. "Landlord"
14 also includes a managing agent of the premises who fails to
15 disclose the name of such owner or lessor.

16 (6) "Managing agent" means a person authorized by the landlord
17 to act on behalf of the landlord under a management agreement.

18 (7) "Notice period" means: (A) within 60 days of the
19 termination of the tenancy; or (B) within 45 days of the occupation
20 of the premise by a subsequent tenant, whichever time period is
21 shorter.

22 (8) "Owner" means one or more persons, jointly or severally,
23 in whom is vested:

24 (A) All or part of the legal title to the property, or

25 (B) All or part of the beneficial ownership and a right to
26 present use and enjoyment of the premises, and the term includes a

1 mortgagee in possession.

2 (9) "Person" means any individual, group of individuals,
3 corporation, partnership, business trust, association or other
4 legal entity, or any combination thereof.

5 (10) "Premises" means a dwelling unit and the structure of
6 which it is a part and facilities and appurtenances therein and
7 grounds, areas and facilities held out for the use of tenants
8 generally or whose use is promised to the tenant.

9 (11) "Rent" means all money, other than a security deposit, a
10 nonrefundable fee or money paid to the landlord by the tenant for
11 damage caused by the tenant to the dwelling unit, owed or paid to
12 the landlord under the rental agreement.

13 (12) "Rental agreement" means all agreements, written
14 (including an electronic record as defined by paragraph (7),
15 section two, article one, chapter thirty-nine-a of the code) or
16 oral, express or implied, embodying the terms and conditions
17 concerning the use and occupancy of a dwelling unit and premises.

18 (13) "Roomer" means a person occupying a dwelling unit that
19 lacks a major bathroom or kitchen facility, in a structure where
20 one or more major facilities are used in common by occupants of the
21 dwelling unit and other dwelling units. Major facility in the case
22 of a bathroom means toilet, and either a bath or shower, and in the
23 case of a kitchen means refrigerator, stove or sink.

24 (14) "Security deposit" means any refundable deposit of money
25 that is furnished by a tenant to a landlord to secure the
26 performance of the terms and conditions of a rental agreement, or

1 as security for damages to the leased premises. Security deposit
2 does not include: (A) Rent; (B) a pet fee; or (C) application fee:
3 *Provided*, That the parties expressly agree, in writing, that a pet
4 fee or application fee is nonrefundable. A security deposit does
5 not include prepaid rent.

6 (15) "Sublease" means the transfer by any tenant of any but
7 not all interests created by a rental agreement.

8 (16) "Tenant" means a person entitled under a rental agreement
9 to occupy a dwelling unit to the exclusion of others and shall
10 include a roomer.

11 (17) "Utility" means electricity, natural gas, propane gas,
12 water, sewer, telephone and cable television provided by a public
13 utility or such other person providing residential utility
14 services. If the rental agreement so provides, a landlord may use
15 submetering equipment or energy allocation equipment, or a ratio
16 utility billing system.

17 **§37-6A-2. Security deposits.**

18 (a) Upon termination of the tenancy and within the applicable
19 notice period, any security deposit held by the landlord, minus any
20 deductions for damages or other charges, shall be delivered to the
21 tenant, together with a written itemization of any such damages or
22 other charges as provided in subsection (c).

23 (b) Upon termination of the tenancy, any security deposit held
24 by the landlord may be applied by the landlord only to:

25 (1) The payment of accrued rent, including the reasonable
26 charges for late payment of rent specified in the rental agreement;

1 (2) The payment of the amount of damages which the landlord
2 has suffered by reason of the tenant's noncompliance with the
3 rental agreement, less reasonable wear and tear;

4 (3) The payment of unpaid utilities in the name of the
5 landlord that the rental agreement provided were to be paid by the
6 tenant that were actually used by the tenant prior to the
7 termination of the tenancy;

8 (4) The payment of reasonable costs for the removal and
9 storage of the tenant's personal property. The landlord may
10 dispose of the stored personal property pursuant to the provisions
11 of subdivisions (1) through (3), subsection (h), section three,
12 article three-a, chapter fifty-five of this code; and

13 (5) To other damages or charges as provided in the rental
14 agreement, including but not limited to, paying for the services of
15 a third party contractor to repair damages to the property caused
16 by the tenant.

17 (c) The landlord shall notify, in writing, the tenant of any
18 deductions to be made from the tenant's security deposit during the
19 course of the tenancy of which the landlord is aware. Such
20 notification shall not be required for deductions made less than
21 thirty days prior to the termination of the rental agreement. A
22 landlord who makes any deductions from the tenant's security
23 deposit pursuant to this section may not use the circumstances
24 related to the deduction as a basis for the termination of the
25 tenancy.

26 (d) In the event that damages to the premises exceed the

1 amount of the security deposit and require the services of a third
2 party contractor, the landlord shall give written notice to the
3 tenant, advising him or her of that fact, within the applicable
4 notice period. If notice is given as prescribed in this
5 subsection, the landlord shall have an additional fifteen day
6 period to provide an itemization of the damages and the cost of
7 repair.

8 (e) Nothing in this section shall be construed by a court of
9 law or otherwise as entitling the tenant, upon the termination of
10 the tenancy, to an immediate credit against the tenant's delinquent
11 rent account in the amount of the security deposit.

12 (f) The holder of the landlord's interest in the premises at
13 the time of the termination of the tenancy, regardless of how the
14 interest is acquired or transferred, is bound by this section and
15 shall be required to return any security deposit received by the
16 original landlord that is duly owed to the tenant. The provisions
17 of this subsection apply whether or not such security deposit is
18 transferred with the landlord's interest by law or equity, and
19 regardless of any contractual agreements between the original
20 landlord and his or her successors in interest.

21 (g) If the tenant has any assignee or sublessee, the landlord
22 shall be entitled to hold a security deposit from only one party in
23 compliance with the provisions of this section.

24 (h) For the purposes of this section, the delivery to a tenant
25 of a security deposit and/or any notice prescribed by this section,
26 may be accomplished by either personal delivery to the tenant, or

1 by mailing the deposit and/or notice to the tenant's last known
2 address or forwarding address as provided by the tenant. Provided,
3 That if personal delivery is not reasonably possible and a deposit
4 or notice mailed to hte tenant at his or her last known address or
5 forwarding address provided is returned as non-deliverable, then
6 the landlord shall hold the deposit or notice for the period of one
7 year, to be personally delivered to the tenant, or his or her
8 authorized agent or attorney, at the landlord's place of business
9 during normal business hours within seventy-two hours of a written
10 request from the tenant.

11 **§37-6A-3. Maintenance of records by landlord.**

12 The landlord shall:

13 (1) Maintain and itemize records for each tenant of all
14 deductions from security deposits provided under this article which
15 the landlord has made by reason of a tenant's noncompliance with
16 the rental agreement for one year after the termination of the
17 tenancy; and

18 (2) Either permit a tenant or his or her authorized agent or
19 attorney to inspect the tenant's records of deductions at any time
20 during normal business hours within seventy-two hours of a written
21 request, or at the landlord's option, provide a tenant or his or
22 her authorized agent or attorney a copy of the tenant's record of
23 deductions during normal business hours within seventy-two hours of
24 a written request.

25 **§37-6A-4. Prohibited provision in rental agreements.**

26 A rental agreement may not contain a provision that the tenant

1 agrees to waive or forego rights or remedies under this article.
2 A provision prohibited by this section included in a rental
3 agreement is unenforceable. If a landlord brings an action to
4 enforce any of the prohibited provisions, the tenant may recover
5 actual damages sustained by him or her and reasonable attorney's
6 fees.

7 **§37-6A-5. Landlord's noncompliance.**

8 (a) If a landlord fails to comply with any of the provisions
9 of this article, and such noncompliance is willfully or not in good
10 faith, the tenant is entitled to a judgment for:

11 (1) The amount of any unreturned security deposit;

12 (2) Damages for annoyance or inconvenience resulting from the
13 landlord's nonconformance equal to one and a half times the amount
14 of the tenant's security deposit, unless the tenant owes rent to
15 the landlord, in which case, the court shall order an amount equal
16 to any amount awarded to the tenant pursuant to this subsection to
17 be credited against any rent due to the landlord; and

18 (3) Reasonable attorney fees.

19 (b) This section does not limit rights or remedies available
20 to a landlord or tenant under any other law.

21 **§37-6A-6. Application and effective date of this article.**

22 (a) The provisions of this article shall apply to all rental
23 premises or units used for dwelling purposes.

24 (b) The provisions of this article do not apply to agreements
25 for the payment of security deposits entered into prior to the
26 effective date of this article.