

1 H. B. 3202

2
3 (By Delegates Miley, Caputo, Skaff, Fleischauer,
4 Manchin, Lawrence, Poore, Lane,
5 Sobonya and Pasdon)

6
7 [Introduced February 18, 2011; referred to the
8 Committee on the Judiciary.]
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,

1 including without limitation actions for possession, rent, unlawful
2 detainer, unlawful entry and distress for rent.

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

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

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

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

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

19 (7) "Owner" means one or more persons, jointly or severally,
20 in whom is vested:

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

22 (B) All or part of the beneficial ownership and a right to
23 present use and enjoyment of the premises, and the term includes a
24 mortgagee in possession.

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

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

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

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

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

23 (13) "Security deposit" means any refundable deposit of money
24 that is furnished by a tenant to a landlord to secure the

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

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

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

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

18 **§37-6A-2. Security deposits.**

19 (a) Within thirty days of termination of the tenancy, any
20 security deposit held by the landlord, minus any deductions for
21 damages or other charges, shall be delivered to the tenant,
22 together with a written itemization of any such damages or other
23 charges as provided in subsection (c).

24 (b) Upon termination of the tenancy, any security deposit held

1 by the landlord may be applied by the landlord only to:

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

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

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

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

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

20 (c) The landlord shall notify, in writing, the tenant of any
21 deductions to be made from the tenant's security deposit during the
22 course of the tenancy of which the landlord is aware. Such
23 notification shall not be required for deductions made less than
24 thirty days prior to the termination of the rental agreement. A

1 landlord who makes any deductions from the tenant's security
2 deposit pursuant to this section may not use the circumstances
3 related to the deduction as a basis for the termination of the
4 tenancy.

5 (d) In the event that damages to the premises exceed the
6 amount of the security deposit and require the services of a third
7 party contractor, the landlord shall give written notice to the
8 tenant, advising him or her of that fact, within the applicable
9 notice period. If notice is given as prescribed in this
10 subsection, the landlord shall have an additional fifteen day
11 period to provide an itemization of the damages and the cost of
12 repair.

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

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

1 landlord and his or her successors in interest.

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

5 (h) For the purposes of this section, the delivery to a tenant
6 of a security deposit and/or any notice prescribed by this section,
7 may be accomplished by either personal delivery to the tenant, or
8 by mailing the deposit and/or notice to the tenant's last known
9 address or forwarding address as provided by the tenant.

10 **§37-6A-3. Maintenance of records by landlord.**

11 The landlord shall:

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

17 (2) Permit a tenant or his or her authorized agent or attorney
18 to inspect such tenant's records of deductions at any time during
19 normal business hours within seventy-two hours of a written
20 request.

21 **§37-6A-4. Prohibited provision in rental agreements.**

22 A rental agreement may not contain a provision that the tenant
23 agrees to waive or forego rights or remedies under this article.

24 A provision prohibited by this section included in a rental

1 agreement is unenforceable. If a landlord brings an action to
2 enforce any of the prohibited provisions, the tenant may recover
3 actual damages sustained by him or her and reasonable attorney's
4 fees.

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

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

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

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

16 (3) Reasonable attorney fees.

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

19 **§37-6A-6. Application and effective date of this article.**

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

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

NOTE: The purpose of this bill is to gain uniformity in the way in which landlords return security deposits to tenants and penalties for noncompliance.

This article is new; therefore, it has been completely underscored.