WEST VIRGINIA CODE CHAPTER 37 ARTICLE 6A

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§37-6A-1. Definitions.

When used in this article, unless expressly stated otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

(11) "Rent" means all money, other than a security deposit, a nonrefundable fee or money paid to the landlord by the tenant for damage caused by the tenant to the dwelling unit,

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owed or paid to the landlord under the rental agreement.

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

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

(14) "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, or as security for damages to the leased premises. Security deposit does not include: (A) Rent; (B) a pet fee; or (C) application fee: Provided, That the parties expressly agree, in writing, that a pet fee or application fee is nonrefundable. A security deposit does not include prepaid rent.

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

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

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

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§37-6A-2. Security deposits.

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

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

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

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

(3) The payment of unpaid utilities that were billed to and paid by the landlord, are the obligation of the tenant under the rental agreement and unpaid by the tenant;

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

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

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

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

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

(f) If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a

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security deposit from only one party in compliance with the provisions of this section.

(g) For the purposes of this section, the delivery to a tenant of a security deposit and/or any notice prescribed by this section, may be accomplished by either personal delivery to the tenant, or by mailing the deposit and/or notice to the tenant's last known address or forwarding address as provided by the tenant. It shall be the responsibility of the tenant to provide an accurate address to the landlord. If personal delivery is not reasonably possible and a deposit or notice mailed to the tenant at his or her last known address or forwarding address provided is returned as non-deliverable, then the landlord shall hold the deposit or notice for the period of six months, to be personally delivered to the tenant, or his or her authorized agent or attorney, at the landlord's place of business during normal business hours within seventy-two hours after a written request is received from the tenant.

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

The landlord shall:

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

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

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

A rental agreement may not contain a provision that the tenant agrees to waive or forego rights or remedies under this article. A provision prohibited by this section included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him or her and reasonable attorney's fees.

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§37-6A-5. Landlord's noncompliance.

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

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

(2) Damages for annoyance or inconvenience resulting from the landlord's nonconformance equal to one and a half times the amount wrongfully withheld, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to any amount awarded to the tenant pursuant to this subsection to be credited against any rent due to the landlord.

(b) Jurisdiction for any civil action brought pursuant to this article shall be in magistrate court or circuit court in the county where the residential rental premises or units are located.

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

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

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

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

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