**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “HEALTHY RENTAL HOUSING ACT OF 2017” BY ADDING SECTION 27‑40‑635 SO AS TO PROVIDE REMEDIES FOR TENANTS OF RESIDENTIAL RENTAL PROPERTIES WITH MOLD THAT MATERIALLY AFFECTS THE HEALTH OR SAFETY OF THE TENANT OR AUTHORIZED OCCUPANT OF THE RENTAL PROPERTY; TO AMEND SECTION 27‑40‑210, RELATING TO DEFINITIONS IN THE RESIDENTIAL LANDLORD AND TENANT ACT, SO AS TO DEFINE ADDITIONAL NECESSARY TERMINOLOGY; TO AMEND SECTION 27‑40‑420, RELATING TO CERTAIN WRITTEN DISCLOSURES THAT LANDLORDS MUST MAKE TO RESIDENTIAL TENANTS, SO AS TO REQUIRE WRITTEN DISCLOSURE OF VISIBLE EVIDENCE OF MOLD IN AREAS READILY ACCESSIBLE WITHIN THE INTERIOR OF THE DWELLING UNIT, AND TO PROVIDE OPTIONS FOR A TENANT TO WHOM THE LANDLORD DISCLOSES THE PRESENCE OF SUCH MOLD; TO AMEND SECTION 27‑40‑440, RELATING TO LANDLORD OBLIGATIONS TO MAINTAIN RENTAL UNITS AND PREMISES, SO AS TO PROVIDE LANDLORDS SHALL MAINTAIN THE RENTAL UNITS AND PREMISES IN A CONDITION APPROPRIATE TO PREVENT THE ACCUMULATION OF MOISTURE AND THE GROWTH OF MOLD, AND TO PROVIDE CERTAIN NOTICE REQUIREMENTS WHEN SUCH MOISTURE OR MOLD IS FOUND; AND TO AMEND SECTION 27‑40‑510, RELATING TO THE OBLIGATIONS OF TENANTS WITH RESPECT TO RENTAL UNITS AND PREMISES, SO AS TO PROVIDE TENANTS SHALL USE REASONABLE EFFORTS TO MAINTAIN THE PREMISES IN A CONDITION APPROPRIATE TO PREVENT THE ACCUMULATION OF MOISTURE AND THE GROWTH OF MOLD, AND TO PROVIDE CERTAIN NOTICE REQUIREMENTS WHEN SUCH MOISTURE OR MOLD IS FOUND.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Healthy Rental Housing Act of 2017”.

SECTION 2. Subarticle I, Article 7, Chapter 40, Title 27 of the 1976 Code is amended by adding:

“Section 27‑40‑635. Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards for a period not to exceed thirty days. The landlord shall provide the tenant with either a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or a hotel room, at no expense or cost to the tenant. The tenant continues to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section may be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined. The landlord shall pay all costs of the mold remediation, unless the mold is a result of the tenant’s failure to comply with Section 27‑47‑510.”

SECTION 3. Section 27‑40‑210 of the 1976 Code is amended to read:

“Section 27‑40‑210. Subject to additional definitions contained in subsequent articles of this chapter which apply to specific articles or parts of this chapter, and unless the context otherwise requires, in this chapter:

(1) ‘action’ includes recoupment, counterclaim, set‑off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) ‘building and housing codes’ include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premise, or dwelling unit;

(3) ‘dwelling unit’ means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household and includes landlord‑owned mobile homes. Property that is leased for the exclusive purpose of being renovated by the lessee is not considered a dwelling unit within the meaning of this chapter;

(4) ‘essential services’ means sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(~~4~~5) ‘fair‑market rental value’ means the actual periodic rental payment for comparable rental property to which a willing landlord and a willing tenant would agree. In determining the fair‑market rental value, the court may consider appraisals offered by the tenant, landlord, realty experts, licensed appraisers, and other relevant evidence;

(~~5~~6) ‘good faith’ means honesty in fact in the conduct of the transaction concerned;

(~~6~~7) ‘landlord’ means the owner, lessor, or sublessor of the premises, and it also means a manager of the premises who fails to disclose as required by Section 27‑40‑420;

(8) ‘mold remediation in accordance with professional standards’ means mold remediation of the portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the United States Department of Housing and Urban Development, the Bioaerosols Manual of the American Conference of Governmental Industrial Hygienists, Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents;

(~~7~~9) ‘organization’ includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity;

(~~8~~10) ‘owner’ means one or more persons, jointly or severally, in whom is vested:

(i) all or part of the legal title to property; or

(ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises. The term includes a mortgagee in possession;

(~~9~~11) ‘person’ includes an individual or organization;

(~~10~~12) ‘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~~13) ‘rent’ means the consideration payable for use of the premises including late charges whether payable in lump sum or periodic payments, excluding security deposits or other charges;

(~~12~~14) ‘rental agreement’ means all agreements, written or oral, and valid rules and regulations adopted under Section 27‑40‑520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(~~13~~15) ‘roomer’ means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove, and kitchen sink, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure;

(16) ‘security deposit’ means a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure the full and faithful performance of the terms and conditions of the lease agreement as provided in Section 27‑40‑410;

(~~14~~17) ‘single family residence’ means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit;

(~~15~~18) ‘tenant’ means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(19) ‘visible evidence of mold’ means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move‑in inspection;

(~~16~~20) ‘wilful’ means an attempt to intentionally avoid obligations under the rental agreement or the provisions of this chapter~~;~~

~~(17)~~ ~~‘essential services’ means sanitary plumbing or sewer services; electricity; gas, where it is used for heat, hot water, or cooking; running water, and reasonable amounts of hot water and heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.~~

~~(18)~~ ~~‘security deposit’ means a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure the full and faithful performance of the terms and conditions of the lease agreement as provided in Section 27‑40‑410~~.”

SECTION 4. Section 27‑40‑420 of the 1976 Code is amended to read:

“Section 27‑40‑420. (~~a~~A) A landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy:

(1) the name and address of an owner of the premises or a person authorized to act on behalf of the owner as agent, inter alia, for purposes of service of process and receiving or receipting notices or demands; and

(2) whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord’s written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement must be considered correct unless the tenant objects to it in writing within five days after receiving the report. If the landlord’s written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant may terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord promptly shall within five business days remediate the mold condition and reinspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on an updated written disclosure that there is no visible evidence of mold in the dwelling unit upon reinspection.

(~~b~~B) The information required to be furnished by this section must be kept current and this section extends to and is enforceable against any successor landlord, owner, or manager.

(~~c~~C) A person authorized to enter in a rental agreement on behalf of a landlord who fails to comply with subsection (a) with regard to a rental agreement entered into on behalf of the landlord becomes an agent of the landlord for purposes of that rental agreement for:

(1) service of process and receiving and receipting for notices and demands;

(2) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for the performance of the obligations all rent collected from the premises and retained by the person on behalf of the landlord.”

SECTION 5. Section 27‑40‑440 of the 1976 Code is amended to read:

“Section 27‑40‑440. (~~a~~A) A landlord shall:

(1) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(2) maintain the premises in a condition appropriate to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notice of mold from the tenant;

(~~2~~3) make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;

(~~3~~4) keep all common areas of the premises in a reasonably safe condition, and, for premises containing more than four dwelling units, keep in a reasonably clean condition;

(~~4~~5) make available running water and reasonable amounts of hot water at all times and reasonable heat except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection;

(~~5~~6) maintain in reasonably good and safe working order and condition all electrical, gas, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him. Appliances present in the dwelling unit are presumed to be supplied by the landlord unless specifically excluded by the rental agreement. No appliances or facilities necessary to the provision of essential services may be excluded.

(~~b~~B) If the duty imposed by ~~paragraph~~ item (1) of subsection (~~a~~A) is greater than any duty imposed by any other paragraph of that subsection, the landlord’s duty must be determined by reference to ~~paragraph~~ item (1) of subsection (~~a~~A).

(~~c~~C) The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord’s duties specified in ~~paragraph~~ item (5) of subsection (~~a~~A) and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(~~d~~D) The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(1) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord;

(2) the work is not necessary to cure noncompliance with subsection (~~a~~A)(1) ~~of this section~~;

(3) the agreement does not diminish or affect the obligations of the landlord to other tenants in the premises.”

SECTION 6. Section 27‑40‑510 of the 1976 Code is amended to read:

“Section 27‑40‑510. A tenant shall:

(1) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(2) keep the dwelling unit and that part of the premises that he uses reasonably safe and reasonably clean;

(3) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a reasonably clean and safe manner;

(4) keep all plumbing fixtures in the dwelling unit or used by the tenant reasonably clean;

(5) use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in a condition appropriate to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord in writing of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

(~~5~~6) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air‑conditioning, and other facilities and appliances including elevators in the premises;

(~~6~~7) not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or knowingly permit any person to do so who is on the premises with the tenant’s permission or who is allowed access to the premises by the tenant;

(~~7~~8) conduct himself and require other persons on the premises with the tenant’s permission or who are allowed access to the premises by the tenant to conduct themselves in a manner that will not disturb other tenant’s peaceful enjoyment of the premises;

(~~8~~9) comply with the lease and rules and regulations which are enforceable pursuant to Section 27‑40‑520.”

SECTION 7. This act takes effect upon approval by the Governor.

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