

Your Guide to Landlord - Tenant Disputes

This pamphlet is designed to provide you with general information regarding common landlord-tenant issues. It does not discuss every aspect of the law or all the legal issues that may come up in any particular matter. In addition, it is not intended to advise you on a particular case. If you find that you are in need of legal advice, please contact one of the following resources:

<p>Central Virginia Legal Aid Society 804-648-1012</p>	<p>Legal Aid Justice Center 804-643-1086</p>
<p>Hunton & Williams Church Hill Office 804-775-2248</p>	<p>Virginia Lawyer Referral Service¹ 800-552-7977</p>

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Introduction

This guide is intended to help a person understand the general issues and legal procedures that are involved in most landlord-tenant disputes. However, housing law is a complex area of litigation, and it is always recommended that a person seek the assistance of an attorney before taking any action.

What is a lease?

A lease is an agreement in which a landlord gives a tenant the right to live in a house or apartment in exchange for the tenant's regular payment of rent to the landlord. A lease is generally in a written form but may also be a verbal agreement. A lease does not give the tenant an ownership interest in the property.

Every lease should contain a term that states the duration of the lease. For example, the lease may state that the lease is one year, one month or any other period of time. If the duration is not set out in the lease, or there is no written lease, the law considers the term to be one month. Most leases contain provisions that renew the lease automatically for an additional term if neither the landlord nor the tenant gives advance notice to terminate the lease.

A month-to-month lease can only be terminated by providing at least 30 days written notice prior to the next rent due date. A year-to-year lease may be terminated by three months written notice prior to the end of the lease. No lease may be terminated in the middle of the term unless there has been a violation of the lease or both the landlord and the tenant have agreed to terminate.

What is a security deposit?

A landlord may require the tenant to pay a security deposit, which the landlord will hold as "insurance" in case the tenant damages the property or breaks the lease. The landlord may apply the security deposit to pay unpaid rent, late charges, or damages to the apartment. The landlord may not apply the security deposit, however, to fix reasonable wear and tear.

The landlord is required to provide the tenant with a written report within 5 days of the tenant moving-in

that itemizes the damages existing at that time, or the landlord must adopt a written policy that permits the tenant to prepare the report. The report will be deemed correct unless it is objected to in writing by the landlord or the tenant within 5 days of its receipt.

The security deposit may not exceed two months' rent, and the landlord must accrue interest on all security deposits that are held for more than thirteen months. When the term of the lease expires and the tenant moves out, the landlord must return the tenants security deposit and provide the tenant with an itemized list of all deductions from the security deposit within 45 days.

At times, landlords attempt to hold on to the security deposit, alleging that they had to repair damages caused by the tenant. Therefore, it is very important for the tenant to take pictures of the premises at the time of moving out, to show the condition of the premises and possibly challenge a claim made by the landlord on the security deposit.

Tenants Rights and Responsibilities

By law, a tenant has a right to the "quiet enjoyment" of the rental property, which means the right to inhabit peacefully the home without undue interference from the landlord. Once the term of the lease has begun, the landlord ceases to have a right to enter the property unannounced. Unless there is an emergency, the landlord must provide reasonable notice prior to entering the property for appropriate purposes (e.g., maintenance, repairs, etc.).

A tenant must pay the rent for the leased property at the time and place designated in the agreement. Payment should also be made in the form detailed in the lease (e.g., cash, check, money order). Failure to pay the rent in the time and manner described may be a violation of the lease agreement and lead to eviction proceedings. Moving out after receiving a notice of delinquent rent does not release the tenant from paying rent. A judgment may still be entered against the tenant, requiring the tenant to make monthly payments until the lease expires.

A tenant also has the obligation to maintain a clean and safe dwelling. To that end, tenants must:

- conduct themselves and require their visitors to conduct themselves in a manner that does not violate the peace and enjoyment of the neighbors;
- not allow anyone to possess drugs or conduct criminal activity on the premises;
- not deliberately destroy or damage any part of the dwelling;
- abide by all reasonable and lawful rules and regulations of the lease;
- use all utilities, facilities and appliances in a reasonable manner;
- keep all fixtures as clean as their condition permits;
- regularly remove all garbage and waste and dispose of them in appropriate facilities;
- keep the house or apartment in a clean and safe condition;
- comply with the terms of the lease as well as all applicable housing and fire codes.

At the end of the term, the tenant should move out of the property unless the lease has been renewed. If the tenant fails to leave the apartment, the landlord may begin eviction proceedings.

Landlord's Rights and Responsibilities

A landlord is entitled to expect that a tenant will comply with the above-stated obligations. If a tenant fails to pay the rent when it is due, the landlord may provide the tenant with a 5-day "pay or quit" notice, which advises the tenant in writing that the rent must be paid within 5 days or risk eviction proceedings. Until the tenant is evicted from the premises, he or she will continue to owe rent payments to the landlord.

If a tenant violates any of the other obligations under the lease, a landlord must notify the tenant in writing. If the tenant fails to correct the violation, the landlord may: (1) give notice that the violation must be corrected in 21 days or the lease will terminate in 30 days, or (2) enter the dwelling, correct the violation (if possible) and bill the tenant. If the violation can be corrected by repairs, payment or other action, and the tenant corrects the violation prior to the date specified in the notice, then the lease will not terminate. If a landlord accepts rent knowing that a tenant has violated the lease, the landlord waives the right to terminate the lease for

that violation, unless he or she provides written notice reserving the right to evict.

A landlord also has the obligation to comply with applicable state and local health and building codes. To that end, landlords must:

- make all repairs and do whatever is necessary to keep the premises in a fit and habitable condition;
- in an emergency, repair any maintenance problems (e.g., no heat in the winter, no water) within a reasonable time of first learning of the problem;
- keep all common areas of the premises in clean and structurally safe condition;
- maintain all electrical, plumbing, sanitary, heating, ventilating, air-conditioning (if provided), and other facilities and appliances supplied or required to be supplied by the landlord in good and safe working order;
- provide and maintain appropriate trash receptacles;
- supply running water and reasonable amounts of hot water and air-conditioning (if provided) and heat in season, unless those utilities are exclusively in the tenants control or directly supplied by public utilities.

Eviction

A tenant may only be evicted from the premises if the court has entered judgment for the landlord and granted him or her Writ of Possession. A court may grant the landlord a Writ of Possession based upon any one of the four following reasons: (1) rent is unpaid 5 days after the tenant receives a 5-day notice, (2) a lease violation has not been corrected within 21 days after receiving written notice, (3) the lease has ended without renewal, or (4) a lease violation occurs that is not remediable.

In order to begin the eviction process, the landlord must provide written notice to the tenant that the landlord will be pursuing eviction proceedings in court. The landlord must then file an application for a “Summons for Unlawful Detainer” in the clerk’s office for the General District Court. The clerk will then set a date for a hearing. The tenant will be served with the “Summons for Unlawful Detainer,” which informs the tenant of the case and the date of the hearing (“return date”). Failure to appear at

the return date may result in the court issuing an order for the tenant’s immediate eviction. If an eviction is based upon a tenant’s failure to pay rent, and the tenant pays all back-rent, late charges and other costs before the return date, then the landlord will not be able to evict the tenant. However, this “right of redemption” may only occur once during any 12-month period.

At the hearing, both the tenant and the landlord will present evidence to show whether the tenant should be evicted from the property. Landlords should bring: (1) the lease for the property; (2) record-keeping books; (3) any other documents that are relevant to the landlord’s claims/defenses; (4) witness(es). Tenants should bring: (1) rent receipts, cancelled checks, or other proof of rent payments; (2) the lease for the property; (3) photographs of any conditions the tenant is claiming; (4) receipts or bills for any money the tenant claims to have spent; (5) any other documents that are relevant to the tenants claims/defenses; (6) witness(es). *Please see the pamphlet “Your Guide to Civil Litigation in General District Court” for more information about the court proceedings.*

If the judge rules that the landlord is not entitled to possession, the tenant may remain in the property, so long as the rent is paid on time and the terms of the lease are followed. If the judge rules that the landlord is entitled to evict the tenant, the judge will grant the landlord a judgment for possession. The judge may also award the landlord any back-rent, fees, and any other damages, including repair costs. If a tenant fails to appear in court, the judge will automatically issue a default judgment against the tenant and order eviction. If either party wishes to appeal the judge’s decision, such notice must be filed with the Circuit Court within 10 days of the judge’s decision and an appeal bond must be secured.

If the landlord has obtained a judgment for possession, he or she may request the court clerk to issue a “Writ of Possession” after the appeal period has expired. The landlord then may request the sheriff to execute the Writ of Possession and evict the tenant; however, the sheriff must provide the tenant with 72 hours notice prior to eviction. If the tenant does not voluntarily leave within those 72 hours, the landlord, with the sheriff, may physically remove the tenant and his/ her

possessions from the apartment or, in the alternative, lock the tenant out of the premises. If the landlord chooses to lock the tenant out of the premise, then he or she must provide the tenant with a reasonable opportunity (at least 24 hours) to reclaim his or her possessions.

Any personal property left in the rental unit after the landlord regains possession is considered to be abandoned. If the landlord wishes to dispose of the abandoned property, he or she must provide the tenant with written notice at least 24 hours prior to the property’s disposal.

State law prohibits illegal evictions, which occur when a landlord: (1) locks the tenant out of his/her apartment and removes the tenant’s personal belongings; or (2) deliberately fails to supply the tenant with essential services, such as heat, water, gas or electricity. If a landlord has illegally evicted the tenant, the tenant can sue the landlord to recover possession of the apartment, restore the utilities or terminate the lease.

Disputes Regarding Repair and Maintenance

A tenant must notify a landlord in writing of any alleged violations regarding the maintenance of the property and a date by which such repairs should be completed. The tenant should send the letter by certified mail and keep copies of the letter and the certified mail receipt. If the landlord fails to make the repairs after 30 days of receiving this letter (emergencies, such as lack of heat or water, may require more immediate action), and the lack of repairs affects the health and safety of the tenant, then the tenant may pursue a legal action against the landlord.

If a tenant wishes to continue living on the property if the repairs are made, she or he may pursue a “rent escrow suit.” The tenant should complete a “tenant’s declaration,” which is available at the clerk’s office for the General District Court. The tenant must file the signed declaration with the court, include copies of the letter sent to the landlord and its certified mail receipt and pay the filing fee.

The tenant’s monthly rent must be placed into a rent escrow account in the General District Court within 5 days of the rent payment due date. The check needs to be payable to the Court, not the

landlord. A rent escrow account is set up by the court to hold the tenants rent payments until the dispute between the landlord and the tenant is settled. The court will then set a date for the hearing and notify both the tenant and the landlord of when it will be held. A tenant cannot stop paying rent because the landlord refuses to do repairs.

If the judge finds that the landlord has violated the law because repairs were not made to a problem that affects health and safety, the judge will order the landlord to make the repairs. The judge may also reduce the rent or award back-rent to the tenant.

For serious violations affecting health or safety, the tenant may seek an emergency order (“injunction”) from the Circuit Court. Such an order will require the assistance of an attorney.

References

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