

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 as a tenant are in need of legal advice, please contact one of the following resources:

Central Virginia Legal Aid Society - 804-200-6046

Legal Aid Justice Center - 804-643-1086

Hunton Andrews Kurth Church Hill Office - 804-775-2248

Virginia Lawyer Referral Service - 800-552-7977

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. As of July 1, 2019, a landlord must offer a tenant a written lease. If the landlord does not do this, the law sets forth a written lease that will apply. 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, the law considers the term to be one week if the tenant pays weekly rent or one month if the tenant pays monthly rent. 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 week to week lease may be terminated by providing at least 7 days written notice prior to the next rent due date. 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 in writing 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. No interest is paid on security deposits. When the term of the lease expires and the tenant moves out, the landlord must return the tenant's security deposit and/or 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 in and 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 at least 72 hours' notice prior to entering the property for appropriate purposes (e.g., maintenance, repairs, etc.) that have been not been requested by the tenant, unless it is impractical to do so.

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 or until the property is re-rented.

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;
- keep the dwelling unit free from insects and pests and promptly notify the landlord of any insects or pests and be financially responsible for the added cost of treatment or extermination due to either the tenant's unreasonable delay in reporting insects or pests or due to the tenant's fault in failing to prevent infestation;
- 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; and
- 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 nonpayment 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.

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

- comply with the requirements of applicable building and housing codes;
- 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;
- maintain premises in a condition to prevent the growth of mold;
- 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; and
- certify that all smoke alarms are present, have been inspected, and are in good working order.

Eviction

A tenant may only be evicted from the premises if the court has entered a judgment of possession and later granted a Writ of Eviction for the landlord. A court may grant the landlord a judgement of possession for any of the following reasons: (1) rent is unpaid 5 days after the tenant receives a 5-day notice; (2) a remedial lease violation has not been corrected within 21 days after receiving written notice to fix the violation within 21 days; (3) a lease violation occurs that is not remediable and the landlord gives the tenant a 30 day notice terminating the lease for that reason, or (4) the lease has ended without renewal.

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 and time of the hearing ("Return Date"). Failure to appear at the Return Date may result in the court issuing a judgment of immediate possession. If an eviction is based solely upon a tenant's failure to pay rent, and the tenant, on or before the Return Date, pays all rent, late charges and reasonable attorney fees (if an attorney is involved), and the court costs due as of the Return Date, then the landlord will not be able to evict the tenant. If the landlord rents 5 or more units, or has at least a 10% interest in 5 or more units, the tenant may use any "right of redemption" at any time. Otherwise, the tenant may use one "right of redemption" 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); (5) the nonpayment or termination notice; (6) the Statement of Tenant Rights and Responsibilities. 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 (if Tenant has filed a Tenant's Assertion); (4) receipts or bills for any money the tenant claims to have spent; (5) copies of any notices sent by Landlord to Tenant and any requests or communications sent from Tenant to Landlord; (6) any other documents that are relevant to the tenants claims/defenses; (7) 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, and may award attorneys' fees. If a tenant fails to appear in court, the judge will automatically issue a default judgment against the tenant and grant the landlord possession. If either party wishes to appeal the judge's decision, a notice of appeal, appeal costs and any appeal bond must be filed with the General District Court within 10 days of the judge's decision.

If the landlord has obtained a judgment for possession, he or she may request the court clerk to issue a "Writ of Eviction." However, the Writ of Eviction may not be executed until after the 10 day appeal period has expired. The landlord then may request the sheriff to execute the Writ of Eviction 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 state in (i) a termination notice that abandoned property will be disposed of within 24 hours of termination, (ii) if the Landlord believes the unit has been abandoned Landlord must request Tenant confirm that Tenant

intends to occupy and that request must include a notice that any personal property will be disposed of within the 24 hour period after the expiration of seven days; or (iii) provide the tenant with separate written notice that abandoned property will be disposed of following a ten-day period.

State law prohibits illegal evictions, which occur when a landlord does any of the following, without a court order: (1) locks the tenant out of his/her apartment; (2) removes the tenant's personal belongings; (3) deliberately fails to supply the tenant with essential services, such as heat, hot water, running water, gas or electricity or (4) intentionally makes the property unsafe. If a landlord has illegally evicted the tenant, the tenant can sue the landlord to recover possession of the apartment, restore the essential services or terminate the lease by filing a Tenant's Petition for Relief from Unlawful Exclusion.

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 first class mail and also may send by certified mail and keep copies of the letter and the certified mail receipt. If the landlord fails to make the repairs after 21 days of receiving this letter (or sooner in case of emergencies such as lack of heat or water) and the lack of repairs is a material breach of the lease or noncompliance with a law, or affects the health and safety of the tenant, then the tenant may pursue a legal action against the landlord.

If a tenant wishes to pursue a "rent escrow suit" he or she should complete a "Tenant's Assertion and Complaint," or Form DC-429, which is available online or at the Clerk's Office for the General District Court. The tenant must file the signed form with the court and include copies of the letter sent to the landlord and its certified mail receipt. On the form, the tenant should ask the judge to order repairs, to order repairs and some of the rent money returned, or to terminate the lease so the tenant can move. The tenant must pay filing and service fees or ask for Form DC-409 if he or she cannot afford it.

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 tenant's 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.

References

VirginiaLegalAid.org. Click "Housing" link for information on Landlord-Tenant issues.

"Getting Repairs" Central Virginia Legal Aid Society, May 2016; <http://cvlas.org/wp-content/uploads/2016/04/repairs.pdf>

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“Bedbug Guidance,” Virginia Department of Agriculture and Consumer Services;
<http://www.vdacs.virginia.gov/pdf/bb-VAMA.pdf>

“Virginia Residential Landlord and Tenant Act,” Virginia Department of Housing and Community Development; <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/2019-landlord-tenant-handbook.pdf>

“Housing Law Resources,” Legal Services Corporation of Northern Virginia; <http://lsnv.org/self-help-resources/housing-law-resources/>

“Eviction Process,” Fairfax County; <https://www.fairfaxcounty.gov/sheriff/eviction-process>

“Evictions, Including Lock Outs and Utility Shutoffs,” Virginia Legal Aid Society;
<https://www.valegalaid.org/resource/evictions-including-lockouts-and-utility-shut?ref=RNtsY>

“Your Rights As a Tenant,” Virginia Legal Aid Society; <https://www.valegalaid.org/files/E095B726-FCD8-81C1-17DC-A16C7ED73FFF/attachments/B155CC1C-F583-D333-349E-676269CFBAD0/tenants-rights.pdf>

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