

TIPS FOR TENANTS

AN OVERVIEW OF YOUR RIGHTS & RESPONSIBILITIES

For more information on the topics below, see the pages to follow in this document.

As a tenant, you have certain rights and obligations under the Virginia Residential Landlord and Tenant Act. All apartment leases fall under this act. Duplexes or houses may or may not be covered, depending on the lease and the number of properties owned by the landlord. You may be able to get a copy of the Act from a local state housing office, or from the Virginia Department of Housing and Community Development at 804.371.7100. HOME cannot provide legal advice or represent you in court, but may be able to help you resolve problems by providing information about your rights as a tenant. For legal assistance, contact a lawyer or your local Legal Aid office.

LEASING AN APARTMENT

- Leases are usually impossible to break without court action.
- Get all agreements in writing.
- Inspect the apartment before moving in and document all problems in writing.
- Read and understand your lease before signing and keep a copy for yourself.

You can find a link to the Virginia Residential Landlord and Tenant Act on our website at www.HOMEofVA.org. For a current copy of the Landlord/Tenant Handbook, call DHCD annually at **804.371.7000**, or visit their web site at www.dhcd.virginia.gov to download a copy. For more landlord/tenant information, visit www.valegalaid.org and click on housing.



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WHAT IF LANDLORD WON'T MAKE REPAIRS?

- At the first sign of trouble, put your complaint in writing to the landlord and keep a copy.
- Never refuse to pay your rent because repairs are needed; instead, you need to follow a legal process to set up an escrow account with the court (described in following pages).
- Report serious violations to your city/county building inspector's office.

WHAT IF I CAN'T PAY MY RENT?

- If a landlord wants to evict you, he must first take you to court.
- Always go to court when summoned; this will help delay the eviction.
- If you are evicted, you may still owe the rent for the rest of the lease period.
- If your possessions are actually being removed from your property by the landlord and he/she has not filed the eviction with the sheriff, you may be able to get help from the police.
- Until your court-ordered eviction day, the landlord has no additional rights to your property. This means he/she cannot turn off utilities, change locks, or enter.

WHAT IF MY LANDLORD WANTS TO EVICT ME FOR PROBLEMS?

- The landlord must prove in court that you violated the lease.
- The landlord must give you a chance to fix most problems before taking you to court.
- Until your court-ordered eviction day, the landlord has no additional rights to your property. This means he/she cannot turn off utilities, change locks, or enter the property without notice.

GIVING NOTICE/TERMINATING A LEASE

- If you plan to move, know how much notice your lease requires before it ends.
- A landlord can't ask you to move during your lease period unless he/she can prove in court that you have violated the lease agreement.
- A landlord can't change the terms of the lease during the middle of the lease term without your permission.
- Once the lease term is up, you or the landlord can terminate the lease without having to give a reason.

SECURITY DEPOSITS

- After you have moved out, the landlord has 45 days to refund your deposit.
- If your landlord has held your security deposit for 13 months or more, you may be owed interest on your deposit.
- You have the right to be present at the walk-through inspection after you move out, and the landlord must notify you of this right.
- Make sure you are not being charged for problems that were there before you moved in. Do this by making sure you do a walk through when you move in, documenting any problems, giving the list to the landlord, and saving a copy.

LEASING & REQUESTING REPAIRS

LEASING AN APARTMENT

Before you sign a lease, make sure you have inspected the actual apartment you will be renting. Remember to make your landlord put all agreements in writing before you move in. For example, if the landlord agrees to make a repair such as cleaning the carpet or painting a bedroom, make sure the promise is in writing. When you move into a place, write down all the things that are wrong with the apartment (such as torn screens) and get your landlord to sign an acknowledgement of them. By doing this, you may avoid being charged for damages you did not cause when it's time to move out. Many landlords and complexes have inspection checklist forms they use for this purpose.

Date

Dear Landlord's Name:

I am writing about problems with my apartment at 3321 Maple Court. As you know from my repeated complaints and my last letter, the following conditions exist in my property:

- 1) leak in the kitchen ceiling,
- 2) hole in the bathroom wall,
- 3) broken faucet in upstairs bathroom.

According to the lease, it is your duty to fix these problems. If these items are not repaired to my satisfaction by [date], I will pay my February rent into an escrow account with the General District Court on [date]. I hope this will not be necessary.

Sincerely,
Your signature

TO REPORT A CODE VIOLATION, CALL YOUR CITY/COUNTY BUILDING INSPECTOR'S OFFICE.

READ and UNDERSTAND everything in your lease before signing. If you do not understand something, or your landlord is not clear, seek legal advice. Make sure you understand the following points and that they are clearly stated in your lease.

- How much is the rent?
- How much is the security deposit?
- How much advance notice is required to move out at the end of the lease?
- What day is the rent due and how much is the late fee?
- Which utilities are included in the rent?
- What appliances are provided by the landlord?
- Which repairs are the landlord's responsibility?
- Are there any unusual rules or regulations? If so, get a copy of them.

WHAT IF MY LANDLORD WON'T MAKE NEEDED REPAIRS?

If you simply refuse to pay rent because of the poor conditions in your property, you will most likely lose in court if your landlord sues you for non-payment of rent. The law does allow for you to withhold rent, but you need to use the following procedure and do it through the court system. You must be current in your rent to use this procedure.

File a tenant's assertion: write your landlord a letter stating the problems you are having and what repairs are needed and keep a copy. If nothing is done and you continue to have problems, you may need to set up an escrow account with the General District Court. This means that you pay your rent to the court, rather than to the landlord, and that the landlord may not take legal action against you for withholding your rent (if the property is under the Virginia Residential Landlord and Tenant Act).

Before you pay your rent to the court, you must write your landlord a second letter stating that you are going to pay your rent into escrow if the repairs are not done, and giving him/her the exact date you plan to do it. Again, keep a copy. (It should be on the day you normally pay your rent). The law requires that you give the landlord at least 21 days to make the repairs before you open the escrow account, unless they are emergencies related to health and safety.

When you go to pay your rent to the court, you must take a copy of your lease and a copy of the letter you wrote your landlord asking for repairs. You will be given a court date within 15 days, and the judge will then decide what to do with your rent money, and which repairs the landlord is required to complete.

Call Legal Aid or a lawyer for assistance if needed. Always mail the letter to your landlord and get a proof of mailing from the post office.

It is illegal for a landlord to evict a tenant or terminate a lease because the tenant reported a code or health violation. It's called retaliation. It is also VERY hard to prove in court. If you have problems because you made a complaint, you may need to get a lawyer.

TERMINATING A LEASE, RENT ISSUES, & EVICTION

WHAT IF I CAN'T PAY MY RENT?

The landlord may evict you for non-payment of rent. However, there is a legal procedure landlords must follow before they can actually put a tenant out. A landlord must first serve a pay or quit or material non-compliance notice, then file an unlawful detainer with the General District Court; then, if the landlord gets possession of the apartment in court, he/she must file an eviction notice with the sheriff. It is always a good idea to show up in court, even if you do not have the rent money. Your presence in court may delay eviction proceedings. If you are being evicted, you must be served an eviction notice from the sheriff's office. This eviction notice is valid for one year, as long as the landlord informs you he/she is "accepting the rent with reservation" every time the rent is paid. If you think you are being evicted illegally, call Legal Aid or a lawyer. Also, if you pay all the amounts owed (rent, fees & costs) before your court date, the unlawful detainer action must be dropped. This is called the Right of Redemption and is available one time in any 12-month period.

UNTIL YOUR COURT-ORDERED EVICTION DAY, THE LANDLORD HAS NO ADDITIONAL RIGHTS TO YOUR PROPERTY. THIS MEANS HE/SHE CANNOT TURN OFF UTILITIES, CHANGE LOCKS, OR ENTER THE PROPERTY WITHOUT NOTICE.

THIS IS THE RIGHT OF REDEMPTION EXCERPT FROM 55-243 OF THE CODE OF VIRGINIA:

A. If any party having right or claim to such land shall, at any time before the trial in such ejectment or before the first court return date in an action of unlawful detainer seeking possession of a residential dwelling based upon default in rent, pay or tender to the party entitled to such rent, or to his attorney in the cause or pay into the court, all the rent and arrears, along with any reasonable attorney fees and late charges contracted for in a written rental agreement, interest and costs, all further proceedings in the ejectment or unlawful detainer shall cease.

GIVING NOTICE/TERMINATING A LEASE

It should be stated in your lease how far in advance you need to give notice to move. Remember that in most leases, you may only give notice at the end of the lease period. In other words, if you have a yearly lease running from 9/1/2011 to 8/31/2012 and your lease states that a 60 day notice is required, you need to notify your landlord IN WRITING by the end of June 2012 that you wish to move. If you don't, you may be liable for another year's lease. Also, if the landlord is giving you notice that your lease is not renewing, and it is proper notice as stated in the lease, the landlord does not have to have a reason to terminate. Neither you nor the landlord can change any terms of the lease in the middle of the lease period without a mutually signed agreement. If you pay your rent weekly or monthly and do not have a lease, you are usually required to give notice either a week or a month ahead of time. For instance, if you are renting a place by the week, you would need to give a week's written notice to vacate. The landlord is also required to give you a week's written notice if he/she wants you to vacate. Remember, if you move out or get evicted before the end of your lease term, you may be held responsible for the rent for the entire lease period. For instance, if your lease runs through September and you get evicted or vacate the apartment in May without the landlord's consent, you will still owe for June, July, August, and September. However, if the landlord re-rents the property, you would no longer owe rent for the months after the apartment is re-rented. A landlord cannot collect rent twice for the same property.

WHAT IF MY LANDLORD WANTS TO EVICT ME?

If your landlord thinks you have violated the terms of the lease (examples: making excessive noise, having unauthorized people living there, having a pet without permission), he/she may pursue legal action in court to have you evicted. Before taking you to court, the landlord must issue a notice notifying you of the problem and giving you 21 days to correct it. The notice should say that if you do not correct the problem within 21 days, you must move out within 30 days. (You may still be responsible for the rest of the lease even if you do move out). After those 30 days, the landlord may file an unlawful detainer against you. This will be a summons to court. When you go to court, the landlord will try to prove how you violated the lease, and try to get the judge to grant him/her possession of the property. If possession is granted, the landlord may file an eviction with the sheriff ten days after the court date, provided the tenant showed up for court. If the tenant does not show up in court, the landlord may file for an immediate possession. (If the nature of the tenant's violation poses a safety threat to others, the process may be much quicker.) If you receive a lease violation notice, correct the problem, and then commit the same violation again, the landlord does not have to give you another chance to correct it. He/she can simply give you notice that your lease will terminate. However, the landlord still has to file an unlawful detainer and prove the violation in court.

EVICTION CONTINUED & SECURITY DEPOSITS

INTEREST RATES ON SECURITY DEPOSITS

(EXCERPT FROM THE VA RESIDENTIAL LANDLORD AND TENANT ACT)

55–248.15:2. Schedule of interest rates on security deposits.

A. The interest rate established by 55–248.15:1 varies annually with the annual rate being equal to four percentage points below the Federal Reserve Board discount rate as of January 1 of each year. The purpose of this section is to set out the interest rates applicable under this chapter.

B. The rates are as follows:

July 1, 1975—December 31, 1979	3%
January 1, 1980—December 31, 1981	4%
January 1, 1982—December 31, 1984	4.5%
January 1, 1985—December 31, 1994	5%
January 1, 1995—December 31, 1995	4.75%
January 1, 1996—December 31, 1996	5%
January 1, 1997—December 31, 1998	5%
January 1, 1999—June 30, 1999	4.5%
July 1, 1999—December 31, 1999	3.5%
January 1, 2000—December 31, 2000	4%
January 1, 2001—December 31, 2001	5%
January 1, 2002—December 31, 2002	0.25%
January 1, 2003—December 31, 2003	0%
January 1, 2004—December 31, 2004	1%
January 1, 2005—December 31, 2005	2.25%
January 1, 2006—December 31, 2006	4.25%
January 1, 2007—December 31, 2007	5.25%
January 1, 2008—December 31, 2008	0.75%
January 1, 2009—December 31, 2009	0%
January 1, 2010—December 31, 2014	0%

THEREAFTER, THE INTEREST RATE SHALL BE DETERMINED IN ACCORDANCE WITH SUBSECTION B OF 55–248.15:1. (2003, C. 438.) THIS IS THE CHART OF INTEREST RATES AS OF 2012. THIS PROVISION OF THE VA. CODE CAN BE AMENDED EACH YEAR; CHECK FOR UPDATES.

RIGHT OF REDEMPTION

If a tenant is served with an unlawful detainer, then pays ALL the amounts listed on it (rent, fees & costs) before the court date, the landlord cannot get possession in court. This is only available to a tenant one time in a 12 month period. In other words, if you received an unlawful detainer in May, paid the rent, the action was dropped, and then you received another unlawful detainer in September, the landlord could still get possession even if you paid everything before the court date. words, if you received an unlawful detainer in May, paid the rent, the action was dropped, and then you received another unlawful detainer in September, the landlord could still get possession even if you paid everything before the court date.

EVICTION PROCESS:

Sixth day of the month (assuming a five-day grace period and the rent is due on the first): Landlord issues pay or quit or material non-compliance notice, giving the tenant five days to pay the rent and late fees to avoid further action.

Eleventh day of the month: Landlord files an unlawful detainer with the court; the tenant is issued the unlawful detainer, which is a summons to go to court; court date is usually two to three weeks later; warrant usually asks for rent, late fees, court fees, legal fees and possession of the property.

Court date: Landlord asks for judgment for money owed and for possession of the property. If landlord wins and tenant showed up in court, landlord must wait 10 days to file the writ of eviction with the sheriff. If the tenant did not show up in court, the landlord can file that day for immediate possession. Then the sheriff issues the eviction notice to the tenant with the eviction date not less than 72 hours away.

10 days after court date, if tenant went to court: If tenant has not appealed, landlord files a writ of eviction with the sheriff. Sheriff issues an eviction notice to the tenant with the eviction date set on it (no less than 72 hours later). Eviction can happen on that day or any day thereafter for a full year. However, if eviction does not occur and tenant continues to pay rent, landlord must accept the rent with reservation or landlord loses the right to evict (without going to court again).

SECURITY DEPOSITS

At the end of the lease, you and your landlord should inspect the apartment after you have moved out. If the landlord holds some of your deposit for damages, he/she is required to give you a list of the actual damages and their costs. The landlord must do the inspection within 72 hours of lease termination, and must return the deposit within 45 days of lease termination. The landlord is also required to give you notice that you are entitled to be present for the damage inspection. Make sure you are not being charged for problems that were there when you moved in. (Use your move-in inspection list for documentation). If your landlord has held your security deposit for at least 13 months, you are owed interest on that security deposit. Once the 13 months is completed, interest starts being earned from the beginning of the lease, and is earned every day until the security deposit is returned (Interest is not compounded). Deposits on properties (houses) which are not under the Virginia Residential Landlord and Tenant Act do not earn interest.