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Know Your Rights: A Guide for Tenants Renting in the State of Virginia

Introduction

Under Virginia law, tenants have certain rights when they move in, while they are renting, and before they can be evicted. You are a tenant if you pay regular amounts of rent during regular time periods, such as once a month or once a week. You also are a tenant if you have lived in a hotel or motel for more than 90 days, or you are subject to a written lease for a period of more than 90 days. You are not a tenant if you have lived in a hotel or motel for less than 90 days. In this case, the only legal right you have is to receive a five day "pay or quit" notice before your landlord evicts you by self-help without going to court.

Lease Agreements

Most landlords will have you sign a lease before you move in. A lease is a contract stating what the landlord will do and what you as the renter will have to do. As the law will generally make you follow all the terms of lease, make sure you clearly understand what you have agreed to do. Pay careful attention to the following items:

1. How much the rent will be per month.
2. How much the security deposit will be, if there is one.
3. What day is the rent due and when is it considered late.
4. How much is the late fee, if you are late with the payment.
5. How long the lease runs: month-to-month, 6 months, one year.
6. How many days advance notice do you have to give if you wish to move.
7. Whether the electric, heat, water and sewer are included in the rent.
8. Whether a refrigerator and stove are provided by the landlord.
9. What you must do to get repairs made.
10. Any specific rules or other charges.

Although most landlords have a lease, there is no requirement that there be anything in writing. If you simply pay rent once a month, then it is called a month-to-month tenancy and starts again each month. Either you or the landlord can end the tenancy by giving written notice at least 30 days before the next rent payment is due. And, as each month is a new tenancy, the landlord must give the same 30 day notice if he or she wants to raise the rent.

IMPORTANT TIP: *If you and the landlord agree to something that is not written in the lease, for example specific repairs the landlord will make, add it to*

the lease and have both you and the landlord initial and date it. If you don't have a written lease, then simply write the agreement on a piece of paper, have both you and the landlord sign and date it, and keep a copy for yourself.

Security Deposits

Most landlords will make you pay a security deposit before you move in. Under Virginia law, the security deposit cannot be more than 2 months' rent. The security deposit is held by the landlord until you move out to cover the cost of any damages, above reasonable wear and tear, you may make to the apartment or house while you live there, or any unpaid rent or other charges that you owe. If you leave owing no money and the premises are clean and in generally the same condition as when you first moved in, the security deposit will be returned to you. However, if there are damages or money owed, the landlord will keep the security deposit.

If the landlord must return the security deposit, or send you an itemized list of the damages or charges he or she is deducting from the security deposit, within 45 days after you move out. If the landlord does not do either of these things within 45 days after you move out, or if you disagree with the landlord's itemized list of the damages or charges, you can go to court and sue for the return of your security deposit.

IMPORTANT TIPS: Always thoroughly check the rooms, appliances, and plumbing before you move in to an apartment. As soon as you move in, make a list of all the things wrong with the apartment or house, give a copy to the landlord and keep a copy for yourself. This will protect you from being charged for them later.

When you are ready to move out, make an appointment with the landlord to inspect the premises together so you can agree on its condition. If you are concerned as to return of the deposit, you may also want to take pictures when you move out so you can later prove, if need be, how you left the premises. Always return the keys and if you expect return of the deposit, leave a forwarding address. When you move, take everything with you in as short a period of time as possible. Property you leave can be treated as abandoned. Finally, unless specifically agreed to by the landlord, do not use the security deposit to pay your last month's rent as your landlord could bring an eviction action when the rent is not paid timely.

Repairs

Under Virginia law, unless properly agreed otherwise, all landlords must do these things:

- Follow building and housing codes affecting health and safety.
- Make all repairs needed to keep the place fit and habitable.

- Keep in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances that the landlord supplies.
- Supply water, hot water, air conditioning if provided, and heat in season; unless the tenant alone controls the heat, air conditioning, or hot water, or unless provided directly by a utility company to the tenant on a separate meter.
- Pay for pest treatment or extermination, unless the tenant is at fault or the tenant unreasonably delayed in reporting the pests.

Under Virginia law, all tenants must do these things:

- Keep your rented space and plumbing as clean and safe as conditions permit.
- Use all utilities and appliances reasonably, and get rid of trash.
- Not destroy or mess up the property, or allow anyone else to.
- Not disturb your neighbors, or allow anyone else to.
- Follow the lease and reasonable rules of your landlord.
- Keep that part of the premises you occupy free from insects and pests, and promptly notify your landlord of the existence of any insects or pests.
- Pay for pest treatment or extermination if you are at fault in failing to prevent infestation.
- Pay for the added cost of pest treatment or extermination if you unreasonably delay in reporting the pests.

If something needs to be repaired that is the landlord's responsibility, you must notify the landlord in writing of the problem and give him or her a reasonable time to fix it. If it is an emergency, such as lack of heat or water, your landlord should fix it immediately. This means within hours, or at most a day or two. Other repairs must be made within a reasonable time. Your letter should specify the repairs needed and a time by which to fix each problem. As you must give your landlord access to your home to make repairs, you may also want to put in the letter what times of day are best for you, or how the landlord can reach you for permission to enter the premises.

IMPORTANT TIP: You should always notify your landlord in writing of any repairs that need to be made. Even if you speak to him or her about the problem, follow it up with a letter confirming the conversation. Mail the letter by 1st class mail – not an email or text message. In addition, you can use certified mail, return receipt requested, so you will have proof of it being sent and received. Always make a copy for your records of each letter you send.

The requirement of a written notice of repairs can also be met by calling your local housing inspector and having them inspect the premises. The inspector will then send a notice to the landlord and a copy to you listing the repairs that need to be made and a time frame to make them.

If repairs aren't made in a reasonable time, you can take your landlord to court with a Tenant's Assertion or a "rent escrow" case. At this point, it probably is best to get legal help. To use this procedure, you pay your full rent into court within 5 days of the date the rent first

comes due. You fill out a “Tenant’s Assertion and Complaint” form at the General District Court for the county or city where you live. You can attach a copy of the inspection report or your repair letter to the landlord. You also can list the bad conditions on the form.

To file and serve the papers will cost about \$58. You may ask the clerk for a “waiver of fee” if you can’t afford to pay. When you fill out the Tenant’s Assertion, you need to decide what you want the judge to do. You can ask the judge for any of these things: to order repairs completed before your rent is released to the landlord; to order repairs and return of some (or all) of the rent money to you for having to put up with the bad conditions; to order your lease ended so you can move out without paying future rent.

After filing the Tenant’s Assertion, the court sets a hearing date and has the landlord served with a summons to court. You can also ask the clerk to subpoena the building inspector if there was one, and any other witnesses who have agreed to help you. Subpoenas cost \$12 each unless your filing fees were waived. Before the hearing date you should get together your list of problems, a copy of your notice letter, certified mail return receipt (if any), the inspector’s report, any pictures or videos, and your rent receipts.

When the case is heard, you will present your evidence first. The landlord or judge may ask you questions. Ask the inspector and your witnesses to testify after you. Then the landlord gets to present evidence and witnesses. You can question them about what they have said, but don’t argue with them. If you do not come to court on your trial date, the court will dismiss your case. If you come to court and the other side does not, you should get a judgment. If both sides come to court, the judge will hear both sides and decide who wins.

IMPORTANT TIP: NEVER withhold your rent while awaiting repairs to be made or you could face possible eviction. Instead, you must be current in your rent and follow the procedures outlined above.

Terminating or Ending Your Tenancy

Whether your lease is written or just an oral agreement, there are certain procedures both you and your landlord must follow to properly end your tenancy. If you have no written lease and you pay rent by the month, the tenancy can be terminated by either you or the landlord for any reason or no reason at all, by giving at least 30 days written notice before the next rental due date. If you pay rent on a weekly basis, then it would be seven days’ notice. If you have a written lease, the notice requirements for termination should be contained in the lease. If it is a month to month lease, 30 days is usually required. If it is a year’s lease, the lease will usually state that your notice that you will not be renewing the lease must be given 30 or 60 days before the lease ends. Often times, a year’s lease will change into a month to month lease after the year runs or it may be for another year. Check the lease carefully!

IMPORTANT TIP: If you do not give the proper written notice when you are moving, you may be held liable for additional rent even if you no longer live on the premises.

If either you or the landlord breach the lease for a reason other than non-payment of rent, a notice can be sent stating that if the problem is not corrected within 21 days, the lease will terminate in 30 days. Note, even if you correct the problem, if the same problem happens again, the landlord does not have to give you another 21 day time period to fix the problem, but rather can simply serve you with a 30 day notice. If the breach of the lease is not capable of being corrected, then a straight 30 day notice can be set.

If you fail to pay the rent or other charges on time, the landlord can try to end your tenancy by sending you a 5 day pay or quit notice. If you pay all the money requested within the 5 day period your lease will not be terminated.

IMPORTANT TIP: Even if the time period has run on any notice to terminate your tenancy, the landlord cannot put you out, deny access to your home or shut off utilities to get you out. Rather they must first take you to Court, get a judgment of possession, and get a Court ordered Writ of Possession.

Note, if you commit a criminal or willful act that is a threat to health or safety, the landlord is not required to send a notice to terminate your tenancy, but rather can simply proceed with the filing of a court action for possession.

Eviction

Once your tenancy has been terminated by a proper notice, if you are still residing in the premises, the landlord can file an Unlawful Detainer action in Court seeking possession of the premises and any money you might owe. The Sheriff will serve you with the Unlawful Detainer and it will state why the landlord wants you evicted, how much money they are claiming and the date and time of your court appearance. If you are being sued for nonpayment of rent and you pay to the landlord – on or before your court date – all the rent, and any late charges, court costs, and attorney's fees that are due and owing as of your court date, the Unlawful Detainer must stop and be dismissed. You can only do this once in a 12 month period per landlord.

IMPORTANT TIP: If a new month's rent and late fees is due after receiving the unlawful detainer, but before the Court date, you will have to pay that as well. Always get a receipt and make sure you appear at the Court date to make sure it will be dismissed.

At the Court date, the Judge will call your name and ask whether you admit or deny what the landlord said in his Unlawful Detainer. If you admit it, the Court will enter judgment for possession of the property as well as a money judgment for the rent, damages, costs or fees sought by the landlord. If the landlord asks, the Judge can give immediate possession and allow the landlord to get a Writ of Possession right away. However, you cannot be evicted until your 10 day appeal period has passed. If the landlord does not ask for immediate possession, the Writ cannot be issued until the 10 day appeal period has passed. The Sheriff will provide you the Writ of Possession, as well as at least 72 hours' notice of the date the actual eviction will occur.

If you disagree with the landlord, the Court will usually set another date to actually try the case. The Judge will also ask both you and the landlord if you want the other side to put in writing why each feels they are right. The landlord's writing is called a Bill of Particulars in which he or she explains why they feel they are entitled to both possession and any money sought. You, in turn may be asked to write a Grounds of Defense explaining why you feel the landlord is wrong. The Court will set dates when these are due to be sent to the other side and filed with the Court. If they are not done by the required dates, you could automatically lose without ever presenting your case.

If you ask the case to be set for another day, the landlord can ask the Court that you pay all the rent owed to the Court until the trial date. Unless you have a good defense to the case, the Court will give you 7 days to pay the money to the court. If you fail to make the payment on time, the landlord can ask for judgment without ever having the trial.

IMPORTANT TIP: If you and your landlord should reach an agreement at any time during the case to take care of the matter, still show up in Court on your Court date(s) to make sure you know what happens. Often times a landlord will get their judgment but will work with you to catch up. However, if you fail to live up to the agreement, they can simply get their Writ of Possession without taking you to Court again.

When the case is heard, all witnesses will have to speak under oath. The landlord goes first. You will get a chance to question the landlord and any other witnesses. After that, you and your witnesses will testify. Then the landlord gets to ask questions. At the end, each side can make a short closing argument, telling all the reasons the judge should decide the case for the landlord or the tenant. After hearing both sides, the judge will decide the case. If you win, you can stay on as if the case never came to court. If the landlord wins, there will be a 10 day appeal period before the landlord can get the Writ of Possession. You can appeal the case to a higher court by filling out a notice of appeal in the Clerk's office within ten days of the judgment. However, you will also be required to pay an appeal bond within that same ten day period which would include all the money found owing to the landlord plus up to a year's future rent.

As explained earlier, the landlord can get a Writ of Possession which will be served on you by the Sheriff giving you at least 72 hours' notice of the date the actual eviction will occur. The Sheriff comes to keep the peace, and will not actually move you out. The landlord must take care of that. It is always best to move your things out before the sheriff arrives so as to avoid your belongings being placed on the curb.

IMPORTANT TIP: Simply making some payments to the landlord after the judgment will not stop the eviction process. The landlord can take your money and still proceed unless everything you owe has been paid and a new tenancy created. Even then, check with both the landlord and the Sheriff's Department to make sure that the eviction has been cancelled.