

# HOUSING

## Landlord-Tenant Issues

As you make the transition into senior citizen status, (and assuming you will not desire or need long-term care facilities) the housing accommodations that once met your needs may no longer serve your best interest. Some people prefer to avoid the physical and financial requirements of home ownership and instead rent a residence or apartment. There are a several rights and duties of both a landlord and a tenant in Virginia. Here are some guidelines.

### Obtain Necessary Information About Rental Property

After deciding the amount of rent you can afford and the type of house or apartment you want, you should shop around thoroughly. Carefully inspect the rental property you are considering, and note any problem areas or damage. It may be helpful to ask other tenants about the property and landlord relations. You should also consider the housing's insulation, heating and cooling systems, security, parking, quality of construction, and proximity to public transportation and shopping. Other important factors to be considered include the cost and availability of utilities, the demographic of your neighbors (seniors, families, students, transients, etc.), and handicapped accessibility.

### Understand Your Lease

A "lease" is an agreement between the owner of property, the "landlord," and a person who wants to use the property for a period of time, the "tenant." The lease may be oral or written; however, a written lease is much better and safer. Oral leases are not preferred because they are only as good as the recollection of the parties who enter into them. If either a landlord or a tenant fails to remember any term of an oral lease or disagrees with the other party's recollection of the terms of the lease, there is no writing to consult to resolve such a matter.

An example of an oral lease is a tenant telling a landlord that he or she will pay \$500 a month for the apartment and the landlord saying, "Fine, it's yours," accepting the first rent payment and delivering the keys to the property. Generally, the term of an oral lease is the same as the period of time for which the tenant pays the rent, up to one year. For example, if the tenant pays rent each month under an oral agreement, the term of the lease is only one month. This is called a month-to-month tenancy. If the tenant pays rent once every three months, the term of the lease is three months.

A written lease is a contract signed by both the landlord and the tenant which spells out the rights and responsibilities of both the landlord and the tenant. Although there are no special terms needed to create a lease, a standard lease should include the names of the parties, a description of the premises, the length of the lease, the amount of rent and security deposits due, if any, and the signatures of the landlord and tenant. Any oral promises and agreements must be written into the lease, or they will not be binding. Any subsequent change to the written lease must also be in writing and signed or initialed by both the landlord and the tenant. Although the landlord must provide the tenant a copy of the written lease within one month, it is best to insist on a copy signed by the landlord prior to paying rent and before moving in.

Before signing a lease, you should read it carefully, fully **understand** the contents, and agree with the contents. If you are not satisfied with the terms of your lease, it may be wise to consult an attorney.

# HOUSING

## Virginia Residential Landlord and Tenant Act (§§ 55-248.2 to -248.40 of the *Code of Virginia*)

The Virginia Residential Landlord and Tenant Act (VRLTA) governs most landlord and tenant affairs. VRLTA, however, does *not* apply to:

- public housing, if applicable HUD regulations are inconsistent with the VRLTA;
- transient housing for less than thirty days;
- landlords who, as individuals, own or lease:
  - no more than ten single family residences subject to rental agreements; or
  - no more than four condominium units or single-family residences located in any city or in any county having either the urban county executive form or county manager plan of government.

Even if your leasing situation is among those not generally covered by the VRLTA, you and the landlord can agree to have the VRLTA govern your lease. If the landlord specifically provides in the rental agreement for VRLTA to govern your lease then it will apply. Simply ask your landlord to include such a provision in your lease.

## Security Deposits (§ 55-248.15:1)

The landlord can, and probably will, request a security deposit before renting property to you. The purpose of the deposit is to guarantee that you will take good care of the property while you are renting. If the VRLTA applies, the security deposit may not exceed the total of two months rent, and if the landlord holds the security deposit for more than 13 months from the date of the lease, interest must be paid on the amount of the deposit from the date of the lease until the security deposit is returned to you. The interest will accrue at an annual rate equal to one percentage point below the Federal Reserve Board discount rate as of January 1 each year.

When you move out, the security deposit can be used only to pay for rent due but not for damages to the unit caused by other than normal wear and tear. Note, however, that the landlord has 30 days in which to notify a tenant in writing of any deductions. Thus, a tenant does not normally have a right to use the security deposit as the last month's rent.

If the VRLTA applies, the landlord must give you a written list of any claimed damage to the property, the dollar amount claimed for the damage, and any rent due, and he must return the remainder of your security deposit within 45 days after the lease ends and you have moved out.

If you desire to be present when the landlord inspects the apartment at the termination of the lease, you may so request in writing. The landlord must then notify you of the date and time of the inspection. Inspection must be made during business hours and normally within 72 hours of your moving out.

To ensure the return of your full security deposit when you move out, you should take certain steps to protect yourself when you first move in. If the VRLTA applies, the landlord is required, within five days of the beginning of your tenancy, to submit to you an itemized list of damages to the unit already existing at the time you moved in. The list is deemed correct, unless you object to it in writing within five days. If the landlord does not submit such a list to you, then you should thoroughly inspect the apartment and submit an itemized list of your own to the landlord. The list is deemed correct, unless the landlord objects within five days of receipt of this list. Both the landlord and tenant may agree to a joint inspection and prepare an itemized list. Remember to keep a copy for yourself.

# HOUSING

## Rental Application (§ 55-248.6:1)

When you want to lease property, the landlord may require that you first file an application and pay a fee. If you decide not to rent the property, or if the landlord rejects your application, then, under VRLTA, the landlord: (1) may keep an application fee of \$20 or less, and (2) must refund any portion of the fee in excess of a specified list of actual expenses and damages if the application fee exceeded \$20. Generally, the refund must be made within twenty days (ten days if this fee was paid by cash, certified check, cashier's check, or money order).

It is against the law, and it is a discriminatory housing practice, for any person to refuse to rent or to represent to a person that an otherwise available dwelling is not available due to an individual's age. If you believe you have been discriminated against on the basis of your age, you should file a complaint with the Real Estate Board, in writing, within one year after the alleged discriminatory housing practice occurred.

## Duties of the Tenant (§ 55-248.16)

- You must comply with all obligations in the rental agreement.
- You must pay the rent on time.
- You must keep the dwelling clean and remove rubbish from the premises.
- You must not deliberately or negligently destroy, deface or damage the premises, or permit others to do so.
- You should get permission from the landlord before you allow more people to move in with you than was originally were represented to the landlord, or before you sublet the property.
- You must permit the landlord to enter the property at a reasonable time and after reasonable notice (§ 55-248.18) so that the landlord may inspect the property, make necessary repairs or improvements, supply necessary or agreed-upon services, or show the property to prospective tenants or purchasers, except in emergency situations.
- You must give the landlord duplicate keys to all burglary and fire protection devices you install, and you should get the landlord's permission before installing these devices.
- You should NEVER withhold rent without first consulting a lawyer. If you cannot afford one, check with your local legal aid office.
- You must give proper written notice before moving out. Look to the terms of your lease for the proper notice requirements. If you have a month-to-month tenancy, 30 days' advance written notice is required from the beginning of the next tenancy period.
- You must follow the rules and regulations established for the property. This includes controlling the conduct of yourself, others authorized to live with you, and your guests.

## Duties of the Landlord (§ 55-248.12)

- The landlord must comply with local building and housing codes affecting health and safety. If you believe that your landlord is not complying with the local code, contact the local housing inspector.
- The landlord must maintain all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, in good working order and condition.

# HOUSING

- The landlord must make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
- The landlord must provide for collection, storage, and removal of garbage if there are two or more dwelling units. The tenant, however, may be responsible for sorting the garbage under state and local recycling laws and ordinances.
- The landlord must supply hot and cold running water, heat in season, and, if equipped, air conditioning, unless the rental unit is supplied by a direct public utility connection or the rental unit has its own hot water, heat installation, or air conditioning unit under the tenant's exclusive control.
- The landlord must keep common areas shared by two or more rental units in a clean and structurally safe condition.
- The landlord may not demand payment from a provider of cable, satellite, and other television services in return for granting tenants access to such services or for granting service providers access to tenants. The landlord, however, may require payment from tenants if the landlord is the provider of such services.

**Note:** The first three duties of the landlord, listed above, cannot be waived, and any clause in the lease waiving these duties is unenforceable. Additional duties of landlord and tenant may be spelled out in the lease.

Any county, city or town may require, by ordinance, that landlords who rent five or more units in one building shall install:

- deadbolt locks and peepholes in any exterior swinging door not made of glass;
- manufacturer's locks and removable pins or Charlie bars on exterior sliding glass doors; and
- locks on all exterior windows.

## Tenant Remedies/Defenses (§ 55-248.25)

You can defend a lawsuit brought against you by your landlord for possession of the unit or unpaid rent by asserting that the landlord failed to comply with the lease or his/her duties under the VRLTA, only if you take the following steps BEFORE the landlord sues you:

- a. Notify the landlord, in writing, of the problems (certified mail with return receipt requested is preferable); and
- b. Pay your rent into an escrow account with the court of the city or county in which the property is situated. You may sue the landlord in general district court for the city or county where the rental unit is located if the landlord violates either the terms of the lease, or the provisions of VRLTA, provided you first take the following steps:
  - a. Notify the landlord in writing of the problems (certified mail with return receipt requested is preferable); and
  - b. Allow the landlord 30 days to remedy the problem (fewer days are required if it is a health or safety problem); and
  - c. Pay your rent when due into an escrow account with the court.

# HOUSING

If there is something wrong with the rental property that affects your health and safety, you must notify the landlord in writing stating that, if the conditions are not fixed within 21 days, you will terminate the lease within 30 days after the landlord receives the letter. If the landlord fixes the conditions within 21 days, you may not terminate the lease.

If the landlord fails to provide an essential service, such as heat, electricity, running hot and cold water, gas, etc., you must notify the landlord in writing. If you allege that emergency conditions exist, you may sue the landlord in general district court and the court must hear the case within 15 days from proper service of process on the landlord.

The court may allow you to:

1. recover damages calculated as the reduction in fair rental value of the unit; or
2. find reasonable substitute housing during the noncomplaint period and without rent, as determined by the court, or recover reasonable attorneys' fees.

## Important Things to Remember

You can NEVER successfully use the remedies/defenses listed above if you, your authorized agent, or your guest caused the damages.

You can NEVER properly withhold rent money on your own, you must always pay the money to the court or to the landlord.

You should ALWAYS make written and dated complaints to the landlord and be sure to keep a copy.

Keep receipts/cancelled checks of rent payments, copies of lease agreements, records of damages, and any correspondence between yourself and the landlord.

The landlord may keep a security deposit only in the amount of rent owed or for the costs of repairs or cleaning after you move.

If you suspect or find that the rental unit is substandard, you should:

- a. call the landlord and ask that the repairs be made;
- b. give written notice of the problems to the landlord by certified mail;
- c. call the health department or local housing inspector if the landlord refuses to make the repairs;
- d. contact a lawyer if the problem still exists.

## Landlord Remedies/Eviction (§ 55-248.31)

When you are behind in your rent, the landlord has a legal remedy for rent, or possession of the property, or both. In order to enforce this right, the landlord must have a "Notice to Pay or Quit" served upon you. The notice generally states that you must pay all the rent due within five days or the landlord may terminate the lease and take possession of the rental property. If the rent is not paid within five days and you have not vacated the premises, the landlord may sue you to get possession of the property and possibly to recover any losses, including attorneys' fees, if applicable.

# HOUSING

There are other reasons why the landlord may attempt to evict you, other than the nonpayment of rent. If you violate the rental agreement in a material way affecting health and safety, the landlord may serve notice requiring you to move out in 30 days, unless you have corrected the lease violation within 21 days. If the breach poses an immediate threat to health and safety, the landlord may terminate the lease immediately, allowing you a hearing within 15 days, at the most. If you have not moved out at the end of the notice period, the landlord may bring suit to gain possession of the property.

If you are on a month-to-month lease, your landlord needs no reason to evict you. All your landlord has to do is give you 30 days' written notice, beginning on the day your usual rent is due. As mentioned before, however, the landlord may not evict you solely on the basis of your age.

If the court orders you to move out, and you still refuse to move, the landlord can have you evicted, usually by the sheriff. Both you and your possessions will be removed from the premises.

Under the VRLTA, a landlord may not act on his own to remove you or your possessions physically from the premises, to lock you out, or to cut off your utilities in order to force you out. The landlord must use only the proper court procedures to evict you (§ 55-248.36).

## Retaliatory Action by Landlord

If you complain to the landlord, the health department, or some other government agency about the condition of the building, bring a lawsuit against the landlord. or join a tenant organization, the landlord may not, because of such action, raise the rent, reduce services, terminate your lease, or threaten to terminate your lease.

## Rental Assistance Program

Section 8 Housing, or the Rental Assistance Program, is a rental subsidy program funded by the federal government. The program is designed to supplement the rent payments of low-income families and individuals who qualify. Under the program, the tenant pays only up to 30% of his or her income in rent. The government pays the difference. An advantage of the program is that an elderly tenant can live in the apartment or house of his choice and may even be able to get help paying for the place where he already lives. The program is not available in every Virginia locality. To find out if Section 8 assistance is available in you area and, if so, how to apply, contact your local social services department, redevelopment or housing authority, or Area Agency on Aging.

### Eligibility

To qualify for assistance your income must be within the specific limit for your locality. The limit differs for each city and county in Virginia. The limit also depends on household size.

If you meet the income requirement, you may qualify for assistance if you:

- belong to a family consisting of yourself and one or more family members;
- belong to a family where the head of the household is 55 years or older, permanently disabled, or employed with at least one child under 18 years of age; or