

RENTING/LEASING A HOME

LANGLEY LAW CENTER 2010

Renting can be a reasonable alternative to buying a home. For many people, renting an apartment or house may be the only means of finding affordable housing. This handout is designed to help you understand some of the major issues involved in renting or leasing an apartment or house. Although this pamphlet is not all-inclusive, this information should help make the nerve-wracking process a little more bearable.

The following is general information on Virginia law for a number of legal issues involving both landlords and tenants. This information is intended for general guidance only. Each state's laws and each individual case may be different. If you have a specific landlord or tenant problem, you should contact a legal assistance attorney. Also, if you rent or lease property outside Virginia, as either a landlord or a tenant, you should consult a legal assistance attorney or private attorney licensed to practice in the state where the property is located.

What is the Virginia Residential Landlord and Tenant Act (VRLTA)?

In Virginia, the *Virginia Residential Landlord and Tenant Act (VRLTA)* is found at § 55-248.2 through 55-248.40 of the Code of Virginia. It automatically applies to most apartment leases. The lease cannot require a tenant to give up any protections under the *VRLTA*, but the landlord and tenant may agree to different provisions (such as the tenant assuming responsibility for maintenance of the property). Some of the specific provisions of the *VRLTA* are discussed further below. The *VRLTA* does not apply to the rental of a single-family home or condominium if the owner is a person who rents no more than ten units (no more than four units if in a city or county with certain types of property management plans). However, even if the *VRLTA* does not automatically apply, the landlord and tenant can agree in the lease that the *VRLTA* will apply (for example, "This lease is subject to the terms of the Virginia Residential Landlord and Tenant Act."). This may be helpful since the *VRLTA* provides specific protections for both the landlord and tenant and gives a recognized legal framework to resolve any disputes over the lease. Many pre-printed form leases include this provision. The answers to most of the following questions are based on the *VRLTA*.

What is a lease?

A lease or rental agreement is an agreement between the landlord and the tenant. It establishes the responsibilities of both the landlord and tenant. In very basic terms, the landlord gives the tenant the right to use the property and the tenant agrees to pay rent to the landlord. The lease also sets the amount of rent, when rent must be paid, any restrictions on the use of the property (no pets, etc.), the length of the lease, and responsibilities for damage and maintenance of the property. A lease for less than one year may be oral or written, but a

written lease will help to avoid later disagreements over who promised to do what.

You should carefully read the lease before you sign it. If there are terms you do not understand, a legal assistance attorney can review the lease and explain it to you. It is too late to ask questions after you sign a lease (but you should call a legal assistance attorney if you have a problem). In addition, a written lease is usually considered to be the entire agreement between the landlord and tenant. *VRLTA* § 55-248.7(G) allows for no unilateral changes in the terms of the rental agreement unless notice of the change is given in accordance with the rental agreement's terms or as otherwise required by law and both parties consent in writing to the change. Any verbal agreements that are different from the terms of the written lease may be unenforceable. Under *VRLTA* § 55-248.7(F), the landlord must provide the tenant with a copy of the signed lease within one month after it becomes effective.

The landlord says I have to pay an application or processing fee before I can sign a lease. Can the landlord do that?

Under *VRLTA* § 55-248.6:1, the landlord may charge an application fee or deposit. If the applicant fails to rent the unit or the landlord rejects the application, the landlord shall refund the applicant within 20 days all sums in excess of the landlord's expenses and damages together with an itemized list of these expenses and damages. The refund must be given within 10 days if the application fee or deposit was paid by cash or money order.

Should I inspect the property before I sign the lease?

A tenant should always inspect the property before signing a lease. Any damages such as worn or stained carpets, damaged walls, chipped sinks, broken appliances, etc. should be carefully noted. Some landlords provide an inspection form for a pre-occupancy inspection or allow the tenant to prepare the written report of the move-in inspection. The tenant must provide a copy of that report to the landlord. Both the landlord and tenant should initial each page of the inspection form and sign the last page. The tenant should give the original inspection form to the landlord when the lease is signed, and keep a copy for his or her own records. Photographs or a videotape of the property can also help to verify the original condition of the property should a dispute arise. If major repairs are needed, the tenant should consider looking at other properties and not signing the lease. If minor repairs are needed, the tenant should get the landlord to agree in writing what repairs are needed and when they will be completed. Additionally, under *VRLTA* § 55-248.11:1, the landlord must give the tenant a list of damages within five days after the tenant moves into the property. The tenant then

has five days to respond. If the tenant does not respond within five days, the landlord's list is assumed correct.

What is a "military clause" and why do I need one?

Transfers are a part of military life and do not always come only when expected. A "military clause" allows a military member to terminate a lease if transferred. *VRLTA* § 55-248.21:1 automatically includes a military clause in every residential lease, even if the lease is exempt from other sections of the *VRLTA*. It allows a military tenant to terminate a lease if he or she receives PCS orders to a duty station more than 35 miles from the rental property, TDY orders for over 3 months to a duty station more than 35 miles from the rental property, orders to report to government quarters, or is released from active duty. The military tenant must give the landlord written notice at least 30 days in advance and provide a copy of the orders. The lease cannot be terminated more than 60 days before the member must depart under the orders. The final month's rent will be pro-rated to the actual day that the tenant moves out. *VRLTA* § 55-248.21:1 explains that landlords may not charge any liquidated damages when an individual invokes the military clause.

Sample Military Clause – Tenant

"Tenant is an active duty member of the United States Air Force. Tenant may terminate this lease if Tenant is released or discharged from active duty, receives permanent change of station orders to a duty station located more than 35 miles from the rental property, receives temporary duty orders for a period of over 90 days to a duty station located more than 35 miles from the rental property; or is ordered to occupy government-supplied quarters. Tenant will provide written notice with a copy of military orders or a letter from Tenant's command to Landlord not less than 30 days in advance of the day the lease is to be terminated. Tenant may terminate the lease not more than 60 days before the date indicated on the orders. If the final period of occupancy is part of a month, the rent will be prorated for the period that Tenant actually occupies the property. Landlord shall perform any post-occupancy inspection of the property BEFORE Tenant is required to depart under the orders. When a lease is terminated under this provision, it will be considered the same as expiration of the entire lease term. Tenant shall not be liable for unpaid rent or any other damages due to the early termination. Landlord shall refund Tenant's security deposit as otherwise specified in this lease. This lease is VOID if Tenant receives orders meeting any of the above conditions AFTER signing the lease but BEFORE taking possession of the property."

A military clause is also a good idea for military landlords. It allows the landlord to terminate the lease if ordered back to the area where the property is located. However, a landlord's military clause is not automatically included in a lease even if the lease is subject to the *VRLTA*.

Sample Military Clause - Landlord

"Landlord is an active duty member of the United States Air Force. Landlord may terminate this lease if Landlord is released or discharged from active duty, receives permanent change of station orders to a duty station located within 35 miles of the rental property, or receives temporary duty orders for a period of over 90 days to a duty station located within 35 miles of the rental property. Landlord will provide written notice with a copy of military orders to Tenant not less than 30 days in advance of the day the lease is to be terminated. Landlord may terminate the lease not more than 60 days before the date indicated on the orders. If the final period of occupancy is part of a month, the rent will be prorated for the period that Tenant actually occupies the property. When a lease is terminated under this provision, it will be considered the same as expiration of the entire lease term. Landlord shall not be liable for any costs or other damages due to the early termination. This lease is VOID if Landlord receives orders meeting any of the above conditions AFTER signing the lease but BEFORE tenant takes possession of the property."

Should I carry renter's insurance?

A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage, obtained by the landlord, generally known as "damage insurance." Additionally, A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in residential units not occupied by the owner. See *VRLTA* § 55-248.7:2.

Every landlord and every tenant, even if in government-supplied quarters, should carry insurance for the property. Many insurance companies offer renter's insurance at reasonable rates. Renter's insurance covers not only damage to the tenant's property, but usually also provides liability coverage for any injuries to guests on the property. A renter's insurance policy may also provide the tenant with coverage for accidental damage to the rental property, such as a fire. Landlords should also contact their insurance company when renting property. Some insurance policies may be void if the property owner rents the property to someone else without notifying the insurance company.

How much of a security deposit can the landlord require? How much of the security deposit can the landlord keep? How soon after the tenant moves out must the landlord refund the security deposit?

Under *VRLTA* § 55-248.15.1, a landlord may require a security deposit of up to two months' rent. The landlord must

pay interest on the security deposit, but must refund the interest to the tenant only if the security deposit is held for at least 13 months after the date of the original rental agreement. When the tenant moves out, the landlord may apply the security deposit plus any interest to any damages, except normal wear and tear, caused by the tenant, any unpaid rent plus late payment fees allowed by the lease, or to other charges allowed by the lease.

Within 5 days after the tenant gives notice of intent to vacate the property, or when the landlord gives the tenant notice to vacate the property, the landlord must notify the tenant that he or she may be present for the landlord's inspection of the property. If the tenant wants to attend the inspection, he or she must give the landlord written notice. The landlord must then notify the tenant of the time and date of the inspection, but is not required to change the date and time to allow the tenant to attend. The landlord must inspect the property within 72 hours after the tenant vacates. If the tenant attends the inspection, the landlord must give the tenant an itemized list of any damages at the end of the inspection.

Whether or not the tenant attends the inspection, it may be a good idea for the tenant to take photographs or videotape the property after moving out all furniture, etc. The landlord must give the tenant a written list of charges or deductions from the security deposit within 30 days after the tenant vacates the property, and refund the remaining amount (plus interest if required). The landlord may also take deductions from the security deposit during the rental period, but must also notify the tenant in writing within 30 days of taking a deduction.

My landlord kept too much of my security deposit. What can I do?

If, after receiving the landlord's written list of damages and deductions required by *VRLTA* § 55-248.15.1, the tenant disagrees with any of the charges or deductions from the security deposit, he or she should write a letter to the landlord. The letter should tell what charges or deductions the tenant believes are too high. Often, the landlord and tenant disagree over what is "normal wear and tear." A copy of the inspection report from when the tenant moved in and any other records can help to show the original condition of the property. If the landlord still refuses to refund the security deposit, the tenant can file an action against the landlord in the small claims court for the city or county where the property is located. Unfortunately, some dishonest landlords have found that it can cost a tenant who has moved out of state more than the amount of the security deposit to return to file a lawsuit. To avoid this, some tenants have found it helpful to give the landlord a local mailing address, such as the home of a friend, for the security deposit refund.

The landlord will not repair the property. What can I do?

Under *VRLTA* § 55-248.13, a landlord must maintain the property in fit and habitable condition. This includes: complying with all local health and building codes;

maintaining electrical, plumbing, heating, air conditioning, and other appliances in working condition; providing water and hot water; and providing trash receptacles and removal if for two or more rental units. Similarly, under *VRLTA* § 55-248.16, the tenant has a responsibility to maintain the property in a clean and safe condition, and to use all utilities and appliances in a reasonable manner. The tenant also must not act in any manner that disturbs other tenants' "peaceful enjoyment" of the property.

Under *VRLTA* § 55-248.21, if the landlord doesn't fix a problem that affects the tenant's health and safety, the tenant must give the landlord written notice of the problem, and state that the rental agreement will terminate in 30 days if the landlord doesn't fix the problem within 21 days. If the landlord fixes the problem, the lease continues. If not, the tenant may move out after 30 days and is not liable for any remaining rent under the lease. The tenant may also sue the landlord and obtain a court order or injunction requiring the landlord to make the repairs plus damages, usually based on the difference between the rent paid and the value of the property without repairs, and attorney fees. In addition, under *VRLTA* § 55-248.23, if the landlord fails to supply heat, water, electricity, gas, or other services, the tenant must give the landlord written notice of the problem. If the landlord hasn't fixed the problem after a "reasonable time," the tenant may temporarily move out and be excused from paying rent or recover damages based on the difference between the rent and the reduced rental value of the property because of the problem.

However, even if the landlord does not fix a problem, the tenant cannot just stop paying rent and continue to live on the property. If the tenant continues to live on the property, he or she must pay the rent into an escrow account at the general district court for the city or county where the property is located. The court will hold a hearing and decide whether to terminate the lease or return some of the rent to the tenant.

Unfortunately, the provisions discussed above apply only to problems that constitute a "major noncompliance" with the lease or a serious threat to health and safety. Minor problems, even though frustrating if not fixed, do not allow the tenant to terminate the lease. There are no provisions under Virginia law that allow the tenant to withhold rent because of minor problems or make the repairs and deduct the cost from the rent without the landlord's approval. Even for minor problems, the tenant should give written notice to the landlord so that the tenant is not blamed if the minor problem becomes a major problem (for example, a minor plumbing leak isn't fixed and then causes major damage due to flooding).

I do not want the landlord coming into my house or apartment when I am not home. Can I put my own lock on the door?

Under *VRLTA* § 55-248.18, the tenant must allow the landlord access to inspect the property, make repairs or improvements, and show the property to prospective tenants or buyers. The

landlord must give 24-hour advance notice and enter only at reasonable times, except that the landlord may enter the property without the tenant's consent in an emergency or when the tenant makes the request for maintenance. The tenant may install an alarm system or change the locks with the landlord's permission, but only if it does no permanent damage to the property. The tenant must give the landlord a duplicate key and instructions on how to operate any alarms. The tenant may recover damages if the landlord improperly enters the property. The landlord may recover damages or even terminate the lease if the tenant refuses to allow reasonable access.

My tenant is late with the rent payment (again). What can I do?

This is one of the biggest problems for landlords. If the tenant is a few days late, but is expected to make full payment, the landlord may charge the late fee allowed by the lease. Landlords must be careful in accepting late payments: repeated acceptance of late payments without charging a late fee could be seen as a permanent waiver of the late fee provision or even of the requirement to pay rent by a certain date each month. Under *VRLTA* § 55-248.31, if the tenant does not pay the rent when it is due, or the rent check is returned due to insufficient funds, the landlord may give the tenant written notice that the rent has not been paid and that the lease will terminate in 5 days if the rent is not received. If the tenant makes full payment within the 5 days, the lease continues, but the tenant may use this provision only once during a twelve-month period. Even after the 5 days expires, the landlord waives the right to terminate the lease if the landlord accepts payment of the rent without giving written notice to the tenant that the rent is accepted "with reservation." If the rent is not paid, or it is paid later than 5 days and the landlord accepts it "with reservation," the landlord may file a lawsuit to take possession of the property and recover damages under *VRLTA* §§ 55-248.34 and 55-248.35.

Damages may include all rent for the remaining term of the lease unless the landlord is able to find a replacement tenant. The landlord may not just stop providing heat, water, electricity, or other services or lock the tenant out of the property. A landlord should never try to forcibly evict a tenant without a court order.

My lease says I must give the landlord/tenant "notice" if there are any problems. What kind of notice is required?

If the lease provides for a certain type of notice, such as "written notice delivered to landlord's place of business," that is the type of notice required, and you must comply with this requirement. If a landlord and tenant have a good relationship, a phone call may be all that is necessary for many things, although it may be a good idea to follow with a letter confirming the conversation. However, if a problem continues, proving when a phone call was made and to whom can be difficult. Written notice by certified mail or by return-receipt (if the receipt is returned) provides evidence of

delivery. In difficult cases, it may be necessary to have the notice hand-delivered, or "served," on a landlord or tenant by a legal process server.

The lease expired, but my tenant will not move out. Can I evict him or her?

If the tenant "holds over" without the landlord's consent after the lease expires or is terminated, the landlord may file a lawsuit to evict the tenant (called an "unlawful detainer action" in Virginia). The landlord may also recover any actual damages, including rent, plus reasonable attorney fees. A landlord should never try to forcibly evict a tenant without a court order.

My tenant owes me rent but moved out and left some furniture behind. Can I sell it?

Under *VRLTA* § 55-248.38:1, if the lease terminates and the tenant moves out but leaves personal property behind, the landlord may consider the property abandoned. The landlord may dispose of the abandoned property as the landlord sees fit or appropriate, provided he/she has either: (i) given a termination notice to the, which includes a statement that any items of personal property left in the premises would be disposed of within a twenty-four hour period after termination, (ii) given written notice to the tenant, which includes a statement that any items of personal property left in the premises would be disposed of within the twenty-four hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the premises would be disposed of within twenty-four hours after expiration of a ten-day period from the date such notice was given to the tenant. Written notice must be given to the tenant's last known address. If the property is sold, the landlord may deduct any rent or other amounts owed plus the costs of selling and storing the property. Any amounts left over are treated the same as the tenant's security deposit and must be returned to the tenant. To avoid future problems, the landlord should keep a list of the property and records of what was done with the proceeds of any sale.

Exemptions

Exemptions to the *VRLTA* are found in § 55-248.5. They include a purchaser who occupies a dwelling in connection with a contract for sale or occupancy in single-family residences where the owners own in their own name no more than ten single-family residences subject to a rental agreement.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.