

VIRGINIA TENANT RIGHTS UPDATE – JULY 2022

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Through Advocacy, Education, Litigation

*The Virginia Poverty Law Center (VPLC)
breaks down systemic barriers keeping low-
income Virginians in the cycle of poverty*

REMEMBER THESE THREE THINGS

UNDER VIRGINIA LAW, THESE ARE ALWAYS TRUE



Your landlord cannot cut off your utilities, lock you out, or take other actions to deny you free use and enjoyment of your home.



You do not have to move out just because your landlord tells you to leave or files an eviction case against you.



Your landlord must wait until he wins in court and the sheriff has a writ of eviction against you before removing you from the property.



Overview of the Eviction Process

VIRGINIA EVICTIONS

THE MANDATORY NINE STEP LEGAL PROCESS

Notice of Nonpayment Must Include:

- A statement that tenant has five days to pay past due rent and late charges
- The exact, correct amount owed by the tenant
- If landlord is a public housing authority, the name and telephone number of the local legal aid society
- If tenant receives a tenant-based rental subsidy, the statewide legal aid website and phone number
- If landlord is a public housing authority, receives a federal subsidy or has a federally guaranteed mortgage, a 30-day notice to vacate

1

STEP ONE

Notice of Default or Termination
(nonpayment, other lease provision,
nonrenewal)

2

STEP TWO

Summons for Unlawful Detainer (notice of
date, time and location of first court
hearing)

3

STEP THREE

Court Date - Tenant **MUST** go to court to
fight the eviction. If they don't go to court,
judge will enter an eviction order
automatically.

VIRGINIA EVICTIONS

THE MANDATORY NINE STEP PROCESS

Appealing an Eviction Judgment

- A tenant has 10 days after the entry of the judgment for possession/eviction to appeal the case to circuit court and get a new trial
- To appeal, the tenant must file a notice of appeal with the clerk and pay an appeal bond equal to the amount of the judgment
- The tenant must also continue to pay the monthly rent to the landlord; if they miss a payment, the appeal can be dismissed

4

STEP FOUR

Judgment for Possession (If the judge rules for the landlord, the landlord gets an order allowing them to take the next step to evict the tenant.)

5

STEP FIVE

10-day appeal period.

6

STEP SIX

Writ of Eviction (The landlord can get a writ of eviction from the court after they get a judgment. The writ instructs the sheriff to schedule the final eviction.)

VIRGINIA EVICTIONS

THE MANDATORY NINE STEP PROCESS

Right of Redemption

In cases that are only about unpaid rent:

- If the tenant pays everything owed (including lawful late fees and attorney fees if provided for in lease) on or before the first court date, the case will be dismissed
- Even if a judgment for possession/eviction is entered by the judge, if the tenant pays everything owed to the landlord no later than 48 hours before the scheduled eviction, the eviction must be cancelled



STEP SEVEN

Eviction Notice (The sheriff must give the tenant a copy of the writ and a notice with the date and time they will return to evict the tenant, which must be at least seventy-hours later.)



STEP EIGHT

Extended right of redemption



STEP NINE

Eviction by the Sheriff (Unless the court or landlord cancels the eviction, the sheriff will return on the date and time on the notice to physically remove the tenant and their belongings and change the locks)

VIRGINIA EVICTION DEFENSES

IF A TENANT HAS A DEFENSE, THEY SHOULD TALK TO AN ATTORNEY ASAP

DEFENSES RAISED AT TRIAL

- Tenant offered full rent payment to landlord and landlord refused to accept it
- The judgment for possession/eviction is more than 180 days old
- The writ of eviction is more than 30 days old
- Tenant is a survivor of family abuse and abuser is wrongful actor
- The tenant's breach was not material (significant)
- The landlord entered into a new lease with the tenant after learning about the tenant's breach
- For evictions based only on nonpayment of rent, the tenant made a partial payment of rent and the landlord did not provide a reservation notice with the required language
- Eviction is due to unit being uninhabitable due to flood or fire and landlord gave less than 14 days' termination notice
- Eviction is due to the building being rehabilitated/renovated, and the landlord gave less than 120 days' termination notice (unless lease is month to month)

Survivors of family abuse whose abuser breaches the lease can avoid eviction by obtaining a protective order or ban order against their abuser that removes the abuser from the premises.

Pay everything you owe,
including rent, late fees,
and court costs,
attorney's fees and
sheriff's fees, at least 48
hours before the
scheduled eviction to
cancel the eviction and
stay in your home.

THE RIGHT OF REDEMPTION

CHANGES EFFECTIVE JULY 1, 2021

- Starting July 1, 2021, tenants can use the “right of redemption” any number of times.
 - **Exception** = Landlords with four or fewer units can limit redemption to once per lease term with written notice to tenant.
- Your landlord must include clear language explaining the right of redemption in the pay or quit notice.
- Your landlord must give you the exact amount you need to pay in order to cancel the eviction when you ask for it.
- If you “redeem” the landlord **MUST** cancel the eviction and have the judgment marked satisfied..
- If the landlord does not cancel the eviction and the sheriff kicks you out, that is an “unlawful exclusion”.

UNLAWFUL EXCLUSION

WHAT TO DO IF YOUR LANDLORD TRIES TO USE SELF-HELP TO EVICT YOU



No “self-help” evictions! Your landlord cannot:

- Change the locks;
- Make the home unsafe; or
- Cut off essential services like water and electricity.



If your landlord self-help evicts you, you can sue your landlord.

- You can file a “Tenant’s Petition for Relief from Unlawful Exclusion” in General District Court.
- The courts must schedule the first hearing within five days.
- For more information on how to file, see VPLC’s Illegal Eviction Toolkit.



You can recover \$5,000.

- If the judge finds that the landlord illegally evicted you, you can recover \$5,000 or 4 months rent, whichever is more.
- You can also recover damages for expenses caused by the illegal eviction.



Repairs & Maintenance

REPAIRS AND MAINTENANCE



Your landlord has an ongoing duty to provide you with a safe and healthy place to live.

- Your landlord has the right to enter your home to make emergency repairs, even without your consent. An emergency is anything that can cause you immediate harm if not fixed, such as a gas leak.
- You have the right to refuse entry to your landlord for non-emergency maintenance IF your refusal is reasonable.
- Your landlord must give you 72 hours notice before entering the home to conduct routine (i.e. non-emergency) maintenance.

TWO REMEDIES FOR GETTING REPAIRS

IF YOUR LANDLORD IS REFUSING TO FIX A HEALTH AND SAFETY ISSUE

Repair & Deduct



If your landlord has not started repairs within 14 days of you giving notice, you can hire a certified contractor to do the repairs and deduct the cost from rent.

Tenant's Assertion



If your landlord refuses to do repairs within a reasonable period of time, you can pay rent into escrow with the court and ask a judge to mandate the repairs.

REPAIR & DEDUCT

A TENANT'S RIGHT TO USE A CONTRACTOR WHEN THE LANDLORD FAILS TO CONDUCT REPAIRS

To deduct cost of repairs from rent, tenant must:

1. Give the landlord written notice of the condition that is a fire hazard or serious threat to life, health, or safety of the residents;
2. Wait 14 days for landlord to complete or take major steps toward making the repair (shorter if harm is immediate);
3. If landlord has not completed or started repairs within 14 days, tenant can go to a third-party licensed contractor to complete the repairs;
4. Tenant must give the landlord an itemized statement of charges and receipts for the repair;
5. And then tenant can deduct the cost of the repair from the next month's rent. Deductions cannot exceed one month's rent or \$1,500, whichever is less. **The tenant can deduct the value of the repair even if the repair was donated or paid for by a third party on behalf of the tenant.**



Examples of “Health and safety” Defects

- Exposed electrical wires
- Broken stairs
- No hot or cold running water
- Rodents & pests
- Backed up sewage
- Smell of gas
- Lack of heat

TENANT'S ASSERTION

A TENANT'S REMEDY THROUGH THE COURT TO REQUIRE THE LANDLORD TO MAKE REPAIRS



To get court ordered repairs, tenant must:

1. Be current in rent and stay current;
2. Give written notice to the landlord of the need for repairs;
3. Wait a reasonable period of time for landlord to complete repairs;
4. If repairs are not made after a reasonable period of time, take the written notice and next months rent to General District Court and file a 'Tenant's Assertion (or rent escrow case). Tenant can ask the court to:
 - End the lease agreement
 - Order the landlord to make the repairs
 - Distribute escrowed money back to tenant or deduct money from rent amount due

“Reasonable” period of time depends on the issue.

For example, raw sewage, like an overflowing toilet, should be fixed immediately. Broken stairs should be fixed within a couple of weeks.



Rights and Responsibilities

A landlord cannot maintain a court action against a tenant (such as an unlawful detainer/eviction case) until the landlord has provided the tenant a copy of the Tenant Rights and Responsibilities

TENANT'S RIGHTS AND RESPONSIBILITIES

MUST BE PROVIDED TO TENANT BY LANDLORD



RIGHT

Landlords cannot charge a nonrefundable application fee of more than \$50 (\$32 for public housing/subsidized housing)



RESPONSIBILITY

Pay Rent on time

The terms of a lease “by operation of law” (ie if written lease isn’t offered) include:

Late fees of 10%

A security deposit of two months’ rent

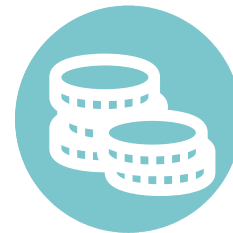
TENANT’S RIGHTS AND RESPONSIBILITIES

PROVIDED BY LANDLORD TO TENANT



RIGHT

Must be offered a written lease
If no written lease offered, terms of lease dictated by law



RESPONSIBILITY

If rent is paid late (usually late after 5th day of month) may have to pay late fee of no more than 10% of rent or amount due and owed by tenant, whichever is less, IF obligated by lease

Many landlords charge first and last month's rent in addition to a security deposit of two months' rent. This presents a significant barrier to low and moderate income tenants.

TENANT RIGHTS AND RESPONSIBILITIES

PROVIDED BY LANDLORD TO TENANT AT BEGINNING OF LEASE



RIGHT

A tenant has a right to do a move-in and move-out inspection with the landlord, and cannot be charged more than 2 months' rent as a security deposit



RESPONSIBILITY

May be required to get renters insurance which is different from damage insurance; total of security deposit and damage insurance cannot exceed two months' rent

Landlord must provide a full accounting of all payments made by the tenant within ten business days of receipt of a written request from the tenant

TENANT RIGHTS AND RESPONSIBILITIES

LANDLORD MUST PROVIDE AT BEGINNING OF LEASE



RIGHT

Tenant has the right to request (in writing) and receive receipts for cash and money order payments and an accounting of all payments made



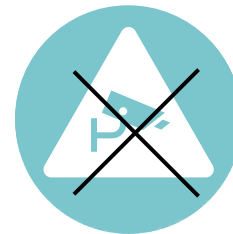
RESPONSIBILITY

Tenant must allow landlord access to unit during an emergency and, with 72 hours notice, for regular maintenance

A tenant is legally responsible for the actions of their guests, except in the case of a survivor of domestic violence whose abuser (guest) causes damage to the unit or otherwise violates the lease (as long as abuser is barred from premises in future)

TENANT RIGHTS AND RESPONSIBILITIES

LANDLORD MUST PROVIDE TO TENANT AT BEGINNING OF LEASE



RIGHTS

Tenant has a right to privacy and to a fit and habitable home



RESPONSIBILITIES

Tenant must keep home clean and safe

Thank You

Eviction Legal
Helpline

1-833-No-Evict
<https://vplc.org>

Virginia Poverty Law
Center

<http://housing.vplc.org>