VIRGINIA LEGAL AID SOCIETY

YOUR RIGHTS AS A TENANT

Under Virginia Law, tenants have certain rights when they move in, while they are renting, and before they can be evicted. The specific rights you have depend on whether or not your tenancy is covered by the Virginia Residential Landlord and Tenant Act (VRLTA).

Generally speaking, the Virginia Residential Landlord Tenant Act, or VRLTA, applies to all residential tenancies unless the landlord is eligible to opt out, and states this in a written lease. The VRLTA also applies to stays in hotels, motels, or boarding houses if the tenant has been renting for more than 90 days or has a written lease for more than 90 days. Even if your rental is not covered by the VRLTA, there may be other state laws that apply to your situation. If you do not know which law applies, you should seek advice from an attorney.

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 the lease, make sure you clearly understand what you have agreed to do. Pay careful attention to the following items:

- How much the rent will be per month.
- How much the security deposit will be, if there is one.
- What day the rent is due and when it is considered late.
- How much is the late fee, if you are late with the payment.

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- How long the lease runs; month to month, six months, a year.
- How many days advance notice you have to give if you wish to move.
- Whether the electric, heat, water and sewer are included in the rent.
- Whether a refrigerator, stove, air conditioner, or other appliances are provided by the landlord.
- What you must do to get repairs made.
- 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 or make other changes.

Special rule for victims of domestic violence: There is a special law about how you may enter into a rental agreement if you have been the victim of domestic violence. Here is the most likely situation, and how it works: 1) you have been living with someone who has abused you; 2) you are not a tenant or authorized occupant listed on the lease, but have been living there; and 3) you obtain a final Protective Order in which the judge orders the abuser to stay away from you AND gives you exclusive possession and use of the rented premises. If you in fact want to stay living there, you can give a copy of the Protective Order to the landlord and submit an application within ten days after the Protective Order was issued to become a tenant in the same place. If the landlord decides they don't want to accept you as a tenant, they have to give you written notice that your application was rejected. You then have 30 days after that notice to move out. If, on the other hand, you don't, within ten days, apply to become a tenant, and don't give the landlord a copy of the Protective Order, you have to move out no later than 30 days after the Protective Order was issued.

IMPORTANT TIP: *Under Virginia law you are considered a tenant at sufferance if you do not have a lease or pay rent. This means that you can be evicted for any reason at all, at any time and no particular notice needs to be given to you. The person who is letting you live there also does not have to take you to court to evict you and can have you removed (or change the locks) at any time.*

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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 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. The deposit cannot be more than two months rent. The deposit is held by the landlord until you move out to cover the cost of any damages you may make to the apartment while you live there or any outstanding 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, this deposit will be returned to you. However, if there are damages or money owed, the landlord will keep the Security Deposit.

The landlord may be able to withhold a reasonable portion of the security deposit to cover any unpaid water, sewer, or other utilities that were your responsibility to pay directly to the utility company under the lease agreement. The landlord must first give you notice of the intent to withhold that amount. That notice may be given to you in a termination or vacating notice, or in a separate written notice at least 15 days prior to the landlord's disposition of the security deposit. If the landlord actually pays the utility bills that were your responsibility, then the landlord must give you written confirmation of that fact within 10 days after the payment was made, along with payment to you of any balance of the security deposit owing. On the other hand, if you can provide written proof to the landlord that you actually paid the utility bills, then the landlord must properly refund the security deposit.

The landlord must return the deposit or send you an itemized list of the damages or charges he or she is deducting from the deposit within 45 days of when you move out.

IMPORTANT TIPS:

- Always thoroughly check the rooms, appliances, and plumbing before you move into 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. You may also wish to take

pictures of the apartment before you move in, so you have a record of the condition of the unit when you moved in. This will protect you from being charged for existing damages 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.

IF I RENT A PLACE, CAN I GET WATER AND SEWER SERVICE IN MY OWN NAME? IF SO, DO I HAVE TO PAY A DEPOSIT?

As a tenant, you can get water and sewer service in your own name from the local public utility, but they may require:

- A letter from your landlord authorizing the city to put the service in your name, and
- A security deposit equal to three to five months' worth of water and sewer charges. ***However, the local utility company is not allowed to require such a deposit if you provide them with written proof that you're receiving government need-based rental assistance.***

If you owe money to the utility when you move out, they may keep part or all of your security deposit to apply it against what you owe. If your security deposit doesn't cover all that you owe, then the utility company can place a lien against the landlord's property for the balance. The utility company is not allowed to put a lien against the landlord's property unless they have first gotten a deposit from you and applied your deposit to the balance owed.

RECEIPT FOR RENT PAYMENT

The landlord is required to give a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or a money order. This is true by law, even if it's not stated

in a written lease. You should ALWAYS request a receipt every time you pay rent by cash or a money order.

If you want an accounting of all the charges from the landlord and the payments you've made, you should make a written request to the landlord. The landlord is then required to give you a written statement showing all the charges and payments over the entire time of the tenancy, or the past 12 months, whichever is shorter. The landlord must provide this within 10 business days after receiving your request.

REPAIRS AND MAINTENANCE

Under Virginia law, unless properly agreed otherwise, most 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 (livable).
- Keep the common areas clean and safe.
- Keep in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances that the landlord supplies or must supply. This includes maintaining a carbon monoxide alarm installed by the landlord. The landlord must install a carbon monoxide alarm if the tenant requests it in writing, and it must be done within 90 days after the request is made. The landlord can charge the tenant a reasonable fee for the installation.
- 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.
- Maintain the place so as to prevent the accumulation of moisture and the growth of mold.
- Promptly get rid of mold when it appears.
- Prevent or remove infestation of rodents.
- Keep clean and safe any common areas used by more than one tenant household.
- Provide and keep up trash containers (except for single family houses).

Under Virginia law, all tenants must do these things:

- Keep your rented space and plumbing as clean and safe as conditions permit;
- Make reasonable efforts to keep the premises so as to prevent accumulation of moisture and growth of mold. Promptly notify the landlord of excess moisture and growth of mold.
- Use all utilities and appliances reasonably;
- Get rid of trash;

- Do not destroy or damage the property, or allow household members or guests to do so;
- Do not disturb your neighbors, or allow household members or guests to do so; and,
- Follow the lease and reasonable rules of your landlord.
- Make reasonable efforts to prevent insect or pest infestation, and promptly notify your landlord if an infestation occurs.

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 certified mail, return receipt requested, so you will have proof of it being sent. 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 the home is in too bad a state of disrepair, then it is possible that the building inspector could condemn the home. If the home is condemned then you may only have 24 hours to vacate the premises.

If repairs aren't made in a reasonable time, you can take your landlord to court with what is called 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 five 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 $30. You may ask the clerk for "waiver of fee" if you can't afford to pay.

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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. (In a Tenant's Assertion case, the judge can terminate the lease only if you request it. If the landlord wants it terminated, that has to be done as part of a separate Unlawful Detainer action brought by the landlord.)

After filing the Tenant's Assertion, the court sets a hearing date and has the landlord served with a summons to appear in 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 lease if written, a copy of your notice letter, certified mail return receipt, 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 you must give notice that you will not be renewing the lease 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 renew automatically for another year. Check the lease carefully!

A tenant may terminate a rental agreement if they are a victim of family abuse, sexual abuse, or other criminal sexual assault. This is allowed by state law, even if it's not stated in the lease. In order to use this early termination right, you must either have a "permanent" protective order (lasting for up to two years) that is currently in effect, or an order convicting the abuser of a crime of family abuse, sexual abuse, or other criminal sexual assault. You need to give at least 30 days' written notice to your landlord, and you must include with your notice a copy of the protective order or conviction order. You can use the same conviction order to terminate the lease in effect at the time of the conviction, and one more new lease after that.

Remember, if you move out or are evicted before the lease term is up, then you can be held responsible for rent until the lease term expires or the unit is re-rented. For instance, if your lease runs through September and you are 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.

If the landlord sells the property, the tenant (lessee) has the same rights against the new owner (grantee) as s/he had against the original owner (grantor). However, the lease would be controlling. Read the lease carefully to see if it says anything about the tenant's rights after the landlord sells the property. If the lease says nothing about a sale of the property, then the regular landlord/tenant law applies and the tenant has all the rights usually granted by the law and the lease.

IMPORTANT TIP: *It is important to continue to pay your rent on time, to the new owner. If you have any questions about who is the actual landlord, you may send a certified letter to the original landlord (retain a copy for your records) requesting clarification, or you may even want to check the local circuit court to see if the deed is listed in the new owner's name.* ***You should always request a receipt for payment of rent, regardless of to whom it is paid, and you should not withhold rent.*** *Withholding rent entitles the landlord to issue a five day pay or quit instead of giving you a 30 day notice.*

There is a law that requires your landlord to give you notice if the property *may be* foreclosed on, even if foreclosure hasn't occurred yet. It may happen that, even though you and the other

tenants are paying your rent to the landlord, the landlord is not current in paying the mortgage on the property. The landlord is required to give you written notice of any of the following: the mortgage is in default, the landlord has received a notice of acceleration of the mortgage (that is, the lender is declaring the whole balance of the mortgage due now), or there's an upcoming sale of the property upon foreclosure. The landlord must give you this notice within five business days after the landlord has received notice from the lender. If the landlord fails to give you this notice, you may terminate the lease by giving five days written notice to the landlord.

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.*

BREACH OF LEASE

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.

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 five day pay or quit notice. If you pay all the money requested within the five day period your lease will not be terminated.

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.

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IMPORTANT TIP: *Even if the time period has run out on any notice to terminate your tenancy, the landlord cannot enter the home without notice, 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.*

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 (eviction) 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 all the rent, and any late charges, court costs, and attorneys' fees that are due and owing on or before judgment is entered, the Unlawful Detainer must stop the day you paid. You can only do this once in a 12 month period per landlord.

IMPORTANT TIP*: If a new month's rent is due after receiving the unlawful detainer, but before the court date, you will have to pay that as well. Thus, if at all possible, pay what you owe before the next month starts. Always get a receipt and make sure you appear at the court date to make sure it will be dismissed effective the date you paid.*

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. The judge must give you 10 days before the Sheriff can execute a writ of possession requiring that you leave. The Sheriff will send you the writ as well as at least 72 hours' notice of the date and time 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 wherein 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 are covered by the VRLTA and 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 **seven 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. If you are not covered by the VRLTA, the landlord cannot make this request.

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 Sheriff can execute 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.

After the ten days runs, the Sheriff can execute a writ of possession, but the Sheriff must give you at least 72 hours' notice of the date and time 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.

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Eviction can occur on the scheduled eviction day or any day after for a full year. If eviction does not occur, and the tenant pays the full rent and other costs ordered in the judgment, the landlord may accept the rent with a written notice stating he or she is accepting the rent with reservation. If the landlord does not give this notice, the landlord loses the right to evict without going to court again.

***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.*

What if I disagree with the judge's decision?

If you believe the judge's decision is wrong, then you can appeal the judgment, but it can be difficult. You have ten days to file the appeal after the judgment was entered. You must pay an appeal bond and court costs. The appeal bond is usually the amount of the judgment entered against you, but it can be as much as one year's rent. If you do not pay the appeal bond, your appeal will not be heard.

An alternative to appealing the judge's decision is to file a Motion for New Trial. You need to file such a motion within 30 days after the judgment. You must have a very good reason for getting a new trial, and it is up to the original trial judge to decide if you'll get one. You may be able to get a new trial, for example, if you didn't get proper notice of the first trial, or if you find new evidence that wasn't available to you at the time of the first trial and that you couldn't have discovered in time to present to the judge.

Can a landlord lock out a tenant or shut off utilities?

The landlord may not shut off utilities, lock the tenant out of the rental unit, or evict the tenant without giving notice and going to court. You do not have to move out just because the landlord tells you to leave and takes out an unlawful detainer. The landlord must wait until a court order is issued. Any statement in a lease that says you give up (waive) your rights to the court eviction process is not enforceable.

If the landlord locks you out or deliberately fails to supply essential services, such as heat, water, gas or electricity, you should call local law enforcement for help. You may also have grounds to sue in court to recover possession of the property or terminate the lease and owe no more rent.

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In either case, you can also sue the landlord for damages (for example, the cost of finding alternative house) and can collect attorney fees from the landlord.

If the landlord locks you out or "diminishes" your services, you may get an order from the General District Court to get back possession of your rental unit, including requiring the landlord to restore your services. If you can prove you had other costs and expenses due to being locked out, you can ask the court to order the landlord to pay you those costs. You should go to the clerk of General District Court to file for such an order.

As an alternative, you may sue in Circuit Court to get back into your place (asking for an "injunction"), plus reimbursement for any damages you incurred. It is generally more challenging for a non-lawyer to file in Circuit Court instead of General District Court, however. It is highly recommended that you have an attorney to represent you in Circuit Court, whereas General District Court is easier for non-lawyers to use.

THIS INFORMATION IS NOT LEGAL ADVICE. *Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

Free Legal information by Web and Phone: www.vlas.org and
1-866-LeglAid (534-5243)

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