



VIRGINIA  
LEGAL AID  
SOCIETY

## WHEN RENTAL PROPERTY IS DESTROYED

If the rental property in which you live is destroyed by fire or casualty, which is not your fault or caused by your negligence, then Virginia has laws defining your rights to either terminate the lease, or continue renting.

### **Terminating the Lease**

If the rental property is damaged to the extent that you can no longer live in it or required repairs can only be accomplished if you vacate the property, then either you or the landlord may terminate the rental agreement.

You may terminate the rental agreement by vacating the premises and, within 14 days after that, giving the landlord a written notice that it's your intention to terminate the rental agreement. If you follow this procedure, then the rental agreement is considered to be terminated as of the date you vacated.

The landlord may terminate the rental agreement by giving you 30 days' notice of his intention to terminate the rental agreement if he decides that the damage is so severe that you cannot live in the rental property. The rental agreement terminates at the end of the 30 day notice and you are no longer responsible for rent.

If the rental agreement is terminated by either you or the landlord then you are not responsible for paying rent as of the date that you move out. After you move out, the landlord must return all security deposits and prepaid rent, plus interest (if your security deposit was held more than 13 months). Be sure to give the landlord your new address.

The landlord may keep your security deposit, prepaid rent or interest to cover tenant-caused damage beyond normal wear and tear, unpaid rent, late charges, and other charges agreed to in your lease. As

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long as you were not at fault or careless, the security deposit can't be used to pay for normal wear and tear on the property. The landlord must give you a list (accounting) of all deductions from the security deposit within 45 days after you leave.

## **Continuing the Rental Agreement**

If you choose to continue the rental agreement but must leave the property so repairs may be performed, then your lease can remain in effect unless and until either you or the landlord give written notice to terminate the lease. You don't owe rent for any period of time you can't live in the rental property due to the damages and repairs being made. Once you are able to move back in, you start owing rent again.

The landlord is not required by Virginia law to provide you with another rental property, even if he has another property available. The landlord also does not have to pay for you to live somewhere else while the repairs are being made, because you do not owe rent for any time period that you can't live in the rental housing due to the damages. The money you would have typically paid to the landlord for rent can be used to find temporary alternative housing.

## **Renter's Insurance**

One way to make certain that the cost for repairs will be covered if you are determined to be at fault for the damages, is by obtaining renter's insurance. This insurance can cover not only damages to the landlord's property, but to your own as well.

Your landlord has the right to require you to pay for property and casualty insurance, otherwise known as renter's insurance. The premiums for this insurance are separate from your security deposit and may be included as part of your monthly rent. If the landlord requires you to pay for the policy before you may begin renting, then the total amount of the insurance premium and the security deposit cannot be more than two months' rent. The landlord is required to provide you with a copy of the insurance policies and a summary prepared by the insurer explaining what coverage is being provided.

You may obtain a separate policy from the landlord's, if you so choose, but you will have to provide the landlord with written proof of your policy and you must maintain coverage as long as you are renting from this landlord.

## **Frequently Asked Questions**

### **What if the damages were caused by myself or my guest?**

If you or your guest damaged the property, then the landlord has the right to request compensation for the damages. If you decide to move out without making repairs or paying for the damages, then the landlord may keep your security deposit and sue you for the difference. The landlord must give you a detailed accounting, in writing, of the damages and the cost to make repairs.

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## **Does my landlord have to pay for my damaged property?**

Usually not, unless your landlord was at fault. If you have renter's insurance, that should cover your damaged property. If you don't have renter's insurance and if your landlord was at fault, you may want to sue your landlord for money damages.

## **Does my landlord have to let me get my property from the damaged rental housing?**

Yes, but probably not right away. Your landlord and the authorities may reasonably control access to the damaged rental housing for health and safety reasons. Common sense and safety control. If your landlord unreasonably denies access to the damaged rental housing to let you get your property, you may want to sue your landlord for return of your property.

## **How do I sue my landlord?**

If your landlord fails to refund the unearned rent and your security deposit within 45 days after you left or if you have any other legal claim against your landlord, you can take the landlord to General District Court. If you win, the court can award you your costs and attorney fees.

## **How do I file a lawsuit in General District Court?**

Virginia has a General District Court in each city and county. You may file a lawsuit for money or return of your property. You can file in the Small Claims Division, where attorneys are not allowed, for up to \$5,000. You can file in the regular division, where attorneys are allowed, for up to \$25,000. You may file in either division on your own, by yourself, without an attorney.

## **How do I file a lawsuit for money, such as a rent refund, my security deposit, and/or money damages?**

For this lawsuit, file a "Warrant in Debt." You will need to state in a few words why the person or business you are suing owes you money. You also need to state the most money you could be owed. You can't get a judgment for more than what you sued for. You must file in the city or county where the person or business you want to sue is located or where your claim arose.

## **How do I file a lawsuit for return of property?**

For this lawsuit, file a "Warrant in Detinue." You will need to list each item of property you want returned and give a value for each item. If you forget to list any item, you will not be able to get that item back without filing another Warrant in Detinue. You must file in the city or county where the person or business you want to sue is located or where your property is located.

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## **What do I need when I file a lawsuit in General District Court?**

You must have the complete name and address of the business or person you want to sue. The address must be a physical address, not a mailing address such as a post office box. The name of the business or person must be correct. Sometimes, a business or person will not use their real name. This is an “assumed or fictitious” name. The Circuit Court Clerk has a list of these names. If you are suing a corporation, you need the name and address of its registered agent. You can get this by calling the State Corporation Commission at (804) 371-9733.

Write on the warrant your name and address, the name and address of the business or person you want to sue, the amount of your claim, and the reason for your lawsuit. After your warrant is filed, the clerk should give you two copies. Mail one copy to the business or person you’re suing, at least 10 days before trial. The warrant says when and where to appear for court. The clerk gives a copy of the warrant to the Sheriff’s Department to deliver (or serve) on the business or person you’re suing. Your lawsuit can’t be heard unless the other side is served.

## **What does it cost to file and serve a General District Court lawsuit?**

Filing fees vary from one county to the next. Contact your clerk’s office to find out how much you will have to pay to file. If you win, the judgment will include your filing & service fees.

## **What if I can’t afford the filing and service fees?**

If you can’t afford the filing and service fees, ask for the “Petition for Proceeding in Civil Case Without Payment of Fees or Costs. (Form CC-1414).” You must be a Virginia resident to file this. Only the Judge can grant your request to proceed without paying filing or service fees.

## **What happens after I file court papers?**

The court papers must be served (legally delivered) on all other parties at least five days before the court hearing. The papers tell all parties the date, time, and place of the court hearing. A hearing is held usually within 3-4 weeks, and afterwards a written order or judgment is issued.

***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](http://www.vlas.org) and

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