

Rights and Remedies of the Virginia Landlord-Tenant Relationship

The relationship between a residential landlord and tenant can be a balancing act of legal rights and duties. Before stepping out onto that legal tightrope, whether you have decided to rent out your own property, or you are about to move into a rental property yourself, it's important to understand some of the basic rules.

First, in Virginia, there are two different sets of rules that may apply. Generally, a landlord who leases multiple properties on a larger scale is bound by the Virginia Residential Landlord Tenant Act (the "VRLTA"). Some of the more common exceptions to the VRLTA are commercial landlords, individual landlords who own no more than ten single-family rental properties (four in certain types of cities or counties), landlords who are leasing to the purchaser under a contract to purchase the property, or landlords who are leasing incidental to a contract to provide medical, educational or similar services. Landlord-tenant relationships not within the scope of the VRLTA are governed by the common law (caselaw) and statutes based in part on the common law.

Prior to July 1, 2011 the VRLTA was generally more favorable to tenants than the common law. However, recent legislation has given those tenants not protected by the VRLTA similar rights. Both bodies of law place on the landlord the duty to repair and keep the property in habitable condition, and on the tenant to keep the property clean and safe.

A landlord's remedies for non-payment of rent or other breach are substantially similar under the VRLTA and the common law, such as the requirement of particular notices prior to taking court action, and procedures for filing an unlawful detainer in court or filing a writ of possession to have the tenant removed from the premises. However, if the landlord owns property through a corporation or L.L.C., Virginia law requires that the company proceed in court through an attorney; an owner or employee will not be permitted to represent the company *pro se*.

A tenant's remedies for the landlord's failure to perform its duties, although substantially dissimilar under the two bodies of law prior to July 1, 2011, are also parallel in important respects. In neither type of landlord-tenant relationship can a tenant simply withhold rent until the landlord complies, and a court will not likely accept failure to repair as a defense to an unlawful detainer. Both the VRLTA and the non-VRLTA statutes provide that a tenant, after giving the landlord notice of the breach, may file a *tenant's assertion* and pay the rent into escrow at the court within five days of becoming due. The court will then make a determination of what the landlord must do and how to distribute the rent. This is a significant change from prior non-VRLTA statutes which did not allow a tenant to pay into escrow, and required that in most cases, with the exception of *constructive eviction* or mold remediation, the tenant continue to pay rent and sue the landlord for damages caused by the breach.

A recent change to both the VRLTA and non-VRLTA statutes gives tenants greater rights than ever before. Beginning July 1, 2011, a tenant may give a breaching landlord 30 days notice of a material noncompliance with either the lease or the VRLTA, stating that, unless remedied, the lease will terminate in as little as thirty days. The tenant can also sue for damages or to have the landlord ordered to comply and, if successful, can recover attorney's fees.

Of course, there are many other statutory and common-law provisions that may govern the particular circumstances of your landlord-tenant relationship and the lease itself may alter the rights and duties imposed by law. An attorney may be able to assist you in determining your rights, and avoiding adverse legal consequences.

****Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**