

## SECURITY DEPOSITS IN VIRGINIA

1. **PURPOSE.** This information paper is written to inform military families living in Virginia of the laws and rules concerning the proper use and refunding of security deposits made under residential leases. Please note that laws frequently change, and the information provided in this document may not be an accurate statement of the laws in your jurisdiction when you read it. Please contact your local legal assistance office with any questions regarding this topic before you take action on your case.

2. **VIRGINIA LAWS ARE DIVERSE IN THIS AREA.** Virginia has two sets of rules regarding residential tenancies, those that fall under the Virginia Residential Landlord and Tenant Act (VRLTA) and those that do not. The VRLTA provides substantial protections to tenants, but only applies if: a) specified in the lease; or b) if the landlord owns more than 10 rental units; or c) if the landlord owns more than 4 single-family residences or condos in a single county; or d) if the rental unit is an apartment. This paper will attempt to clarify how the laws diverge in the areas discussed below.

3. **WHAT IS A SECURITY DEPOSIT?** A security deposit is a refundable payment of money from the tenant to the landlord to cover damages to the property and other obligations under the lease. Security deposits are usually due when the lease is signed, and held by the landlord during the time the tenant is residing in the property. Under the VRLTA, a landlord may not use the security deposit for payment of damage or renter's insurance.

4. **AMOUNTS / LIMITS.** Normally, a security deposit is equal to one month's rent. If the tenancy is covered by the VRLTA, a landlord may not require more than two months' rent as a security deposit.

5. **WHEN STARTING A LEASE.** Inspect the property and note any existing damage, and the general condition of the carpet, walls, floors, appliances, outdoor areas, and other sections of the property. Taking photos / videos of the property when you are first handed the keys is a good way to document the condition of the premises. If you discover any damage or wear and tear, make sure you notify the landlord immediately, in writing. Under the VRLTA, the landlord is required to give the tenant notice of the condition of the property within 5 days of the tenant moving in. The tenant then has 5 days to object to the written description, or the landlord's accounting is deemed to be correct.

### 6. **WHEN TERMINATING A LEASE.**

a. The tenant cannot use the security deposit as payment for the last month's rent. Such practices are clear breaches of a tenant's obligation to pay rent under the lease, and can trigger damage provisions, including attorney's fees.

b. Be sure to conduct a comprehensive exit inspection before you return the keys to the landlord. Just like the entry inspection, taking photos and videos of the property upon vacating the property is a good practice. Note that many leases have notice and time requirements to

conduct a joint exit inspection with the landlord. If your lease has these types of provisions, follow them - and be sure to give the landlord the notice required in the lease.

c. The VRLTA requires that the landlord must inspect the rental unit within 72 hours after the tenant vacates. If the tenant requests in writing to be present at the inspection, the landlord must inform the tenant of a reasonable date and time for the inspection. The purpose of this inspection is to allow the tenant and landlord the opportunity to view the dwelling together and discuss any problems that might affect the return of the tenant's security deposit.

d. Be sure to give the landlord a written notice of where your security deposit can be mailed.

## **7. DEDUCTIONS FROM SECURITY DEPOSIT.**

a. A landlord may deduct unpaid rent, damages to the property (less ordinary wear and tear), and other charges authorized under the lease, from the security deposit.

b. Many cases involve disputes regarding the difference between damage and ordinary wear and tear. Normal "wear and tear" depreciation or deterioration of equipment, furnishings, or appliances is expected in a rental dwelling. Landlords should be prepared to cover the costs for replacing worn items, painting periodically, or maintaining appliances and fixtures. However, if something in the rental unit is damaged due to negligence, carelessness or abuse by the tenant or a guest, this may be considered damage and with proper documentation, deducted from the tenant's security deposit. For example, small holes in the wall from picture hooks would be wear and tear, but a large hole in the wall that requires drywall or plaster repair could be considered damage. Good judgment, communication and documentation is necessary between tenants and landlords to reach agreement regarding normal wear and tear.

c. Under the VRLTA, the landlord must return the security deposit with interest, less deductions, with an itemized statement to the tenant within 45 days after termination of the tenancy.

**8. RECOVERY OF SECURITY DEPOSITS.** If the tenant does not believe that the landlord has returned the correct amount of the security deposit, there are a range of options available, including the following.

a. Contact the Consumer Affairs Branch of the County Government. In Virginia, these offices provide free mediation and arbitration for tenant-landlord complaints. Residents can file complaints online, and once a case is opened, an investigator will be assigned to your case. The investigator will mediate the complaint between the tenant and landlord, and try to negotiate a resolution that is satisfactory to both parties. If a tenant-landlord law has been broken, the Consumer Affairs Branch works with the party to come into compliance with the law. If mediation is not successful, a voluntary, but legally-binding, arbitration process is available before proceeding to court action. The investigator assigned to mediate your complaint will advise you if arbitration is an option.

b. File an action in the county General District Court for return of the security deposit. The tenant (hereafter "plaintiff") will be required to fill out and file a "Warrant in Debt". In preparing this form, the claim must specify a dollar amount and the reason for the claim. A sample Warrant in Debt for the recovery of a security deposit is attached to this information paper. The plaintiff should prepare a solid argument using any related evidence or documents and provide the legal name and address of the defendant. After the required documents are submitted, a case number and trial date will be provided. The defendant will receive a notice from the court by mail or the plaintiff may elect to have the defendant served by a process server. Prior to the trial the plaintiff should collect all evidence relating to the payment of the security deposit, the lease, and the condition of the property upon the start and end of the tenancy. The plaintiff and defendant will be given an opportunity to introduce evidence, ask questions of the witnesses, and explain to the judge why the judge should enter judgment in his favor. At the end of the case, the judge will enter judgment for either the plaintiff or the defendant. If a party wishes to appeal the judgment and the amount in dispute exceeds fifty dollars (\$50.00), the party may file an appeal of the case to the circuit court for a new trial. Notice of the appeal must be filed within ten days after the entry of judgment.

**WARRANT IN DEBT (CIVIL CLAIM FOR MONEY)**  
Commonwealth of Virginia VA. CODE § 16.1-79

FAIRFAX CITY OR COUNTY General District Court  
4110 Chain Bridge Road, Fairfax, VA 22030  
STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).  
TO THE DEFENDANT(S): You are summoned to appear before this Court at the above address on

RETURN DATE AND TIME to answer the Plaintiff(s)' civil claim (see below)

DATE ISSUED [ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

**CLAIM:** Plaintiff(s) claim that Defendant(s) owe Plaintiff(s) a debt in the sum of

\$ net of any credits, with interest at % from date of until paid,  
\$ costs and \$ attorney's fees with the basis of this claim being

[ ] Open Account [ ] Contract [ ] Note [x] Other (EXPLAIN)

Plaintiff seeks recovery of security deposit paid to Defendant under terms of residential lease for property rented in the County.

HOMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] cannot be demanded

DATE [ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S EMPLOYEE/AGENT

**CASE DISPOSITION**

JUDGMENT against [ ] named Defendant(s) [ ] for \$ net of any credits, with interest at % from date

of until paid, \$ costs and \$ attorney's fees  
HOMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED

[ ] JUDGMENT FOR [ ] NAMED DEFENDANT(S) [ ]  
[ ] NON-SUIT [ ] DISMISSED

Defendant(s) Present? [ ] YES [ ] NO

DATE JUDGE

SAMPLE

CASE NO.

Names of Tenants  
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

Current Address

Current Address

Phone Number

V.

Name(s) of Landlord from Lease  
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

Current Address

Current Address

Phone Number

**WARRANT IN DEBT**

\* \* \*

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.

[ ] To dispute this claim, you must appear on the return date to try this case.  
[ ] To dispute this claim, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars ORDERED DUE

Grounds of Defense ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

HEARING DATE AND TIME

JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION.

DATE

CLERK

**DISABILITY ACCOMMODATIONS**

for loss of hearing, vision, mobility, etc., contact the court ahead of time.