

## INFORMATION PAPER

SUBJECT: Recovering a Security Deposit through Small Claims Court

1. **Purpose.** To provide information on how a tenant may recover a security deposit through small claims court.
2. Under§ 55-248.15:1 of The Virginia Residential Landlord and Tenant Act (VRLTA) and most lease agreements, the landlord may charge up to a maximum of two months rent as a security deposit, and must pay interest on all security deposits held for more than 13 months. The VRLTA applies to all rentals in multi-unit apartment structures and prohibits landlords from using certain lease clauses that deny a tenant's rights provided by law. If not covered by the VRLTA there are fewer choices. However, the lease should state the full agreement between the tenant and landlord. Within 45 days after the tenant vacates and surrenders possession of the unit, the landlord must return the security deposit and any accrued interest to the tenant.<sup>1</sup> Any deductions or charges for damages must be itemized in writing by the landlord and provided to the tenant. This notification shall be made within 30 days of the date of the determination of the deduction. Note that notification is not required for deductions made less than 30 days prior to the termination of the rental agreement. Leases may vary thus, make sure to review the lease.

### 3. Procedures.

#### Filing Suit In Small Claims Court For Security Deposits

The tenant (hereafter "plaintiff") will fill out the forms for a Warrant in Debt - Small Claims Division (Form DC-402). The form is available online or at the courthouse.

In preparing a warrant in debt, the claim must specify a dollar amount, not to exceed five thousand dollars (\$5,000.00) and the reason for the claim. You may indicate a rate of interest if you have a signed document providing for interest or you may claim the legal rate of 6%. The plaintiff should prepare a solid argument using any related evidence or documents and provide the legal name, address and phone number of the defendant. Make sure to name all of the landlords named in the lease. The filing fee for all claims will be \$46 plus a \$12 sheriff fee for each defendant. An out-of-state defendant must be served through the Secretary of the Commonwealth, which requires a \$28.00 fee in addition to the filing fee. After the required documents are submitted, a case number and trial date will be provided. The time to trial depends on the docket of the court, but the average trial date is 4 – 6 weeks after the necessary paperwork has been filed.

#### Trial

Generally, a landlord may use a security deposit to repair damage to the property, but absent contrary provisions in the lease the landlord cannot use the deposit to pay for new paint, carpet, or to fix ordinary wear and tear. Prior to the trial the plaintiff should collect receipts, work orders, photos or diagrams that document work done, or not done on, the unit and any other evidence pertaining to the case, namely the conditions of the property at the end of the lease term. Note that the case will be tried in an informal manner. The plaintiff and defendant will be

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given an opportunity to introduce evidence, ask questions of the witnesses, and explain to the judge why the judge should enter judgment in their favor.

### **Judgment Is Entered**

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.

### **Enforcing The Judgment**

If the defendant fails to pay the judgment, after the appeal time has elapsed, the plaintiff may enforce the collection of the judgment. Plaintiff may contact the general district court clerk's office for additional information on court procedures to collect the judgment.

4. Please visit your Fort Belvoir legal assistance office with any questions regarding this issue.

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