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## **Evictions (including Lockouts and Utility Shutoffs)**

Every tenant has the legal right to live in rental housing unless and until the landlord follows the legal process for eviction. The process depends on whether your rental housing is covered by the Virginia Residential Landlord Tenant Act (VRLTA).

### **What rental housing does the Virginia Residential Landlord Tenant Act cover?**

You are covered by the VRLTA if you live in an apartment building or in any type of multi-family housing. Multi-family housing means you share heating, hot water, entry and exit, or some other service with another dwelling unit in the same building. As of July 1, 2014, you also are covered if your landlord rents out more than two rental units. You also are covered if you live in a hotel, motel or other temporary rental place for more than 90 days.

### **What type of notice does a landlord have to give to evict?**

No matter what the reason, a landlord must give you a written notice in order to evict. However, you do not have to move just because a landlord has given written notice.

### **Is a landlord's oral notice to move any good?**

No. A landlord's oral notice to move is not good. An oral notice to move should not allow the landlord to start an eviction. You do not have to move just because a landlord has given an oral notice.

### **What type of notice does a landlord have to give in a non-payment of rent case?**

If a landlord wants to evict you for not paying rent, the landlord must give you a written notice to either move or pay rent in 5 days. If you pay the rent in 5 days, you get to stay. If you do not pay, the landlord can start an unlawful detainer action (an eviction) in General District Court (GDC). You do not have to move just because the landlord has given a written notice.

### **What type of notice does a landlord have to give in other cases?**

If the landlord wants to evict for any other reason, the landlord must give you a written notice to move in 30 days. If you do not move by the end of the 30 days, the landlord may start an unlawful detainer in GDC. You do not have to move just because the landlord has given a written notice.

Under the VRLTA, if – during the lease term – the landlord wants to evict for any reason other than non-payment of rent, the landlord must give you a 21/30 day written notice to move. This notice must explain the problem or reason the landlord wants to evict. If you correct the problem in 21 days, you get to stay. If not, the landlord can start an unlawful detainer in GDC.

### **What type of notice can a landlord give an emergency?**

In a true emergency, a landlord may give you a written notice to move in less than 30 days. The number of days must be reasonable. The number of days depends on the nature of the emergency. You do not have to move just because the landlord has given you a written notice.

### **What are the steps in an unlawful detainer action?**

A landlord must follow these steps in an unlawful detainer action.

- File a lawsuit in court. The lawsuit may be filed either in General District Court or in Circuit Court. Almost all evictions are filed in General District Court.
- Serve (legally deliver) you a copy of the court papers in a manner allowed by law.
- Go to court at the date and time of your hearing.
- Get a judgment of possession from the court.
- Get a Writ of Possession from the court. This is the paper that allows the Sheriff to evict you.

### **How does a landlord file an unlawful detainer?**

A landlord starts an unlawful detainer in General District Court by filing a Summons for Unlawful Detainer. Although this court paper is called an “unlawful” detainer, it is not used in a criminal case. It is used only in a civil (non-criminal) case.

### **How does a landlord serve an unlawful detainer?**

An unlawful detainer must be served (legally delivered) on you. This may be done three different ways.

- Given to you in person, usually by a Deputy Sheriff.
- Given to a member of your household, usually by a Deputy Sheriff. The household member must be 16 or older. The person serving the unlawful detainer must explain what it is.
- Posted on your front door and then mailed to you by first class mail.

An unlawful detainer can be legally served on you, even if you never actually get it. If it was properly given to a household member who didn't tell you about it, you still were legally served. If an unlawful detainer was properly posted and mailed to you but you never saw it, you still were legally served. Both these things are unusual, but they do happen. You should tell household members to pay attention to court papers, and you should pay attention yourself.

### **What do unlawful detainer papers say?**

These papers tell you the date, time, and place of your court hearing. The papers also tell you amount of money the landlord is claiming, such as rent, interest, damages, late fees, attorney's fees and court costs. The hearing may be your only chance to dispute or oppose the eviction and the claim for money. *In all eviction cases, go to the hearing.* Get there early so you can find your courtroom and watch how the court handles other cases.

### **What if I can't go to my unlawful detainer hearing?**

If you can't go to General District Court on the date of your unlawful detainer hearing, you must ask the court for a new hearing date. This is called a "continuance." Different General District Courts have different rules for getting a continuance. In some courts, the Clerk can give a continuance. In other courts, only the Judge can give a continuance.

To find out the rule for your court, call the Clerk's Office as soon as you know you can't go to court on the date of your court hearing. Ask to be told the rule to get a continuance, and follow that rule. In addition to calling the Clerk's Office, it's a good idea to write and/or fax a letter to the court explaining why you need a continuance.

### **What should I do at an unlawful detainer hearing?**

If you go to General District Court to dispute or oppose the eviction, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case. If a witness doesn't want to come to court, you can ask the Clerk to subpoena the witness.

A subpoena is a court order that says a witness must come to court. You must pay \$12.00 for the subpoena, and you must ask for it at least 10 days before your hearing date. If you don't have enough money to pay this (or any other) fee, ask the Clerk for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This also is called "Form CC-1414."

### **Do I need a lawyer in General District Court?**

You don't need a lawyer in General District Court, but a lawyer can help you. You may have defenses to the eviction.

### **What defense could I have in a non-payment of rent case?**

Under either the general law or the VRLTA eviction law, if the only reason the landlord has for evicting is non-payment of rent, you may stay in the rental unit if you pay all the rent and arrearage, and court costs (plus any late charges, interest, and attorney's fees based on a written lease) on or before the *first* eviction (unlawful detainer) court date.

You may pay these amounts owed to your landlord, your landlord's attorney, or the court. If you pay these amounts owed, get a written receipt and bring it to court on the first court date. If an unlawful detainer is filed, you can prevent eviction only once every 12 months that you continue to live in the same place by paying these amounts owed.

### **What other defense could I have?**

Under the VRLTA, you may have defenses. One defense is that the landlord did not keep the place in good shape. To use this defense, you must be current in rent and you must tell the landlord about the problem. You should do this in writing by certified mail to the landlord, before the unlawful detainer is filed. You also must pay rent to court instead of the landlord.

Another defense is that the landlord wants to evict because you complained or used legal rights. To use this defense, the landlord must know that you complained to the landlord or government agency about a rental housing problem, or that you joined a tenant's group, before the unlawful detainer is filed.

### **Do I have to go to the unlawful detainer hearing?**

If you don't want to oppose the eviction, you don't have to go to court. You won't be arrested if you do not go to court. That only happens in criminal cases. This is a civil (non-criminal) case. If you don't go to court, and the other side does and proves its case, you will lose the eviction case. In addition, if you don't go to court and the other side does, the Writ of Possession to allow the Sheriff to evict you can be issued right away.

### **What happens in court?**

If both sides come to court, the Judge will hear both sides and decide who wins. If the judge rules in your favor, you get to stay. If the judge rules in your landlord's favor and you came to court, the judge must give you at least 10 more days in which to move. If you have not moved by the end of the 10 days, the landlord, based on the court order, can get a Writ of Possession. This allows the Sheriff to remove you and your belongings, from the premises. If the judge rules in your landlord's favor and you did not come to court, the Writ of Possession may be issued immediately.

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

Under either the general law eviction or the VRLTA eviction law, the landlord may not shut off utilities, lock you out of the rental unit, or evict you 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. These steps usually take more than 2 months from the day you get a notice to move out.

If a landlord cuts off utilities, locks you out of the rental unit, or evicts you without giving notice and going to court, you have a quick remedy. Go to General District Court and file a Tenant's Petition for Relief from Unlawful Exclusion (Form DC-431). You can file this on your own, by yourself, without an attorney.