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What Happens if my Rental Housing is Destroyed?

What is the law if my rental housing is destroyed by fire or other casualty?

Two sections of the Virginia Code apply if your rental housing is destroyed by fire or other casualty. These are Code of Virginia §55-248.24 and 55-226.

§55-248.24. Fire or casualty damage.

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, §55-226 shall apply.

The landlord may terminate the rental agreement by giving the tenant 45 days' notice of his intention to terminate the rental agreement based upon the landlord's determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with §55-248.15:1 and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant's guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall account to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

§55-226. Buildings destroyed or lessee deprived of possession; covenant to pay rent or repair; reduction of rent.

No covenant or promise by a lessee to pay the rent, or that he will keep or leave the premises in good repair, shall have the effect, if the buildings thereon be destroyed by fire or otherwise, in whole or in part, without fault or negligence on his part, or if he be deprived of the possession of the premises by the public enemy, of binding him to make such payment or repair or erect such buildings again, unless there be other words

showing it to be the intent of the parties that he should be so bound. But in case of such destruction there shall be a reasonable reduction of the rent for such time as may elapse until there be again upon the premises buildings of as much value to the tenant for his purposes as what may have been so destroyed; and, in case of such deprivation of possession, a like reduction until possession of the premises be restored to him.

What does this mean?

It means you can end your lease by giving your landlord a written notice within 14 days of the day you leave. If you do this, you owe no rent after the day you leave, as long as the fire or casualty was not your fault. It also means your landlord can end your lease by giving you a written 45 day notice to vacate. If your landlord does this, you owe no rent after the 45 day notice period.

Even if you don't give a written notice to your landlord, your lease can be viewed as ended if the rental housing can't be lived in. If you want to be sure your lease is ended, it is best to give written notice to your landlord.

What about my rent? What about my security deposit?

You owe no rent after the day you leave. If you paid rent for a period of time after the day you left, your landlord must refund this unearned rent along with your security deposit. Under Code of Virginia §55-248.15:1, your landlord is required to return your security deposit and any earned interest (if the deposit was held more than 13 months), minus any deductions, within 45 days after you leave. Be sure to give the landlord your new address, in writing.

The landlord may keep your security deposit to cover tenant-caused damage, unpaid rent, late charges, and other charges agreed to in your lease. As 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 of all deductions from the security deposit within 45 days after you left. The landlord may deduct any unpaid rent, late fees, other charges agreed to in your lease, and the cost to repair tenant-caused damage beyond normal wear and tear.

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.

Does my landlord have to provide me with another rental unit?

No. Even if your landlord has other rental housing available, under Virginia law, your landlord is not required to provide you with another rental unit.

What if I have a §8 housing voucher?

Because your assistance is tied to you, and not to your unit, you may carry your voucher from one landlord to another. You must end your current §8 lease and enter a new §8 lease. Give your old landlord a written notice you are ending the lease and give the §8 agent written notice you have done this. Ask the §8 agent to give you a new voucher that is good for 60 days. After you find a new unit, ask the §8 agent to inspect it to be certain it meets Housing Quality Standards and the rent is fair. If the §8 agent approves the new landlord, the unit, and the lease, you and the new landlord sign a new lease.

What if the landlord can fix the damages to the rental housing so that I can stay?

Your lease can stay in effect unless and until you give a written notice of termination, or your landlord gives you a written notice to vacate. You don't owe rent for any period of time you can't live in the rental housing due to the damages and the repairs being made. Once you are able to move back in, you start owing rent again.

Does my landlord have to pay for me living elsewhere while fixing the damages?

No. Because you don't owe rent for any time period you can't live in the rental housing due to the damages and the repairs being made, you should use that money to live elsewhere.

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.

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?

The filing fee is \$44, plus \$12 for each person or business you are suing. 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.