Virginia State Landlord Tenant Law

An overview of state statutes relevant to representing tenants in disputes with their landlords

Three Key Acts
- **Virginia Residential Landlord and Tenant Act**: Governs many, but not all, residential tenancies in Virginia.
- **Manufactured Home Lot Rental Act**: Governs most rentals of lots in mobile home parks; incorporates much of the VRLTA.
- **Landlord Tenant Act**: Governs private tenancies exempted from the VRLTA and rentals that do not involve any federal subsidy.

VRLTA
- Applies to all residential tenancies entered into after July 1, 1974 except those that are expressly exempt in the VRLTA.
- Exemptions should be read narrowly.
- Even otherwise exempt tenancies may be covered by the VRLTA if the lease expressly provides.

Tenancies Exempt from VRLTA
- Tenancies in single family homes owned by natural persons are exempt IF the owner owns no more than ten rental properties OR no more than four if located in cities or counties with certain forms of government (i.e., some suburban counties).
- Beginning 7/1/2014, tenancies in single family homes owned by natural persons are exempt IF the owner owns no more than TWO single family rental homes, regardless of where they are located.
- Exception: This exemption does NOT apply to early termination of rental agreements by military personnel.

Tenancies exempt from VRLTA
- Business, commercial or agricultural tenancies.
- Occupancy by an owner of a condominium unit or cooperative unit.
- Tenancies in which right to occupancy is conditioned on employment in and about the premises or employee whose occupancy continues less than 60 days.

Landlord Obligations (VRLTA)
- **Duty to Inspect and Provide Damages List**: Within 5 days of occupancy, LL must provide tenant with written, itemized list of damages to unit existing at time of occupancy. Tenant must note any inaccuracies within five days or list deemed correct. LL may have policy allowing tenant to prepare list in which case LL has five days to object or for them to do it jointly.

Landlord Obligations (VRLTA)
- **Disclosure of Mold in Dwelling Unit**: LL must disclose visible evidence of mold as part of move-in inspection. Written report of “no mold” deemed correct unless tenant objects in writing within 5 days.
- If LL discloses visible evidence of mold, tenant may accept unit “As Is” or terminate the tenancy.
Landlord Obligations (VRLTA)

Duty to Maintain Fit Premises:
- LL must comply with building and housing code regarding health and safety; make necessary repairs; maintain appliances and heating, cooling and plumbing systems in good working order, etc. (55-248.13)
- Remedies for LL's Noncompliance include: Termination of lease/damages; tenant's assertion; defense to non-payment of rent; injunction; damages and rent abatement/substitute housing

Security Deposit:
- Limited to two months' rent
- Upon termination, must be applied to rent, late fees, damages or other things specified in lease
- LL must return security deposit within 45 days of lease termination; if there are deductions, LL must provide written accounting

LL may withhold additional money for bill owed by tenant to a third party utility provider, as long as he gives notice to tenant, an opportunity for tenant to pay, and evidence that he (LL) has paid the bill

VA Code 55-248.15:1

Additional Disclosures:
- Pesticide Use: LL must provide at least 48 hours' written notice of pesticide application (unless tenant requests or agrees to shorter notice) VA Code 55-248.13:3
- Properties near US Master Jet Base: LL must provide prospective tenant written disclosure that property located in a noise/accident potential zone VA Code 55-248.12:1

Limitation of Liability:
- If rental unit is sold:
  - Sale only affects who owns property, not who occupies property
  - Lease runs with the land and not the property owner
  - Lease is a binding on the new owner as it was on the old owner
  - New owner retains ownership subject to the lease with the prior owner

VA Code 55-248.14

Landlord's Obligations (VRLTA)

Security Deposit:
- If LL willfully fails to comply with requirements, court must order the return of the security deposit and interest, along with actual damages and reasonable attorneys' fees, less any rent owed by the tenant.

VA Code 55-248.15:1

Locks and Peepholes:
- LGA may provide, by ordinance, that a LL who rents 5 or more dwelling units in one building must provide locks and peepholes on exterior doors and windows
- LL must install a new lock (or allow tenant to do so) where tenant presents a copy of a protective order; LL cannot provide new key to person excluded from premises by Protective Order

VA Code 55-248.13:1
Landlord’s Liability
- If rental unit is sold:
  - New owner steps into the shoes of the old owner and has the same rights and duties under the lease that the old owner had.
  - If new owner wants possession, he or she must file unlawful detainer in court.
  - Tenants do not have to vacate at sale.

Landlord Obligations (VRLTA):
- Abuse of Access:
  - Tenant may seek injunctive relief or terminate lease if LL makes unlawful entry onto premises or enters in an unreasonable manner.
  - VA Code 55-248.10C.
- Damage or Renter’s Insurance:
  - LL may require tenant to pay for damage insurance or renter’s insurance; such payments are treated as rent.

Landlord’s Obligations
- If a tenant pays rent by cash or money order and requests a receipt from the landlord, the landlord MUST provide the tenant with a written receipt.
- If a tenant makes a written request for an accounting, the landlord MUST provide the tenant with a written statement showing all charges and debits for the past 12 months within 10 business days of request.
  - VA Code 55-248.7.

Protecting Tenants at Foreclosure Act
- Federal law requires the following in event of foreclosure of rental property:
  - New owners must honor existing lease as long as tenant is deemed a “bona fide tenant.”
  - Tenants with more than 90 days remaining on the lease may not be evicted until the end of their lease.
  - Tenants with less than 90 days remaining on their lease nonetheless must receive 90 days notice of termination.
  - Exception to right of tenant to remain until end of lease term is when new owner will occupy the unit as his or her primary residence; then lease may terminate with 90 days notice.
  - Tenants must continue to pay rent and should deposit rent into a separate bank account to use later.
  - Tenants do NOT have to vacate at foreclosure.

Landlord References and Release of Information
- If tenant has NOT given written consent, landlord may NOT release information about the tenant unless it is:
  - A matter of public record.
  - A summary of the tenant’s rent payment record.
  - A remedial breach notice that was not remedied.
  - A nonremediable breach notice.
  - VA Code 55-248.9C.

Landlord References and Release of Information:
- Additional information about the tenant landlord may release without tenant’s written consent:
  - Information requested by law enforcement or by subpoena.
  - Information requested by a purchaser of the property.
  - Information needed in an emergency.
  - VA Code 55-248.16.

Tenant Obligations (VRLTA)
- Duty to Maintain Dwelling Unit:
  - Tenant has obligation to do his or her part to comply with code regarding health and safety; keep things clean and safe; use utilities, etc. in a reasonable manner; keep all utilities paid for by tenant on at all times.
  - Tenants must maintain a smoke detector in accordance with UBC standards, etc.
  - VA Code 55-248.16.
Tenant Obligations (VRLTA):

- Rules and Regulations:
  - Tenant is obligated to follow reasonable rules of the landlord (see section 55-248.17) as long as the rule is reasonably related to its purpose, applies to all tenants fairly, is clear, does not evade the LL’s obligations and the tenant was provided a copy of it when he entered into the lease or when the rule was adopted.

- Access by LL:
  - LL can enter to inspect, make necessary repairs, supply necessary services, or show unit to prospective tenants, purveyors or workers
  - Can enter only at reasonable times and with prior notice except in the event of emergency when LL can enter unit without consent
  - VA Code 55-248.18

- Use and Occupancy by Tenant:
  - Unless otherwise agreed, tenant must use the premises only as a residence.

Eviction:

- Tenant does NOT have to move just because:
  - Landlord says so, orally or in writing
  - Landlord files a summons for unlawful detainer in court

- Tenant must move ONLY if:
  - Landlord files an unlawful detainer; and
  - Landlord gets a judgment for possession; and
  - Landlord gets a writ of possession which is served on the tenant

- The Sheriff waits at least 72 hours after service of the writ of possession on the tenant before coming back to evict

Landlord Remedies (VRLTA):

- Tenant Noncompliance with Lease:
  - Remediable Breach
  - Nonpayment of rent

  - 5 day written “pay or quit” notice must be delivered by LL to tenant
  - If tenant does not pay the rent owed within the 5 day period, LL may terminate lease and obtain possession
  - However, once every 12 months tenant may “redeem” by paying everything sued for or providing written promise to pay from MPDUGA on or before the first court date

  - VA Code 55-225, 55-243, 55-248.31

- Non-remediable breach
  - LL may serve written notice on tenant terminating tenancy not less than 30 days from notice
  - If breach constitutes criminal or willful act that threatens health or safety of other tenants, LL may terminate lease IMMEDIATELY and initial hearing on LL’s claim for possession must be heard within 15 days from date of service on tenant (earlier in emergency)

  - Tenant is held liable for criminal activity of guests and invitees except for special rule when criminal activity is domestic violence committed against tenant

  - VA Code 55-248.31
Landlord Remedies (VRLTA):

- Tenant Noncompliance with Lease:
  - Illegal Drugs
  - Tenant, tenant’s authorized occupant, guest or invitee engages in illegal drug activity.
  - If tenant, tenant’s authorized occupant, guest or invitee engages in illegal drug activity involving controlled substance, such activity is a non-remediable breach.
  - LL can terminate without criminal conviction if proven by P of E.
  - Tenant presumed to have knowledge of illegal drug activity by guest or invitee (rebuttable by P of E).

Landlord Remedies (VRLTA):

- Tenant’s Noncompliance with Lease:
  - Possible defenses to nonpayment –
    - Refusal of payment (estoppel)
    - Failure to send pay or quit
    - Conditions – paying rent into escrow
    - Waiver (ie sent second pay or quit)
  - Redemption (payment of all rent owed, late fees, impound, costs and attorneys fees on or before first return date OR submission of redemption tender and subsequent payment)

Landlord Remedies (VRLTA):

- Tenant’s Noncompliance with Lease:
  - Possible defenses to other breaches –
    - Conduct didn’t occur/not tenant’s fault
    - Not material
    - Lack of proper termination notice
    - Failure to reserve rights by LL (waiver)
  - Conditions
    - Retaliatory/Discriminatory

This is NOT an exhaustive list – be creative!!

Landlord Remedies (VRLTA):

- Remedy After Termination:
  - LL may have claims for rent, possession and actual damages from breach.
  - LL cannot sue for accelerated rent; can only seek rent as it becomes due and owing.
  - LL may simultaneously receive judgment for possession and money.

Limits on Landlord Remedies (VRLTA and VLTA):

- No Self-Help Evictions:
  - LL cannot recover possession by willfully interrupting gas, electric, water or other essential services required by the lease, or by denying tenant access to the unit unless pursuant to court order.
  - Any lease provision that authorizes self-help evictions is unenforceable.
  - VA Code 55-225.1

Waiver of Right to Terminate:

If LL accepts partial or full rent after termination notice is given, and he has not provided tenant written notice that rent is accepted with reservation (either in the termination notice or in a separate notice within 5 days of acceptance of rent), LL waives his right to evict tenant. This holds true even for rent accepted after order of possession entered, and landlord must provide a distinct notice within 5 days of accepting rent after order of possession is entered.

VA Code 55-248.34:1

Landlord Remedies (VRLTA):

- Barring Guest or Invitee of Tenant:
  - LL can send written notice to guest and to tenant barring guest for conduct committed on premises that violates lease, local ordinance, state or federal law.
  - Tenant can challenge the bar notice through a tenant’s assertion.
  - LL may treat Tenant’s allowing barred guest to return to premises as material non-compliance with lease.
  - VA Code 55-248.31:01

Landlord Remedies (VRLTA):

- Remedy by repair; Emergency:
  - Applies to breach which materially affects health or safety but can be remediated by repair, replacement or cleaning.
  - After written notice to tenant, LL may enter premises and have work done and submit itemized bill for actual and reasonable costs as rent on next rent due date.
  - In emergency, LL may enter, have work done and submit itemized bill for actual and reasonable costs as rent on next rent due date.
  - VA Code 55-248.32

Landlord Remedies (VRLTA):

- Tenant Abandonment, Absence, Nonuse:
  - If lease requires notice of absence of more than 7 days and tenant doesn’t provide, LL can get damages.
  - If LL can’t tell if unit abandoned, shall serve written notice on tenant requiring notice within 7 days that tenant wants to stay on premises.
  - If no written notice to LL within 7 days, rebuttable presumption of abandoned premises.
  - VA Code 55-248.33

Notice of Termination of Tenancies:

- Week to week tenancies may be terminated with written notice served at least 7 days before the next rent due date.
- Month to month tenancies may be terminated by serving a written notice at least 30 days before the next rent due date.
- LL may include in lease liquidated damages not to exceed amount equal to per diem of monthly rent, for each day tenant remains in unit after date specified in notice.

VA Code 55-248.31:01
## Landlord Remedies (VRLTA)

- **Disposal of Property Abandoned by tenant:**
  - LL can dispose of personal property left in unit if tenant has given tenant notice that:
  - After possession transferred if he has given notice that:
  - Property left after termination would be disposed of 24 hrs after termination OR
  - Property left would be disposed of after 7 days (in case of abandonment) OR
  - Property would be disposed of 10 days after notice given.
  - VA Code 55-248.38:1

- **Disposal of Property After Court Order**
  - After judgment for possession entered, sheriff places the personal property of tenant in public way or at LL's request in storage area designated by LL.
  - Tenant has 24 hours to retrieve property (or can retrieve at other reasonable times until LL disposes of property).
  - VA Code 55-248.38:2

## Late Fees

- No express statutory cap on late fees for late rental payment.
- Late fees are generally set forth in lease and must be reasonable.
- What is considered a reasonable late fee can vary widely from jurisdiction to jurisdiction.
- Courts generally treat a per diem late fee as impermissible/unreasonable.

## Tenant Remedies

### In Virginia:

- **There is no rent withholding when landlord fails to meet his obligations**
- **There is no “repair and deduct”**

### Tenant Remedies (VRLTA/VLTA):

- **Material Noncompliance by Landlord**
  - Tenant may serve notice on LL saying lease will terminate in 30 days if specified breach isn’t remedied in 21 days.
  - If LL breaches but non-remediable, tenant gives notice of breach and that lease will terminate in 30 days.
  - If LL intentionally or perpetually breaches for which he has previously received 21/30 notice, tenant can send notice terminating lease in 30 days.
  - VA Code 55-248.13 and 55-225.13

- **Early termination by military personnel:**
  - Following members of US armed forces or VA National Guard may terminate lease upon 30 days’ notice:
  - FT duty, received permanent change 35 or more miles away
  - Temporary duty order of 35 or more miles away for more than 3 months
  - Discharged
  - Ordered to live in government-supplied quarters.
  - VA Code 55-248.21:1

- **Wrongful Failure to Supply Essential Services:**
  - If LL, contrary to lease, willfully or negligently fails to supply essential service (ie water, heat, electricity), tenant may serve notice to LL.
  - Tenant can terminate rent agreement with 5 days written notice.
  - Tenant can demand performance and maintain action for possession against LL.
  - Tenant can also seek actual damages and attorneys fees.
  - VA Code 55-248.23
Tenant Remedies (VRLTA/VLTA)

- Tenant's Assertion:
  - Remedy for LL material noncompliance with lease or law constituting fire hazard or serious threat to life, health or safety
  - Tenant must serve LL written notice advising him of the condition unless LL is notified of the condition by another agency
  - If LL doesn't remedy within reasonable time after notice, tenant can file Tenant's Assertion
  - VA Code 55-248.27 and VA Code 55-225.12

- Fire or Casualty Damage:
  - If damage is substantial, tenant may immediately vacate and serve notice on LL (termination effective as of date of vacating); rent abatement or termination
  - If repairs can only be made if tenant vacates, tenant can terminate and serve notice within 14 days OR LL can terminate by giving tenant 30 days' notice
  - LL must return prepaid rent and security deposit
  - VA Code 55-248.24

- LL's Noncompliance as Defense to Action for Possession for Unpaid Rent:
  - Tenant may assert serious threat to health or safety as defense IF
    - He has served LL written notice of the condition(s) or LL notified by building inspector before action for possession
    - LL didn't remedy condition(s)
    - Tenant paid rent into court
  - VA Code 55-248.9

- Manufactured Home Lot Rental Act - Some Key Parts
  - Requires park owners to offer all-year-round tenants a one-year lease
  - One-year leases automatically renew for one year unless noticed for termination of lease or change of services at least 60 days prior to termination of lease
  - Abused eviction; tenant has right to leave home in the park for up to 90 days before eviction
  - If LL rents both lot and home may be covered by VRLTA; incorporates much of VRLTA (55-248.41 through 55-248.52)
  - VA Code 55-248.41 through 55-248.52

- Landlord/Tenant Act
  - Key Provisions:
    - Appointment of resident agent by nonresident property owner (55-218.1)
    - Notice to terminate a tenant (55-223)
    - Failure to vacate at end of term (55-223)
    - Failure to pay after 5 days notice (55-225)
    - Remedies for LL's unlawful diminution of services (55-225.2)
    - Right of Redemption (55-243)
    - Tenant's Assertion (55-225.11)
    - Right to terminate for landlord's material breach (55-225.12)
  - VA Code 55-248.9

- Legal Aid Notice in Public Housing Termination Notices:
  - Notice to terminate public housing tenancy is NOT effective unless it contains on its first page the name and phone number of the local legal aid society
  - VA Code 55-248.24