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# OTHER HOUSING LAWS: TENANT ON THE OFFENSE

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# TENANT AS PLAINTIFF

# Petition to Waive Fees


## § 17.1-606

- Circuit court form to waive fees in filing any general district case (form CC1414)
- If recipient of a state or federally funded public assistance program for the indigent or is represented by a legal aid society, **including pro bono**, such person shall be presumed unable to pay such fees or costs.
- Circuit court judge must rule on the issue, not automatic



# Sue the Correct Defendant

- Do a **property search** in the jurisdiction through the city/county's Real Estate Assessor to find the owner of the building.
- If true owner is not a natural person (i.e. the owner is a corporation or a limited liability company (LLC)), you should instead provide the **name and physical address of the registered agent** of the company.
- **Sue the landlord**, but put the registered agent's address on the court filing for service purposes. You can find the **registered agent** on the **SCC website**.
- If the individual defendant is listed as being out of Virginia, they are also required to have a registered agent in Virginia.
- If you need assistance finding this information, call VA State Corporation Commission at 804-371-9733 or 866-722-2551.
- Service can be done through the court or a private process server

**RVA** **PROPERTY SEARCH**  
RICHMOND VIRGINIA REAL ESTATE ASSESSOR

Print Entire Report Print This Page

Map It! New Search

Property: 1900 E Cary St Parcel ID: E0000165001

Detail Land Assessments Transfers Planning Services Government Extensions Images Sketches

**Parcel**  
**Street Address:** 1900 E Cary St Richmond, VA 23223-  
**Alternate Street Addresses:** 1918 E Cary St  
: 1912 E Cary St  
: 3 S 19th St  
: 1914 E Cary St  
: 1916 E Cary St  
**Owner:** CANAL WALK LOFTS LLC  
**Mailing Address:** 1553 E MAIN ST, RICHMOND, VA 23219  
**Subdivision Name:** NONE  
**Parent Parcel ID:**  
**Assessment Area:** 503 - MF Downtown  
**Property Class:** 325 - R Apartments 100+ Units  
**Zoning District:** B-5 - Business (Central Business)  
**Exemption Code:** -  
**Unit Count:** 89

**Current Assessment**  
**Effective Date:** 01/01/2020  
**Land Value:** \$1,350,000  
**Improvement Value:** \$8,933,000  
**Total Value:** \$10,283,000  
**Area Tax:** \$520  
**Special Assessment District:** None

**Land Description**  
**Parcel Square Feet:** 37548  
**Acreage:** 0.862  
**Property Description 1:** CANAL WALK LOFTS  
**Property Description 2:** 0156.41X0256.10 IRG0000.862 AC  
**State Plane Coords( ?):** X= 11794091.431033 Y= 3718807.499067  
**Latitude:** 37.53149682 , **Longitude:** -77.42730922

Richmond City Assessor's Office | 900 E. Broad St, Rm 802 | Richmond, VA 23219 | Phone: (804) 646-7500 | Fax: (804) 646-5686  
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# CONDITIONS & REPAIRS



# Tenant Assertion

## § 55.1-1244

**Tenant Assertion** is for remedying Landlord's ***violation of the lease***, it does not need to be a health hazard, so long as the violation is a material violation of the lease

- **Material Noncompliance of Lease OR** something that is a serious threat to the life, health, or safety of occupants of the premises
- **1<sup>st</sup> Tenant** must provide Written Notice with Reasonable Opportunity to Remedy (excess of 30 days is rebuttably unreasonable)
- **2<sup>nd</sup> Tenant** pays rent into court in escrow and files tenant assertion in GDC (Form DC 429)
- **3<sup>rd</sup> Judge** holds hearing and can order LL to remedy, order money owed to tenant, including reasonable attorney fees and court costs



## TENANT REPAIR REQUEST TO LANDLORD (SOLICITUD DE REPARACIÓN DEL INQUILINO AL ARRENDADOR)

There exists at my Apartment the following conditions which constitute a material non-compliance with my lease and/or with applicable provisions of law (specifically, the Virginia Residential Landlord and Tenant Act, Va. Code § 55.1-1200 et seq.) and/or which if not promptly corrected will constitute a fire hazard or serious threat to the life, health or safety of the occupants of the Apartment.

### 1. Tenant's Information

(Información del inquilino)

Tenant's Name: \_\_\_\_\_  
(Nombre del inquilino)

Tenant's Address: \_\_\_\_\_  
(Dirección del inquilino)

### 2. Issues to Address

(Problemas a arreglar)

Please address the following problems with my apartment/house:  
(Por favor arregle los siguientes problemas de mi apartamento/casa)

#### Repairs Needed

(Reparaciones necesarias)

☐ Plumbing/ Water (describe)  
(Plomería/ Agua)



☐ Window(s)  
(Ventana[s])



☐ Walls  
( Paredes )

☐ Floor(s)  
(Piso[s])



☐ Appliances (describe)  
(Electrodomésticos; describa)



☐ Heat or air conditioning  
(Calefacción o aire acondicionado)



☐ Roof/ceiling  
(Techo)



☐ Electrical system  
(Sistema eléctrico)



#### Treatments Needed

(Tratamientos necesarios)

☐ Bed bugs  
(Chinches)



☐ Rodents  
(Roedores)



☐ Insects  
(Insectos)



☐ Mold  
(Moho)



☐ Other  
(Otro)

☐ Other problems (describe)  
(Otros problemas; describir)

Description: \_\_\_\_\_  
(Descripción)

### 3. Signature

(Firma)

Tenant Sign Here: \_\_\_\_\_  
(Inquilino firmar aquí)

### 4. Delivery of Request

(Entrega de esta solicitud)

Date this request is mailed or delivered: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Fecha de envío o entrega de esta solicitud) ( MM / DD / YY )

☐ U.S. Mail  
(Correo)



☐ Hand-delivered to landlord's office  
(Entregado personalmente a la oficina del arrendador)



☐ Other (describe)  
(Otra manera; describir)

Landlord Address Where  
Delivered (Dirección del  
propietario donde se  
entrega): \_\_\_\_\_

TENANT (INQUILINO): Deliver the white sheet to the landlord. Keep the yellow sheet for your records. (Entregue la hoja blanca al propietario. Guarde la hoja amarilla para sus registros.)

# Notice



# Assertion



Clear All Data

#### TENANT'S ASSERTION AND COMPLAINT

Commonwealth of Virginia VA. CODE § 55.1-1244

General District Court

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon the Defendant(s) to appear on \_\_\_\_\_  
before this court to answer. DATE AND TIME

\_\_\_\_\_  
DATE [ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

I, the undersigned Tenant, this day assert that Plaintiff(s) executed a lease as indicated with Defendant(s) for the rental of the dwelling unit or premises indicated.

DATE LEASE EXECUTED	DATE RENTAL PERIOD COMMENCED	DATE RENTAL PERIOD ENDS
AMOUNT OF RENT	PERIOD AND CONDITIONS OF PAYMENT	
_____ due each _____		

The following conditions, for which relief is sought, currently exist in the dwelling unit or premises:

- \_\_\_\_\_, and these conditions below; [or]  
☐ constitute material non-compliance by Defendant(s) – Landlord(s) with the rental agreement as indicated below; [or]  
☐ constitute material non-compliance by Defendant(s) – Landlord(s) with the provisions of law, as indicated below; [or]  
☐ will constitute a fire hazard or serious threat to the life, health, or safety of occupant, if not properly corrected, as indicated below;

LIST PERTINENT SECTION OF RENTAL AGREEMENT [OR] SECTION OF THE CODE OF VIRGINIA [OR] TYPE OF HAZARD. EXPLAIN.

Plaintiff(s) – Tenant(s) therefore requests that the Court grant the following specific relief:

\_\_\_\_\_, and any other appropriate relief.

I certify that all prerequisite conditions for relief, as shown on the reverse of this form, have been met.

\_\_\_\_\_  
DATE TENANT

#### CASE DISPOSITION

Judgment: [ ] Plaintiff(s) \$ \_\_\_\_\_ [ ] Defendant(s) \$ \_\_\_\_\_

\$ \_\_\_\_\_ costs and \$ \_\_\_\_\_ attorney fees awarded to [ ] Plaintiff(s) [ ] Defendant(s)

Distribution of funds held in escrow in the court:

[ ] \$ \_\_\_\_\_ Plaintiff(s) [ ] \$ \_\_\_\_\_ Defendant(s)

Other: \_\_\_\_\_

[ ] NON-SUIT [ ] DISMISSED Defendant(s) present? [ ] Yes [ ] No

RETURN DATE	CASE NO.	HEARING DATE AND TIME
<b>TENANT'S ASSERTION AND COMPLAINT</b>		
PLAINTIFF(S) – TENANT(S)		
V.		
DEFENDANT(S) – LANDLORD(S)		
ADDRESS/LOCATION OF DWELLING UNIT OR PREMISES SUBJECT TO THIS ACTION		
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 page two about requesting a change of trial location.		
[ ] To dispute this claim, you <u>must</u> appear on the return date to try this case.		
[ ] To dispute this case, you <u>must</u> appear on the return date for the judge to set another date for trial. See additional notice on page two.		
***		
Bill of Particulars	ORDERED	DUE
Grounds of Defense	ORDERED	DUE
ATTORNEY FOR PLAINTIFF(S)		
ATTORNEY FOR DEFENDANT(S)		



# Repair and Deduct

## § 55.1-1244.1



If landlord fails to make repairs affecting health and safety, tenant can contract with licensed contractor to get work done and deduct the cost from the rent.



Tenant must first provide written notice to landlord and allow landlord **14 days** to initiate the repairs.



Tenant can deduct up to \$1,500 or one month's rent, whichever is higher.



Tenant must provide landlord with itemized statement and receipt for the work.

**Repair & Deduct** is only for violations affecting ***health and safety.***

This statute allows the tenant to withhold rent in the amount that it cost to repair the safety violation ***without*** paying rent into escrow as part of a tenant assertion.

# Repair & Deduct

## § 55.1-1244.1

### ■ Emergency Conditions include:

- *Fire hazard or serious threat to the life*
- *Threat to health, or safety of occupants of the premises*
- *Infestation of rodents*
- *Lack of heat*
- *Lack of hot or cold running water*
- *Lack of light, electricity*
- *Inadequate sewage disposal facilities*



# Bed Bugs

§ § 55.1-1227; 55.1-1244

- Tenant has a duty to promptly notify landlord of insects or pests, otherwise, landlord can hold tenant financially responsible.
- Likewise, if the tenant is held at fault for failing to prevent the infestation of pests, they may be held liable for the cost of extermination
- In ALL other cases, the landlord is responsible to pay the cost to remedy the pest situation and the same tenant assertion & repair/deduct statutes listed previously apply
- Landlord must give 48 hours notice of insecticide or pesticide use



Conditions can be a basis to **defend an eviction** action, but tenant still must be able to **pay full rent** at the date of court. This defense is for any violation that threatens health or safety OR a **material noncompliance** of the landlord.



# Conditions as Defense

## § 55.1-1241

### ■ Defense to Eviction Requires:

- *Written notice of condition to landlord with reasonable opportunity to cure*
- *Threat to health, or safety of occupants of the premises OR material noncompliance of lease*
- *Tenant must pay full rent owed into court in order to assert this defense. Tenant cannot withhold rent without paying into court UNLESS the condition was an emergency (see Repair & Deduct slide)*

# Who's responsible for Natural Disasters?

§ § 55.1-1206; 55.1-1220

- Landlord is still obligated to make repairs
- Tenant is responsible for personal property damaged (renter's insurance is expected), see *Isbell v. Commercial Inv. Assoc.*, 273 Va. 605 (2007).
- If the damage cannot be fixed reasonably quickly, the tenant may be eligible to be transferred or terminate the lease early





# MOVEOUT RIGHTS



# Early Termination of Lease by Tenant

§§ 55.1-1234; 55.1-1235; 55.1-1236

- The tenant may terminate a lease early in much the same fashion as a landlord evicting if the landlord violates the lease (send a 21/30 for remediable violations, a 30 day notice for non-remediable violations).
- If there is no basis for terminating the lease early, the tenant may still terminate it early but will incur some damages (usually 2 months rent). However, if the landlord rents out the unit quickly, there is an argument to be made that the tenant should only owe actual damages for early termination.
- Victims of domestic violence and military personnel have additional rights to terminate the lease early

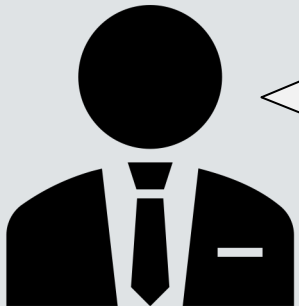
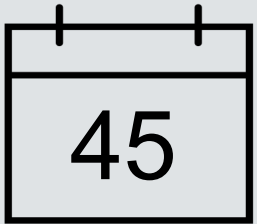


# Security Deposits

§ 55.1-1226



- Security deposit cannot be more than 2 months rent, it accrues interest, which is owed back to the tenant.
- Any deduction of the deposit during the tenancy must be done with a 30 day notice to the tenant. Otherwise, the tenant is entitled to the deposit.
- Itemized list of what the security deposit was used for must be delivered to tenant w/in 45 days of moveout. If not, you can claim full security deposit owed.



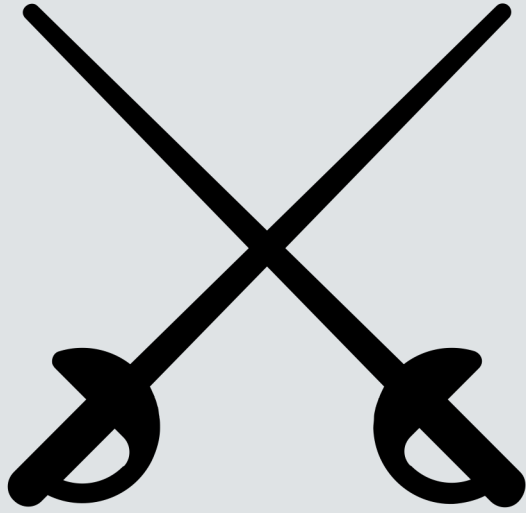
Since the tenant has moved out once security deposits are at issue, the correct action for this is a **Warrant in Debt**, not a Tenant's Assertion.





# COUNTERCLAIMS





# Procedure

## § 16.1-88.01

- File it with your answer or at the return date to avoid filing fees
- When filing a counterclaim, you are the plaintiff
- It's a good tactic for settlement negotiations to avoid eviction
- Once filed, landlord can't nonsuit eviction without you dismissing counterclaim
- Common housing counterclaims include:
  - *Virginia Consumer Protection Act Violation*
  - *Fair Housing Violation*

# Virginia Consumer Protection Act

## § § 59.1-196 et seq.

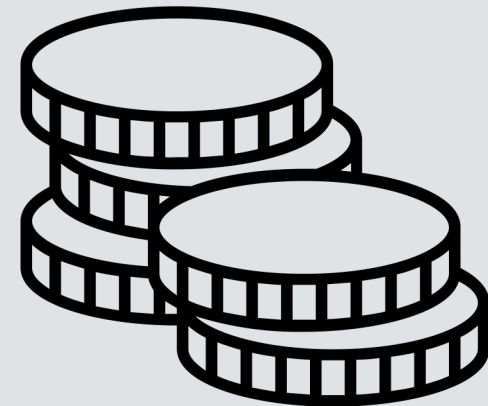
- Protects against deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction
- Excludes VRLTA *UNLESS* the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.
- Common landlord violations include:
  - *Charging attorney fees & court costs prior to when they accrued (these costs should not be owed on the 5 day notice to pay or quit)*
  - *Charging fees unauthorized by law (ex: charging late fees in excess of 10% of amount owed)*



# Virginia Consumer Protection Act

§ § 59.1-196 et seq.

- Each violation entitles the victim to actual damages, or \$500, whichever is greater
- If the violation is “willful,” the damages go up to \$1000 per violation (per fraudulent fee charged)
- Also allows for recovery of reasonable attorney fees and court costs





# FAIR HOUSING LAW

# Virginia & Federal Fair Housing are Substantially the Same

- Virginia Laws located at §§ 36-96.1, et seq.
- Federal Laws located at Sec. 801. [42 U.S.C. 3601]
- Disparate Impact was upheld in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project Inc*, 576 U.S. \_\_\_\_ (2015),
- HUD's new disparate impact rule shifts the burden of proof (not yet published, but final rule released September 2020)

# Elements of a FH case

- 1 ➤ In a housing transaction,
- 2 ➤ it is illegal to discriminate against
- 3 ➤ someone because of
- 4 ➤ their membership in a protected class.

# Disparate Impact Standard



1. **Plaintiff** shows **effect of neutral policy** (statistics)

- Disparate impact on protected class and/or
- Perpetuates segregation



2. **Defendant** proves **substantial, legitimate, nondiscriminatory interest**



3. **Plaintiff** proves **less discriminatory alternative** achieves defendants' interests

HUD's new disparate impact rule shifts the burden of proof

\*not yet published, but final rule released September 2020



# Protected Classes



1. Race
2. Color
3. Religion
4. National origin
5. Sex
6. Familial status
7. Disability
8. Elderliness

# Race & Criminal Background



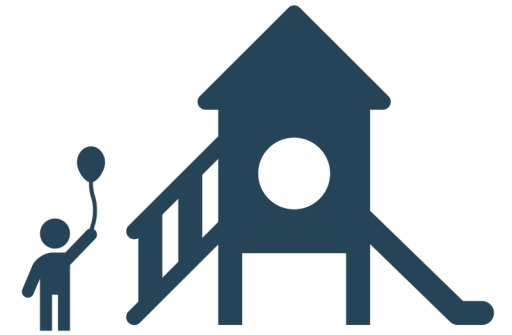
- Having a criminal record not a protected category under fair housing
- Criminal history barriers violate fair housing if, without justification, burden falls more often on one race or nationality than another (disparate impact)
  - *Use of an arrest record, without a conviction, likely violates fair housing*
  - *Blanket use of a criminal conviction – no matter when, for what, or what has happened since – likely violates fair housing*
  - *Use of a criminal conviction must be tailored to serve a significant, legitimate, nondiscriminatory interest*
  - *Use of a criminal conviction must accurately distinguish between criminal conduct indicating a demonstrable risk and criminal conduct that does not*
  - *An individualized assessment of criminal conviction likely is required to comply with fair housing*

# National Origin/Race & Immigration Status



- Requiring all occupants to provide **documentation of legal immigration status** to renew a lease may violate Fair Housing. See *Giron de Reyes v. Waples Mobile Home Park LP*, No. 17-1723 (4th Cir. 2018)
- A landlord is allowed to contact ICE, but using **immigration status to harass** the tenant is arguably a violation of Fair Housing
- A private landlord does not need to provide **language access**, but some subsidized properties are required to provide language access if the language is common enough in the area under Title VI (not fair housing). Nevertheless, a housing provider cannot require the tenant to speak a certain language.

# Familial Status



- Increasing rent by **number of people** in the household (or requiring **extra fees** per person) violates Fair Housing
- Rules/regulations that **disproportionately affect kids** (banning kiddie pools, curfews for kids under 18, rules against unsupervised kids) likely violates Fair Housing
- Landlords can have maximum occupancy standards if they are reasonable
- Putting all families in one section of an apartment complex may also violate Fair Housing

# Disability



- A physical or mental **impairment** that **substantially limits** one or more **major life activities**
  - *A record of having such impairment*
  - *Being regarded as having such an impairment*
- **Substantially limits** = “to a large degree,” not minor or temporary; consider duration, severity, long-term impact
- **Major life activities** = caring for self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.

# Disability Examples

- *Physical or mental **impairments***
  - Orthopedic,
  - visual,
  - speech and hearing impairments,
  - cerebral palsy,
  - autism,
  - epilepsy,
  - muscular dystrophy,
  - multiple sclerosis,
  - cancer,
  - heart disease,
  - diabetes,
  - HIV/AIDS,
  - developmental delays,
  - emotional illness,
  - drug addiction (other than addiction caused by current, illegal use of a controlled substance), alcoholism, etc (if receiving treatment)

# Proving Disability + Need

- Need only disclose that which is necessary
- Sources of verification
  - *The individual him/herself (e.g. proof receiving SSI or SSDI)*
  - *Note from doctor, therapist, other medical professional*
  - *peer support group, non-medical service agency, or a reliable 3<sup>rd</sup> party with knowledge of the disability*

# Right to Request a Reasonable Accommodation/Modification

- Only applies to disabilities
- IF The RA or RM is related to the disability and full use and enjoyment of the housing, and...
- It isn't an undue financial burden, and...
- It isn't a fundamental alteration

**The housing provider must grant the request**



# Modifications = Physical Structure Change

- Common requests
  - *Ramps*
  - *Installation of grab bars*
  - *Changes to environmental controls*
  - *Installation of carpeting or acoustic tile to reduce noise*
  - *Removal of carpet to facilitate wheelchair use*
  - *Widened doorways*

# Modifications

## ■ Who pays?

- *Private market housing – the tenant*
- *Federally assisted housing – the housing provider (Sec 504)*
- *Multi-family housing built after 1991 that should have been accessible – the housing provider pays!*

# Reasonable Accommodations = Change in Policy

- Changes, exceptions, or adjustment to rules, policies, practices or services
- Necessary to use and enjoy a dwelling
- Includes unit and public and common use areas
- No limitation on number or type of requests
- Applies to applying for housing, during tenancy, or termination of tenancy

# Accommodations



## ■ Common requests

- *Parking – proximity, assigned space, caretakers*
- *Animals – service, support, therapeutic, companion*
- *Waiver of fees – “pet” fees, guest or parking fees, late fees because social security payment comes at a certain time each month*
- *Request not to evict for behavior closely linked to disability*
- *Appeal of application denial related to disability*
- *Transfer to another unit*

# Interactive Process



- Make the request to housing provider
- Both sides have to work the process in good faith
- Provider can offer reasonable alternative

# What is reasonable?

## ■ NOT if undue financial burden

- *Mentally ill tenant requesting daily call to tenant to confirm not hospitalized v. call two days prior to rent due day to remind to pay rent.*

## ■ NOT if fundamental alteration in nature of services

- *Asking landlord to send someone to read all mail to blind tenant v. asking landlord to read only notices from landlord to blind tenant.*

# Fair Housing Enforcement

## Forum

### ■ Court

- *state or federal*

### ■ Administrative

- *Virginia Fair Housing Office or Federal HUD Complaint*

## Remedies

- Actual damages
  - Lost housing opportunity
  - Emotional distress
- Punitive damages
- Civil penalties
- Injunctive relief
- Attorneys fees

# Source of Income Discrimination

§§ 36-96.1:1,  
36-96.3

**Voucher  
Holders!**

Starting July 1, 2020, sources of funds was added to the reasons why a person may not be denied housing under the Virginia Fair Housing Law.

Protects prospective home buyers and renters.

Source of funds = “any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.”



# Exceptions to Source of Funds Protection:



Does not apply to owners of four or fewer rental units in Virginia, or those who own a 10% or less interest in four or more units.



Does not apply if the source of funds is not approved within 15 days of submitting the request to approve the tenancy.