



# ARLINGTON COUNTY Housing Information Center

## RENT ESCROW

The state law allows tenants in certain circumstances to pay their rent into a rent escrow account with the courts rather than to the landlord. However, it is important to remember that you **cannot** simply withhold your rent from your landlord on your own. If you do so, you run the risk of eviction regardless of the validity of your complaint.

### **BASIC REQUIREMENTS**

The following is an outline of the major conditions which must be fulfilled in order to withhold your rent legally. The landlord **must be notified** before you actually put any rent in escrow (see paragraph #2 below). Because of the technical legal requirements for filing a rent escrow with the court, it is advisable to consult an attorney prior to taking action against your landlord.

- Your complaint must be for a "material noncompliance" with the rental agreement or with the laws or **for a serious threat to health or safety**, e.g., lack of heat in winter, frequent lack of hot or cold water, existence of a major fire hazard.
- Your landlord must be notified of the problem either by a **written notice SUPPORTED** by a **certificate of mailing** from you or by a violation notice from an appropriate County (e.g., Code Enforcement 703.228.3232) or State agency. You should retain copies of any letters you send as well as the certificate of mailing.
- A reasonable amount of time must be allowed for the repairs. If your landlord fails to repair the problem by the next rent due date, you may file a declaration with the court specifying the problem and requesting relief.
- Your rent must then be paid into the court within 5 days of the rent due date.
- You should be prepared to show the court that you have not received more than 3 notices for nonpayment of rent (either 5-day notices or "warrants in debt") during the preceding 12 months, or, if you have lived on the premises for 6 months or less, no more than 2 such notices.

REV 2019/10

**FILING PROCEDURE:** In order to establish a rent escrow with the courts, you fill out a "Tenant's Assertion and Complaint" at the Clerk of Courts' Office (Room 2500; Arlington County Courthouse; hours 8 a.m. to 4 p.m.). To complete this form, you will need:

- The name and complete address of the owner (the defendant) of the property you are renting. If the owner is a corporation, you must list the name and address of the corporation's registered agent. (This warrant can be served only in Virginia);
- The name and address of the Plaintiff (yourself);
- A statement that your rent has been paid into the court within 5 days of the rent due date and that you are seeking relief under Section 55.1-1244, of the Code of Virginia, citing the basis for that claim, e.g., lack of heat. You may specify the particular form of relief you are seeking, such as rent abatement, dispersal of funds to a repairman to correct the problem, or termination of the lease.

If you plan to subpoena any witnesses (e.g., a County Inspector or resident manager), you will need each witness' name and complete address.

**PAYMENT OF RENT:** You must pay your rent into the courts within 5 days of the date your rent is due under your lease. You may pay the rent by certified check or by money order made out to "Clerk of Courts." *Personal checks will not be accepted.*

**FILING FEE:** There is a charge for filing and service of the Tenant's Assertion and Complaint (call the courts 703.228.7900 for schedule of fees).

**DATE OF TRIAL:** A trial date will be set at the time you file the Tenant's Assertion and Complaint. The trial is approximately three weeks from the date you file. The date may be set earlier if the problem is an emergency.

It is helpful to check with the Clerk of the Courts' Office (703.228.7900) on the morning of the trial to see if your case has been postponed. The case would be postponed if the complaint had not been served soon enough or if the landlord requested a continuance to a more convenient date. If your case will be heard that day, you should be in court at the appointed time.

**PREPARATION:** You should be prepared to present the evidence necessary to establish the validity of your claim at the trial. Generally, you should make sure that you have all necessary documents and other physical evidence. You should also make arrangements for any necessary witnesses to testify.

**COURT PROCEDURE:** You are not required to have an attorney for the court hearing. The judge has the discretion to relax formal rules of procedure and evidence in the interests of justice, if neither party has an attorney.

After swearing to tell the truth, you will tell your side of the story, producing any relevant papers or other evidence. Your presentation should be concise and to the point. The judge may ask you questions and he will allow the defendant to ask you questions. Then any witnesses for you may testify and be questioned. Next, the defendant will be

allowed to present his case, including evidence and witnesses. You will be permitted to ask the defendant questions on his testimony. After hearing both sides, the judge will announce his decision.

**It is important to understand that the judge cannot act as your attorney or provide legal advice.** However, if the defendant is represented by an attorney and you are not, and this inequity appears likely to impair your rights to a fair hearing, the judge may grant a continuance (set the hearing for a later date) so that you may have time to consult a lawyer.

**JUDGMENT:** The court has the power to issue any order it deems necessary. For example, the court may order that repairs be made, that your rent be reduced, that the tenancy be terminated, that damages be awarded to either party or that the complaint be dismissed. If the judge rules in your favor, you must submit a written statement, called an "order" for the judge's signature. This statement would summarize the judge's decision and would advise the Clerk of the Court how to disburse the money which had accumulated in the rent escrow.

**APPEALS:** Any judgment of more than \$50 can be appealed to the Circuit Court provided an appeal is filed within 10 days from the date of judgment. The person appealing the case is normally required to post an appeals bond equal to the amount of money necessary to satisfy any final judgment and court costs.

**LEGAL ASSISTANCE:** Because of the technical legal requirements for filing a rent escrow with the court and the possibility that your landlord will dispute the seriousness of your claim, you may want to consult an attorney prior to taking action against your landlord.

Legal Services of Northern Virginia provides free legal services for the indigent. In order to qualify for their services your income cannot exceed their income criteria. The Legal Services office is located at 6400 Arlington Blvd., Suite 630, Falls Church, Virginia 22042. Call them at 703.532.3733 to arrange for an appointment.

The Arlington County Bar Association maintains a legal referral service. Under this service, you are given the name of an attorney specializing in the area in which you have a problem. You may then consult with that attorney for a nominal fee. If you decide to retain the lawyer, you would then pay him at his regular rates. For legal referral, call 703.228.3390. Their office is located in Room 1800 of the County Courthouse.