

So What Exactly Is the Right of Redemption and What Right Does a Landlord Have?

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Anyone who has worked in the multifamily industry has likely heard the term “right of redemption” used. This is arguably a residential tenant’s greatest protection under Virginia state law. Unfortunately, however, there continues to be confusion among judges and tenants regarding what the right of redemption is and when exactly it applies. Just last month I was forced to explain this concept to a local judge while I was in his courtroom and I have previously held telephone conversations with another judge in a similar effort of explanation. It is my hope that if multifamily professionals understand this concept, as well as that of a strong protection afforded to landlords under Virginia law, that we as an industry can reach greater success in the courtroom and manage delinquencies more effectively.

As a matter of background, it is important to remember that there are actually two bodies of landlord-tenant law in Virginia. Most residential leases fall under the Virginia Residential Landlord and Tenant Act (commonly identified as the “VRLTA”), although the rental of certain single-family residences is not governed by the VRLTA. While the term “right of redemption” does not actually appear in either the VRLTA or Virginia’s non-VRLTA landlord-tenant law, the concept applies to residential leases in both contexts. When an unlawful detainer action is brought against a residential tenant due to nonpayment of rent, the tenant has a right to “redeem” the property – that is, prevent an eviction – by paying all “rent due and owing as of the court date” as well as late fees, other charges and fees, court costs, and attorney fees.¹ The Supreme Court of Virginia has made clear that a “tenant’s act in tendering the amount due before the first court return date triggers the protection” of the right of redemption automatically and that “no further act is required” by a tenant in order to exercise the right of redemption.² The unlawful detainer proceeding shall be dismissed as a matter of right when the tenant has made the required payment prior to the court date.

Importantly, the General Assembly has made clear that a tenant must pay *all* rent due through the court date, not just the rent sued for in the pending unlawful detainer action, in order to invoke the right of redemption. If an unlawful detainer action is filed for unpaid rent in April, for example, the tenant must pay all unpaid rent through the court date, in addition to all other amounts owed such as late fees, court costs, and attorney fees, in order to redeem the property. In this example, if the court date is in May then the tenant would have to pay the rent due for May in addition to the unpaid April rent in order to invoke the right of redemption.

The right of redemption is an extremely powerful protection for a tenant because the tenant – as a matter of right under state law – can prevent an eviction in an unlawful detainer action for unpaid rent by paying all amounts owed as of the court date. However,

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1 Va. Code §§ 55-243(D) and 55-248.34:1(E).

2 *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998).

this right is not unlimited. A tenant is only entitled to invoke the right of redemption one time during any twelve-month period of continuously residing in a dwelling unit “regardless of the term of the rental agreement or any renewal term thereof.”³ If a tenant has invoked the right of redemption within the preceding twelve months, then a landlord can seek an order of possession against the tenant in a subsequent unlawful detainer action for unpaid rent even if the tenant pays all amounts owed as of the court date in the subsequent case.

While the right of redemption is arguably a tenant’s strongest legal protection, Virginia law also provides an extremely powerful tool for landlords. A writ of possession in an unlawful detainer action may be issued “within one year” from when a court awards an order of possession.⁴ In other words, a landlord may execute on an order of possession at any point within one year of when a court grants the order of possession without the necessity of filing a new unlawful detainer action. In order to do so, however, there are certain requirements that a landlord must satisfy in order to preserve the enforceability of an order of possession. For leases falling under the VRLTA, an order of possession is no longer enforceable if the “landlord enters into a new written rental agreement with the tenant” subsequent to entry of the order of possession by the court.⁵

In the case of VRLTA tenancies, a landlord is also required to accept all rent payments with reservation in order to maintain the enforceability of an order of possession. There are two circumstances when a landlord must be concerned with accepting rent with reservation and each circumstance has different requirements. Any payments made prior to the court date in an unlawful detainer action must be accepted with reservation in order for the landlord to seek an order of possession from the court. (Note that in cases where the tenant pays *all* amounts owed as of the court date *and* the tenant has not previously exercised the right of redemption within the preceding twelve months, then the landlord would not be entitled to have an order of possession awarded by the court.) A separate written notice must be issued by the landlord within five business days of receipt of each such payment informing the tenant that the payment is being accepted with reservation, unless the notice of noncompliance issued prior to commencement of the unlawful detainer action contains acceptance of rent with reservation language.⁶ It is good practice, therefore, for landlords to include acceptance of rent with reservation language in every notice of noncompliance issued.

Once a court has awarded an order of possession, it is also necessary for a landlord to accept with reservation all subsequent payments made by a tenant in order to maintain the enforceability of the order of possession. For all payments made *after* the court has granted the order of possession, however, the landlord *must* issue a separate written notice within five business days of receipt of each such payment informing the tenant that the

3 Va. Code §§ 55-243(D) and 55-248.34:1(E).

4 Va. Code § 8.01-471.

5 Va. Code § 55-248.34:1(B).

6 See Va. Code § 55-248.34:1(A).

payment is being accepted with reservation.⁷ The right of a landlord to execute on an order of possession for up to one year is a very strong legal protection granted under Virginia law. Therefore, it is vital for landlords to remember to accept with reservation each payment made by a tenant subsequent to the court's award of the order of possession in order to retain this ability.

⁷ See Va. Code § 55-248.34:1(B).