**Legislative Proposals to Reduce Evictions**

Most Effective in Reducing Evictions:

1. **Warranty of Habitability** - Currently in Virginia, the law does not allow a tenant who hasn't paid rent to raise the poor conditions of the dwelling unit as a defense.  Many other states allow tenants to withhold rent when the dwelling unit is in poor condition (i.e. where the condition jeopardizes the health and safety of the tenant.) . We propose that Virginia enact a warranty of habitability, which would allow tenants to withhold rent when a landlord refuses to make necessary repairs.  Many tenants believe this is the law already, and they end up getting evicted even if they paid the amount of rent the property was actually worth.  Further, tenants who can't remain in the home (for example, because the water, heat or another essential service is broken) often have to pay for a hotel or motel and therefore can't pay their rent.  They also end up getting evicted.  With a warranty of habitability, these tenants would not be evicted.
2. **Improve the Right of Redemption**- Under current Virginia law, a tenant who falls behind on rent can "redeem" (pay all rent, late fees, court costs and attorney's fees) any time on or before the initial court date ONCE every twelve months.  We think tenants should be able to redeem as often as they need to and at any time before the eviction occurs, since the payment makes the landlord whole.  This would significantly reduce evictions across Virginia.
3. **Reform the Appeal Bond** - Most indigent people can appeal a judgment from general district court to circuit court without posting an appeal bond.  One of the very few exceptions to this rule is an indigent tenant who wants to appeal an order allowing him or her to be evicted due to nonpayment of rent.  Furthermore, a court can require up to 12 months' rent as an appeal bond, although usually a court requires three to four months of rent.  Indigent tenants can almost never come up with this money, so the appeal bond requirement effectively denies indigent tenants a right to appeal their cases.  We suggest eliminating the appeal bond for indigent tenants in rent-related cases, and for other tenants limiting the appeal bond to one or two months' rent.

Most likely to meet heavy resistance

1. **Limit late fees on past due rent payments** - Currently there are NO limits on the amount a landlord can charge a tenant for paying rent late, although the Virginia Code does require that late charges be "reasonable."  But judges in different places have different interpretations of what "reasonable" late fees are, and tenants who pay late fees without contesting them in court can effectively be charged any amount.  If late fees are too high for tenants to pay, a landlord can file an eviction case solely because of the nonpayment of these late fees.  Virginia's usury law limits late fees to 6% of the principal.  We suggest limiting late fees to 6% of the amount of the rent that is past due.
2. **Strengthen Prohibition on Retaliatory Eviction -** Although Virginia law prohibits a landlord from evicting a tenant to retaliate against the tenant for asserting his or her rights, it requires the tenant to prove that the landlord evicted the tenant because he was retaliating.  This is almost impossible to do in cases where the tenant has a month-to-month lease, since these leases can be terminated for any reason with only thirty days notice.  The Revised Uniform Landlord and Tenant Act (and many other states) includes a rebuttable presumption that if a landlord sues to evict a tenant within a certain time period after the tenant does a protected act (such as calls the building inspector in order to get the landlord to make repairs), the effort to evict is presumed retaliatory.  Virginia should adopt a similar presumption.
3. **Statutory Damages for Constructive Eviction** - When a dwelling unit is condemned because it is uninhabitable, the tenants living there are forced to move out even if they have always paid rent on time and have never committed a lease violation.  Nothing in Virginia law requires landlords to compensate tenants in this situation, even though in almost all cases the dwelling units become uninhabitable because the landlords don't do what the law requires them to do to keep them up to building code standards.  We suggest giving tenants who are constructively evicted when a dwelling unit is condemned the right to recover three months' rent from the landlord.

Least Likely to Meet Resistance

1. **Prohibit Landlords from Filing More than One Eviction Case at a Time Against the Same Tenant -** Many landlords across the state file more than one unlawful detainer (eviction) case against the same tenant at the same time.  For example,  when a tenant is late on rent in June and the court hearing is scheduled for sometime in July, these landlords will file TWO unlawful detainers-- one for June and one for July -- requiring the tenant to pay twice as much in court costs (and possibly attorneys' fees.) . There is no reason to file the second unlawful detainer, since a landlord can always amend the June unlawful detainer to include July rent and late fees.
2. **Require any attorney's fees provision in a lease to be reciprocal** - Currently, almost all leases in Virginia contain a provision that requires tenants to pay the landlord's attorney's fees if the landlord brings a successful case against the tenant in court.  I have never seen a lease that required a landlord to pay the tenant's attorney's fees if the tenant is successful.  Very few tenants who are sued in an unlawful detainer appear in court with an attorney, and according to a 2017 study by the National Center on State Courts, tenants who appeared with attorneys avoided eviction sixty to seventy percent of the time.  If leases that required tenants to pay landlords' attorney's fees when they lost also required landlords to pay tenants' attorney's fees when THEY lost, it would be much easier for tenants to obtain attorneys.
3. **Requiring Termination Notice to be Filed with the Court** - Legally, an unlawful detainer action cannot move forward until a landlord gives the tenant a notice terminating the lease.  But most tenants who don't have attorneys (i.e. most tenants) don't know this and some get evicted even if the landlord never sent a termination notice.  The Virginia Code should make the presentation of the termination notice an express element of an unlawful detainer case that must be presented in court in order for the landlord to get an order allowing him to evict the tenant, even in the case of a default judgment (when the defendant dos not appear in court).

For more information: Christie Marra, christie@vplc.org, 804-615-8150.