

## **DEFENDING AGAINST TENANT EVICTION**

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(Appendix items are cited as *A-page #*; attachments to pleadings omitted)

### **A. WHY EVICTION IS AN INEVITABLE CRISIS**

#### **1. FAMILIES IN POVERTY HAVE NO SHELTER SECURITY.**

- A family dependent on one member's full time employment at minimum wage of \$7.25 an hour can expect take-home income of about \$1150 per month. While impoverished families may also be eligible for varying food and medical assistance, those do not easily translate into rent money. If they commit 50% of their \$1150 to housing and related utilities, they must find a rental in the range of \$400-\$500 per month and keep their electric, gas and water bills to \$150. That is highly improbable unless their shelter cost is subsidized.
- An elderly or disabled individual living on federal Supplemental Security Income (SSI) receives about \$750 per month. To obtain shelter on 50% of that income one must find a combination of rent and utilities at rental at \$375 per month, highly improbable without subsidy.
- Under normal market conditions, the most sympathetic of landlords cannot realistically provide decent housing at those levels of rent. The least sympathetic of landlords can get by with producing indecent housing at well more than 50% of tenant income because of tenant desperation.

#### **2. FORCED RELOCATION IS FINANCIAL DISASTER FOR POOR FAMILIES.**

- A change of residence is expensive for anyone. To move, a family must come up IN ADVANCE with a month's rent, at least another month's security deposit, new utility deposits, and costs of truck rental and any helpers required. This may represent two or more entire months' income for poor families, and can often be managed only by neglecting rent for one or more months in their previous rental.
- If relocation takes place in the context of an unlawful detainer, the tenant family has to come up with the funds on extremely short notice to avoid being altogether homeless.
- A rent judgment may also result in loss by garnishment of wages or bank account. Although many tenants have nothing vulnerable to execution at time of judgment, the GDC judgment lingers to be enforced over at least ten years.

#### **3. NONFINANCIAL COSTS OF FORCED RELOCATION ARE SEVERE. A family unable to avoid enforcement of judgment for possession may also face:**

- Credit impairment, specifically denial of future housing because of court record of eviction.
- Denial of utility service for unpaid bills and deposits resulting from the financial crisis.
- Loss of employment because of the stress of homelessness or the time demands of finding alternate housing and going to court.
- Loss of all their possessions if they cannot move them to storage in time.
- Forced transfer of their children to a new school, with inevitable disruption of education.

- Loss of their children to child protective services if they cannot secure immediate shelter.
4. VIRGINIA HAS AN EXTREMELY HIGH RATE OF EVICTION.
- Matthew Desmond's Pulitzer Prize-winning book, Evicted: Poverty and Profit in the American City (2016) has prompted alarm at the incidence of judicial evictions around the country. Desmond's Eviction Lab at Princeton University followed with an exhaustive study evaluating rates of judicial eviction in many cities around the country, *see generally* <https://evictionlab.org/>.
  - In this study, Virginia jurisdictions had an overall rate of 5.1%, meaning a judgment for possession in 2016 against more than 1 in 20 of all renting households in Virginia! That's twice the national average, and Virginia had five cities within the top ten eviction-prone large cities in the whole country.
  - My practice jurisdiction of Roanoke was #48 among mid-size cities in the country, with the GDC evicting 7.36% of Roanoke residential households in a single year (total of 1531 in 2016). Lynchburg was not evaluated for lack of access to data.
  - Virginia is among those states historically regarded as having a very landlord-friendly eviction system.

## B. EVICTION BASICS.

1. RESIDENTIAL RENTALS in Virginia have since 1974 been mostly covered by the Virginia Residential Landlord and Tenant Act ("VRLTA") § 55.248.2 *et seq.* If the landlord owned no more than two single family units subject to a rental agreement, the VRLTA at § 55-248.3.1B has allowed the parties to opt out of the VRLTA in favor of the largely similar requirements of § 55-225.01 *et seq.* As of July 1, 2018, the provisions of these two sources were largely conformed; and we can look forward to elimination of this confusing parallelism altogether when those separate schemes are recodified later in 2019 into a single regime to be called the "Virginia Rental Housing Act." *See generally* A-1, Marty Weigbreit's summary of 2019 changes, "7 new laws that are more fair, favorable& friendly to tenants" A great resource on Landlord Tenant law (and much else) through 2017 is the DISTRICT COURT JUDGES BENCHBOOK (2017 ed), available at <http://www.courts.state.va.us/courts/gd/resources/manuals/districtcourtbenchbook.pdf>

2. EVICTION of residential tenants by landlord self-help is prohibited in almost all situations by VRLTA § 55-248.36, forcing the landlord to go to court unless the tenant voluntarily honors a lease termination. Judicial eviction is governed mostly by Virginia's pre-VRLTA unlawful detainer statutes, § 8.01-124 *et seq.*, which allow general district court summons for unlawful detainer ("UD)" described in §§ 8.01-126 and 8.01-128. The wording of the UD statutes reveals their history as a quick, cheap landlord tool for summary eviction, with a nice afterthought that the statute does not preclude "a the tenant who appears at the initial court date from contesting an unlawful detainer action as otherwise provided by law," § 8.01-128B.

## 3. THE JUDICIAL EVICTION SEQUENCE.

- A plaintiff landlord may load up the UD summons form with a variety of claims for possession, rent (including future rent through the disposition of the case), damages,

charges, and attorney fees, none of which need be broken down or explained in the short form. The form summons must, however, be signed and sworn to, § 8.01-126A. Example at *A-5 Macher Properties LLC v. Everett*.

- GDCs are directed to set unlawful detainers “as soon as practicable” on the civil docket, § 8.01-126A, so most UD’s are set for first return within a couple of weeks of filing.
- Court practice at that first return may vary around the state, but most courts seem to use the first return hearing to:
  - (1) Grant the plaintiff landlord judgment for all the possession and money claims pled if the tenant does not appear in person or by counsel; or
  - (2) If the tenant does appear, the court will inquire whether the tenant admits to any of the claimed rent being due (*i.e.*, “unlawfully detaining” the property) and if so, issue a final judgment for possession to the landlord under § 8.01-128B; the judgment may be enforceable immediately in the discretion of the court. Then the court -
  - (3) Determines if any other part of the landlord claims is contested, and if so, continues remaining matters for later trial, § 8.01-128B.
- If possession has been awarded, then at request of the landlord after ten days, or immediately if the court has so ordered, the clerk may issue a “writ of possession” to the sheriff to remove the tenants in possession.
- Practices of sheriffs may vary but in Roanoke the sheriff’s office first serves a notice of the writ, allowing the tenant to get out voluntarily before being forcibly set out on the appointed date in the notice, usually 2-3 days out.
- Appeal of the initial judgment for possession within 10 days takes the whole case to circuit court for new trial, § 8.01-128B. If the case is not appealed then but goes to money judgment after GDC trial, appeal can be taken as to damages only within 10 days of that judgment. This is seldom feasible because appeal in “any action involving the recovering rents” requires even an indigent tenant to secure their appeal bond by payment into court of the amount of the money judgment within 10 days, plus later rent as it comes due, § 16.1-107B and C, *as amended eff. 7/1/2019*; § 8.01-129.
- Thus the initial priority of an attorney representing the tenant in UD is generally to avoid an early judgment of possession!

### C. PREVENTING JUDGMENT FOR POSSESSION AT FIRST RETURN.

1. GET THE TENANT OUT BEFORE COURT. In the common case where the tenant is actually behind in rent and can’t catch up, the best only way to dodge the eviction bullet is for the tenant to surrender the leasehold before the first return date. BUT

- “Surrender” doesn’t just mean moving the inhabitants to another location: it also means at least getting all their belongings out and returning the keys to the landlord before court.
- In theory removal of the tenant makes a judgment for possession unnecessary and moot, depriving the court of reason or power to enter judgment for possession. See *Everett GoD+sanctions mo, A-6*. This argument may be futile, however, if the landlord articulates reasonable doubt about whether the surrender is in fact complete.

- And in any event, if the tenant was in possession at time of the landlord's filing, the case may still proceed on rent and damages, which will also impact credit standing for later rentals.

2. SETTLE THE CASE BEFORE IT GETS TO THE FIRST RETURN. There is a short window of opportunity for settlement of UD cases prior to the first return date in the right circumstances; that is, IF –

- The tenant has already located a potential alternate rental, or a place to hang out after putting their goods in storage; *and*
- They can assemble the funds to pull that off, and the help to do the moving; *and*
- They understand that the surrender of premises means leaving the premises clean and getting all keys to the landlord before the deadline; *and*
- The landlord understands that recovery of any money judgment from the tenant is unlikely, and the tenant's voluntary removal is worth some sacrifice.

In such cases, some landlords will agree to continue the UD to a near date and dismiss it altogether if the tenant is out by an agreed date. This is usually viable only if the offer includes an agreement to entry of a judgment - for possession only with immediate writ - if the tenant does NOT surrender premises by the deadline; and may require reservation of both parties' rights to sue about later move-out damages and security deposits. This is high risk/high gain territory for both parties (and for your credibility), but if successful, it removes the "recent eviction" obstacle to tenant relocation.

3. SCRAMBLE TO RAISE THE RENT AND REDEEM THE TENANCY by 1 of 3 methods:

- TENANT REDEMPTION ("pay and stay"). If the tenant raises enough money to cover all the rent, charges, attorney fees and costs in issue, that money may be paid to the landlord or into court on or before the first return date and will by operation of law require dismissal of the UD, VRLTA § 55-248.34:1D.
- REDEMPTION TENDER ("offer to pay and stay"). Alternately if the tenant presents to the court on or before the return date a written commitment from a governmental or social agency to pay all the amounts claimed as of the first return date, then the court can allow another 10 days for the those payments to be made, and if made, must dismiss. If the amounts are not paid, however, the court may without further evidence enter judgment for the full amounts and possession sued for. Unclear what happens to other defenses! VRLTA § 55-248.34:1C.
- EXTENDED RIGHT OF REDEMPTION ("extended pay and stay"). 2019 legislation added an extended right of redemption: beginning 7/1/19, even after judgment for possession and issuance of a writ, the tenant may pay the landlord the amount of the judgment plus any costs, fees, and additional rents accruing subsequently, and if received (via certified or cashiers check or money order) at least two business days before the Sheriff's scheduled writ execution date, will cancel the eviction.
- ONE SHOT PER YEAR. A tenant can use any of these forms of redemption only once in a 12-month period.

4. MOVE TO DISMISS, BAR OR TRANSFER THE UD FOR TECHNICAL FAILINGS

- UD does not lie. The statutory premise for the action of unlawful detainer is the wrongful detention of real estate from the plaintiff entitled to possession, § 8.01-124, -126A. The cause of action is statutory and its requisite elements must be proved,

Power v. Tazewells, 66 Va. 786, 789-90 (1875). If the tenant has already surrendered possession before the landlord files the UD, then a requisite for bringing such an action was unmet, the action did not lie, and the case must be dismissed. Example: *A-7, Davis*.

- Faulty notice.

- NOTICE REQUIRED. Notice to quit or demand required. See Johnson v. Goldberg, 207 Va. 487 (1966):  
 “It is settled in Virginia that if the defendant holds the land not adversely, but under the plaintiff, a notice to quit, or a demand of possession, must be shown before an action of unlawful detainer can be maintained.” 207 Va. at 490.
- MUST BE TENDERED IN EVIDENCE. Effective 7/1/19, a revised § 8.01-126D2a will require presentation to the court of the landlord’s operative termination notice to get judgment for possession in UD cases.
- VRLTA NOTICE REQUIREMENTS. Under residential leases, the VRLTA at § 55-248.31 explicitly requires a landlord’s written notice appropriate to the cause of termination as requisite to eviction. A common landlord error is in the distinction between remediable and non-remediable breaches, *compare* § 55-248.31 subsections A and B *with* C and E. With regard to rent nonpayment in particular, § 55-248.31F requires for eviction that the landlord give written notice that rent is unpaid and the lease will be terminated unless the rent is paid within five days. Lack of notice may be raised by plea in bar.
- NOTICE MUST BE PRECISE. In some jurisdictions, GDC judges have granted dismissal because the tendered pay or quit notice did not state the amount owed correctly. The District Court Judges’ Benchbook (2017 ed.) at 105-106 says:  
 “The written notice must be “for the precise sum due,” Johnston v Hargrove, 81 Va. 118 (1885) meaning the content of the notice must be accurate. It is not uncommon to see five-day notices containing amounts not authorized by the lease, such as late fees or attorney’s fees. Under the authority of Johnston v Hargrove, those notices are invalid and should result in the dismissal of the unlawful detainer summons or a judgment for the defendant. The landlord would be permitted to draft and serve a new 5-day notice and then proceed on the basis of the corrected notice. If the rent is paid within the 5 days, the landlord may not take action against the tenant. Johnston v Hargrove, supra.”  
 See also Dogwood Ltd Partnership v. Williams, 1989 WL 1740031 (Charlottesville Cir. Ct. 5/2/89). Tenant counsel report that this point is sometimes overcome by tenant admission that some rent is owed. But if all proper rent is paid before the issue is resolved, the court may well dismiss on the equities, yet another form of redemption of the tenancy.
- BUT with regard to all these notice requirements, be wary that tenants are often unreliable reporters on notices they have received!

- Wrong venue for the case. Unlawful detainer is one of those actions for which the “Category A” preferred venue is only where the rented premises lie, § 8.01-261(3)(g).

A court must transfer to the proper jurisdiction upon timely written objection on or before the day of trial, § 8.01-264, and may award attorney fees for the motion, § 8.01-266. This failing does not require dismissal, only transfer, but may buy some time as well as serve the purposes of the venue statutes. Example *A-10, Barrow*.

- Named plaintiff lacks standing. Virginia's reported decisions about standing of a named plaintiff, *e.g. Chesapeake House on the Bay Inc. v. Virginia National Bank*, 231 Va. 440 (1986) are powerful, and in Roanoke, the Legal Aid Society has been very successful in obtaining dismissals (without prejudice) of unlawful detainers where unlawful detainers are brought:
  - in the wrong corporate or LLC name
  - in the name of an agent rather than the actual owner who is 'party in interest'
  - by a layperson in the name of another person who is individual landlord (unauthorized practice)
  - by a person or corporation acting as unlicensed real estate broker
  - by a partnership not observing the formalities required of partnerships
  - by fiduciaries suing only in their individual capacity

*A-11, Cumbie*, is a sample plea in bar. "Quick Guide to Dismissal of Unlawful Detainers for Lack of Standing," a 2017 memo and 40pp appendix of sample motions, decisions, and benchbook materials by your speaker is available from the Virginia Poverty Law Center.

## 5. ASSERT LANDLORD NONCOMPLIANCE AS A GOOD FAITH DEFENSE.

**The statutory conflict in rent escrow: a short history.** At common law, the tenant's lease covenant to pay rent was "independent" of any covenants of the landlord as to conditions, so that no landlord failing justified a tenant's withholding or nonpayment. *Miller v. Southern Railway Co.*, 131 Va. 239 (1921). A primary feature of the VRLTA was its reform of that antiquarian relationship: VRLTA at § 55-248.25 allows "Landlord's noncompliance as defense to action for possession for nonpayment of rent." That defense has three requirements: (1) written notice to the landlord of the nature of the noncompliance; (2) reasonable opportunity for the landlord to come into compliance; and (3) if the tenant continues in possession, rent paid into escrow with the court pending decision. (Consult the section itself for nuances).

In 1999 the General Assembly added § 55-248.25:1, "Rent escrow required for continuance of tenant's case." This addition addressed the common situation where at first return in GDC, a contested case is to be continued for trial. Where the tenant in possession requests that continuance, the court may on request of the landlord, require escrow of rent already accrued. The main feature of this section, however, runs in the opposite direction:

"However, if the tenant asserts a good faith defense, and the court so finds, the court **shall not** require the rent to be escrowed." § 55-248.25:1A

The unlawful detainer statute, § 8.01-124 *et seq.*, contains no such softening touch. Instead it provides at § 8.01-128B (Supp.2018):

"The plaintiff may alternatively receive a final, appealable judgment for possession of the property unlawfully entered or detained and be issued a

writ of possession at the initial hearing on a summons for unlawful detainer, upon evidence presented by the plaintiff to the court.”

That subsection also permits the landlord (only) to bifurcate the case and present the claim for rent and damages at a later trial. Needless to say, landlords invariably invoke this unlawful detainer provision instead of the VRLTA provision, and anecdotally it appears that GDC courts routinely enter judgment for possession at first return regardless of whether a tenant asserts a good faith defense.

Deference to the UD statute instead of the VRLTA in this situation appears to be erroneous for the following reasons:

- (a) The reform of the common law of independent covenants is a critical feature of the VRLTA, and should not be undercut so lightly.
- (b) Unlawful detainer is an all-purpose eviction remedy covering commercial tenancies and various other Improper occupancies, not just residential tenancies; while the VRLTA expresses the legislative will more specifically in the more narrow category of residential tenancies only, and should control in the case of conflict.
- (c) Even the unlawful detainer statute at § 8.01-128B retains the limiting language: “Nothing in this subsection shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.”

VRLTA § 55-248.25:1A is exactly what “as otherwise provided by law” is referring to, and should control.

- (d) A directly relevant AG opinion, 1999 Op.AttyGen.Va. 168 (1999), interprets § 55-248.25:1A similarly:
 

“A court...must determine on a case-by-case basis whether an evidentiary hearing is necessary to prove a tenant’s assertion of a good faith defense on the return date. I am of the view that the good faith defense to be found by the court is a procedural requirement that does not necessarily require an evidentiary hearing to be held to determine whether a tenant has asserted a good faith defense. Consequently, I am also of the opinion that the court may accept a tenant’s oath of a good faith defense on the return date and grant a continuance without escrowed funds.”

The AG also opined that in enacting § 55-248.25:1 it was the -

“clear intent of the General Assembly...to change the existing law by permitting a tenant to assert a defense on the return date to avoid having rent escrowed by the court when either a continued or contested trial date is requested.”

- (e) DISTRICT JUDGES BENCHBOOK (2017 ed.) at p113 adopts the AG’s reasoning on the question explicitly:
 

“However, if the tenant asserts a good faith defense to the landlord’s claim, and the court finds the defense is in good faith, the court ‘shall not require the rent to be escrowed.’ A 1999 opinion of the Virginia Attorney General...opines that the good faith defense is a procedural requirement that does not necessarily require an evidentiary hearing and further that the court may accept a tenant’s oath of a good faith defense on the return date.”

**Practice tips on asserting good faith defenses.** Regardless of the local court's take on required escrow and "good faith defense," it makes sense for the tenant to come to a first UD return with a coherent defense if there is one. Here are some suggestions:

- Putting that defense in writing helps demonstrate good faith and may impel the landlord to be the one who seeks continuance. Just the act of signing a pleading is a certification of "good faith" by the pleader, § 8.01-271.1. Examples at A-17, *Everett*; A-23, *Shaw*; A-30, *Farrell*. In most jurisdictions each counterclaim requires a separate filing fee or waiver thereof, and may be given a separate docket number, to the great confusion of case records.

**The conditions defense** is not the only defense to suits for rent and possession, but is probably the most common and will be reviewed here to the exclusion of others.

**a. Maintaining fit premises.**

- The most common failing of low-income landlords is failing to provide a safe and habitable shelter. This goes to the heart of what the tenant is paying for, and can be a major expense for a landlord. The common law was terrible on this subject, establishing no standards other than as set out in the lease.
- Fortunately a residential landlord has very specific obligations under the Virginia Residential Landlord and Tenant Act, Va. Code § 55-248.2 *et seq.*, and parallel statutes at Va. Code § 55-225.01 *et seq.*
- The "prime directive" under both schemes is to "Comply with the requirements of applicable building and housing codes materially affecting health and safety," VRLTA § 55-248.13A1. That section also contains a subsidiary list of other LL obligations, which are more specific. This outline cites only the VRLTA on the theory that most slumlords will be unable to escape its coverage.

**b. Enforcing the State Maintenance Code**

- The most commonly applicable "building and housing code" is the 2012 Virginia Maintenance Code, published by International Code Council, Inc., online at <http://www.dhcd.virginia.gov/images/SBC/CodeBooks/2012%20Virginia%20Maintenance%20Code.pdf>. This source is Part III of the Virginia Uniform Statewide Building Code, the part which covers maintenance requirements for existing buildings. These standards are the law, enforceable in every jurisdiction of the Commonwealth.
- BUT under Va. Code § 36-105C, local governmental enforcement of the existing building maintenance standards is optional. It appears that Lynchburg and Danville have elected active enforcement. Many jurisdictions, especially rural counties, have chosen not to bear the expense of active enforcement.
- Localities may also establish a rental inspection plan for pro-active enforcement of the Maintenance Code, § 36-105.1:1, requiring inspections prior to rental and

every four years thereafter. It appears that at least Lynchburg has established this program – a great boon to property values and safe residential conditions.

- In jurisdictions which enforce the Maintenance Code, and especially those with rental inspection programs, Code Enforcement officials become a critical source of expert objective evidence in conditions case. Some officials seem to believe that civil enforcement by Legal Aid programs is more effective than criminal prosecution.
- In any jurisdiction with active code enforcement, the state of code compliance and existence of a rental certificate are likely to be the core issues, and obtaining violation notices and inspection reports from an inspector the first step; they are great evidence.
- In a jurisdiction without code enforcement, the Virginia Maintenance Code is still the standard for health and safety compliance, but violations will have to be proved by credible objective witnesses armed with pictures. Bringing roaches and mice to court in plastic bags is seldom, by itself, a winning tactic!

**c. Samples of conditions pleading:**

**D. DEALING WITH SLUMLORDS.** Adversity in the landlord-tenant relationship obviously does not mean that all landlords are predatory or ethically challenged in their treatment of poor tenants, but some are bad actors who deserve a more aggressive litigation response than has been described in these materials. As a new or occasional advocate in the field, how might you know you are dealing with one of the latter? Here are several indicators that your client is in the clutches of a serious slumlord:

- (1) Frequent practice of renting unfit premises/no rental certificate
- (2) Frequent use of lockouts, utility turnoffs
- (3) Excessive use of trespass bars against tenant family/spouses/allies.
- (4) Use of intermediaries to evict, *e.g.* protective services, police, code enforcement.
- (5) Oppressive leases, for example -
  - rental in front name which hides the owner
  - pretense at being an LLC or other entity that does not legally exist
  - rental in “as is” condition or with waiver of landlord duty to maintain
  - purporting to be able to terminate prior to a pay or quit or other mandated notice
  - excessive late fees, other charges
  - automatic forfeiture of security deposits for any alleged breach of the lease
  - outrageous provisions designed to chill tenant rights
- (6) Regularly abusive litigation practices:
  - Knowing use of a bogus name to avoid liability
  - Acting as a real estate broker without a license
  - Serving tenants by posting at the leasehold after they have surrendered it
  - Use of unlawful detainer when it does not lie

- Making claims under abusive lease provisions, e.g. excessive or cascading late fees

Effective response to such predatory practices is an essential and very satisfying part of tenant advocacy, but is beyond the scope of this presentation. You may want to look for the outline and extensive appendices titled "Dealing with Slumlords" h/w, Statewide Legal Aid Training Conf 2018 on the [probono.net/va/civillaw/library/](https://probono.net/va/civillaw/library/) website. Try <https://app.box.com/s/vwkbesndpuhpzv13y9t1u8eps650y2ip/file/344460436452>. There is a wealth of great practice material from other legal aid advocates on that website as well.

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**7 NEW LAWS THAT ARE MORE FAIR, FAVORABLE & FRIENDLY TO TENANTS**

Starting July 1, 2019, seven new laws will take effect in Virginia. All seven are more fair, favorable and friendly to tenants. They all were passed as a response to the high rate of evictions in Virginia, which are more than two times the national average. In many cities in Virginia, evictions are more than four times the national average. These are the seven new laws:

(1) Written Leases Required. Under current law, a lease may be oral or written. An oral lease leaves both landlords and tenants uncertain about their rights and duties. Starting July 1, 2019, landlords must offer written leases. If the landlord does not do that, the law sets out a specific lease that will apply. This lease has these rules:

- The lease is 12 months with no automatic renewal.
- Rent is paid in 12 monthly payments.
- Rent is due on the first of the month and late after the fifth of the month.
- A reasonable late fee may be charged.
- The security deposit can be no more than two months' rent.
- The landlord and tenant still may enter into a written lease.

(2) One Case at a Time and Required Evidence. Under current law, a landlord may file an unlawful detainer (eviction) lawsuit due to nonpayment of rent for each month rent is claimed to be overdue. A landlord can file these lawsuits one after the other even if prior lawsuits are still undecided. This leads to increased fees – multiple court filing fees, and multiple attorney fees if an attorney is involved. Starting July 1, 2019, if nonpayment of rent is the only issue, a landlord may file only one lawsuit at a time. On request of the landlord, the judge must allow the lawsuit to be amended to cover all rent and fees claimed as of the trial date.

Under current law, a landlord is not required to have the court admit into evidence the notice that terminated or ended the tenancy. This means many tenants do not know the exact reason the landlord wants to evict them. Starting July 1, 2019, to get a judgment of possession and start the Sheriff's eviction process, the landlord must present the court with a proper termination notice that the court enters into evidence.

(3) Pilot Eviction Diversion Program. Under current law, in a nonpayment of rent case a tenant must pay all amounts due as of the court date, no later than the court date, to avoid a judgment of possession. These judgments of possession stay on a tenant's record for ten years.

They are a barrier for future rentals even if the tenant later pays current and is able to stay. Starting July 1, 2020, tenants in Richmond, Petersburg, Hampton, and Danville will be eligible for a mandatory pilot Eviction Diversion Program (EDP). Tenants must meet these rules:

- Nonpayment of rent must be the only issue between the landlord and the tenant.
- The tenant comes to court on the return date (1<sup>st</sup> court date) and asks to be in the EDP.
- The landlord and tenant must agree on the amount due on the return date.
- On or before the return date, the tenant has paid the landlord or the court at least 25% of the amount due on the return date.
- The tenant testifies he or she has sufficient funds to make payments under the EDP.
- The tenant testifies why he or she fell behind in rent.
- In the past 12 months, the tenant has not been late in rent more than two times in a 6 month period or more than three times in a 12 month period.
- The tenant has not used the right of redemption – had an unlawful detainer dismissed by paying current – in the last 6 months.
- The tenant has not participated in an EDP in the last 12 months.

If the case is put into the EDP, a court-ordered payment plan is issued. Payments must be made to the landlord by cashier's check, certified check, or money order. Payments must be received by the landlord on or before the 5<sup>th</sup> day of each month included in the plan. The first payment from the tenant is 25% of the amount due. This is due the month following the return date. (For example, if the return date is February 12, the next payment is due by March 5.)

The second payment from the tenant is 25% of the amount due. This is due the second month following the return date. The third and final payment from the tenant is 25% of the amount due. This is due the third month following the return date. Ongoing rent must be paid by the tenant within 5 days of the due date set by the lease. If the tenant makes all payments as required by the payment plan, the lawsuit will be dismissed. If not, the landlord may seek a judgment of possession.

A tenant may participate in an eviction diversion program only once in any 12 month period of time.

(4) Tenant Attorney's Fees in Poor Housing Condition Cases. Under current law, landlords usually may claim attorney's fees under the lease or by statute. Tenants have very few ways to do this. As a result, landlords can use the threat of attorney's fees in litigating with tenants. Starting July 1, 2019, attorneys who represent tenants and who win two types of cases involving poor housing conditions can get attorney's fees

- In a Tenant's Assertion, a tenant must be current in rent and stay current. The tenant also must give reasonable notice to the landlord, or have someone else do so, of the poor housing conditions. In addition, the tenant must wait a reasonable period of time before filing the Tenant's Assertion. If repairs are not made, the tenant may pay the next month's rent into court and file a Tenant's Assertion. If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.

- In a defense to an eviction lawsuit for nonpayment of rent, the landlord must have been given notice of the poor housing conditions by the tenant, or someone else on behalf of the tenant, before the eviction lawsuit was filed. In addition, the tenant, if in possession, must pay the unpaid rent into court. If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.

(5) Extended Right of Redemption (Pay and Stay). Under current law, tenants get three chances to pay their rent late and stay. These chances end on the court date. Starting July 1, 2019, they will have a fourth and later chance.

- The first chance is within any grace period of the lease (if any). If the tenant pays the rent within the grace period, the tenant gets to stay. The tenant may do this any number of times.

- The second chance is after the grace period (if any) ends and before the landlord has filed an unlawful detainer (eviction) lawsuit. Usually this is the time during which the landlord has given the tenant a five day nonpayment notice. If the tenant pays the rent and the late fee during this time period, the tenant gets to stay. The tenant may do this any number of times.

- The third chance is after the landlord has filed an unlawful detainer (eviction) lawsuit and on or before the court date. This is called a redemption (pay and stay), or a redemption tender (offer to pay and stay).

A redemption means the eviction lawsuit must be dismissed as paid if the tenant pays the landlord, the landlord's attorney, or the court all amounts owed as of the court date. All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, and reasonable attorney's fees (if a landlord's attorney is involved).

A redemption tender means the tenant comes to court on the first court date and shows the judge a written commitment from a local government or non-profit agency to pay all or part of the redemption amount. If so, the judge must postpone the case ten days and allow the tenant to come back with the full redemption amount on that day. If so, the case is dismissed as paid. If not, the landlord gets an order of possession.

A tenant may do a redemption, or a redemption tender, only once in any 12 month period of time.

- As of July 1, 2019, tenants will get a fourth and later chance to pay their rent late and stay, which is an extended right of redemption (extended right to pay and stay). If a judge decides in the landlord's favor, a judgment of possession is entered. After that, the landlord may ask the court to issue a writ of eviction. This writ goes from the clerk to the Sheriff to the tenant. It authorizes the Sheriff to evict on a specific date.

Under the extended right of redemption, the tenant can pay the landlord, the landlord's attorney, or the court all amounts owed as of two business days before the Sheriff's scheduled eviction date. All amounts owed means all rent (including a new month's rent

if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, Sheriff's fees, and reasonable attorney's fees (if a landlord's attorney is involved). Payment must be by cashier's check, certified check, or money order. If so, the Sheriff's eviction is cancelled.

A tenant may do a redemption, a redemption tender, or an extended redemption only once in any 12 month period of time.

(6) Use Writ or Lose Writ. Under current law, once a landlord gets a judgment of possession, the landlord can use that for up to 12 months before getting the writ of eviction. This 12 month period, during which a landlord can trigger an eviction hangs, over the head of the tenant even if all rent has been paid current and the tenant is following the lease. Starting July 1, 2019, the timeframe is shortened to six months, giving both landlord and tenant greater certainty.

Under current law, a writ of eviction that is not executed by the Sheriff simply expires after 30 days. Due to this, landlords do not know whether the tenant actually was put out by the Sheriff. Starting July 1, 2019, a writ of eviction that is not executed by the Sheriff is vacated. This will let tenants who work things out with their landlord have the writ removed from their tenant record and not be a blemish.

(7) Access to Appeal. Under current law, to appeal an eviction judgment based on nonpayment of rent, the tenant must post an appeal bond for the amount of the money judgment for rent. Tenants also must post an appeal bond for up to 12 months future rent in advance. Usually courts require 3-4 months future rent. All this money must be paid within ten days of judgment. This estimate of future rent which could be due while the appeal is pending is not related to the actual rent due during this period. It is an impossible barrier to a tenant's appeal.

Starting July 1, 2019, to appeal an eviction judgment based on nonpayment of rent, the tenant still must post an appeal bond for the amount of the money judgment for rent, within ten days of judgment. But after that, the tenant must only pay ongoing rent as it becomes due.

SUMMONS FOR UNLAWFUL DETAINER  
(CIVIL CLAIM FOR EVICTION)

CIVIL DIVISION - CITY OF ROANOKE

CITY OR COUNTY

2nd FLOOR, 315 W. CHURCH AVENUE, ROANOKE, VA 24016-5007 (540) 853-2364

STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: Summon the Defendant(s) as provided below:

TO THE DEFENDANT(S): You are commanded to appear before this Court on

Aug. 3rd 2017 2pm to answer this civil claim.

DATE ISSUED

[ ] CLERK [x] DEPUTY CLERK [ ] MAGISTRATE

CLAIM AND AFFIDAVIT: That Defendant(s) unlawfully detains and withholds from Plaintiff(s):

33-14th ST Roanoke VA

ADDRESS/DESCRIPTION OF DETAINED PROPERTY

and that the Defendant should be removed from possession based on the following:

unpaid rent [ ]

and further that rent is due and owing and damages have been incurred as follows:

\$ 400.00 rent due for July and \$ 50.00 late fee

and \$ 63.00 damages for with interest 6% per year

and \$ 200.00 RAN ELECTRIC civil recovery and attorney's fees.

This summons is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act, § 55-248.2 et seq. of the Code of Virginia.

All required notices have been given.

Subscribed and sworn to before me this 11 day of JULY, 2017

My commission expires:

[ ] CLERK [x] DEPUTY CLERK [ ] MAGISTRATE [ ] NOTARY PUBLIC

[ ] City [ ] County of

CASE DISPOSITION

[ ] JUDGMENT that Plaintiff(s) recover against [ ] named DEFENDANT(S).

[ ] possession of the premises described above pursuant to § 8.01-128.

[ ] A hearing shall be held on to establish final rent and damages.

[ ] Immediate writ of possession authorized pursuant to Virginia Code

[ ] § 8.01-129 based upon a judgment of default for [ ] a trustee's deed following foreclosure

[ ] the nonpayment of rent [ ] immediate non-remediable termination.

[ ] § 55-243(C) or § 55-248.34-1(D).

DEFENDANT(S) PRESENT? [ ] YES [ ] NO

DATE JUDGE

[ ] Rent, in the sum of \$ 400.00 and \$ 50.00 late fee

and \$ 63.00 damages with interest 6% per year and attorney's fees.

\$ 63.00 costs and \$ civil recovery and attorney's fees.

HOMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED

[ ] JUDGMENT FOR [ ] NAMED DEFENDANT(S) [ ]

[ ] NON-SUIT [ ] DISMISSED DEFENDANT(S) PRESENT? [ ] YES [ ] NO

DATE JUDGE

FOR 421 FRONT 07/14 (A172911 3/17)

HEARING DATE AND TIME

CASE NO. 6V17006672 Aug 3rd 2017 2pm

Plaintiff(s) NAME(S) (LAST, FIRST, MIDDLE)

1925 Salem Ave

Roanoke VA 24016

Defendant(s) NAME(S) (LAST, FIRST, MIDDLE)

ANURA V. EVERITT

33 14th ST

Roanoke VA 24016

TELEPHONE NUMBER

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 the reverse about requesting a change of trial location and your right to prevent this unlawful detainer action through payment of amounts owed.

[ ] To dispute this case, you must appear on the return date to try this case

[x] To dispute this case, you must appear on the return date for the judge to set another date for trial.

If you fail to appear and a default judgment is entered against you, a writ of possession may be issued immediately for possession of the premises.

Bill of Particulars ordered

Grounds of Defense ordered

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

DISABILITY ACCOMMODATIONS for loss of vision, hearing, mobility, etc. Contact the court ahead of time.

MONEY JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION

DATE

CLERK

JUDGE'S INITIALS

and any rents coming due to the next hearing date must also be paid into the court.

RENT OWED

into the court to be held in escrow by

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

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DATE

VIRGINIA: IN THE ROANOKE CITY GENERAL DISTRICT COURT

MACHER PROPERTIES LLC and  
RLPJ PROPERTIES LLC

Plaintiffs

v.

ANGA EVERETT

Defendant

Civil No. GV17006672

**GROUND OF DEFENSE AND  
MOTION FOR SANCTIONS**

**GROUND OF DEFENSE**

**FIRST DEFENSE: POSSESSION MOOT**

Plaintiffs filed this unlawful detainer action against Ms Everett on July 11, 2017, upon a lease attached to the Summons and taking effect July 1, 2017, alleging unlawful withholding of possession of a rented house at 33 14<sup>th</sup> Street SE in the City of Roanoke. Defendant Ms. Everett never moved into the premises in question, and on the initial return date of the action on August 3, 2017, the premises were already in the possession of a successor tenant, as was conceded by plaintiffs and noted by the court.

**SECOND DEFENSE: RENT CLAIM IS FALSE**

Plaintiffs' claim for \$400 in July rent, stated in the unlawful detainer and asserted in court on the August 3 return resulting in entry of judgment for that amount, was patently false and fraudulent. The full \$600 July rent and \$200 security deposit called for by the lease were paid in full in June, well before the July 11 filing date of the unlawful detainer, as shown by the receipts at Attachment A.

**THIRD DEFENSE: THE RENTAL WAS ILLEGAL AND UNENFORCEABLE**

The premises at 33 14<sup>th</sup> Street SE were within the zone of the City requiring a rental inspection certificate before residential rental, Roanoke City Code § 7-48, and had no certificate since the previous one expired in 2015, as plaintiffs well knew. In addition there was an outstanding Code Violation Notice issued to plaintiffs on June 20, prior to the effective date of the rental, requiring extensive repairs which had not been completed. The lease was thus contrary to the explicit public policy of the City and the Commonwealth intended to protect tenants such as Ms Everett from unsafe and unsanitary living conditions, and is completely unenforceable by the knowing and culpable party but voidable by the innocent injured party.

WHEREFORE judgment of dismissal with prejudice must be entered in favor of defendant Ms Everett with award of her costs.

A-6

### MOTION FOR SANCTIONS

1. The summons for unlawful detainer, alleging rent as due which had been paid, was signed by Roland H. Macher as managing agent for the two entities named as plaintiffs.

2. By his signature to the unlawful detainer summons for Macher Properties LLC and RLPJ Properties LLC, Mr. Macher has as a matter of law certified as to the pleading that "...*(ii)* to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law, and *(iii)* it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," Virginia Code § 8.01-271.1.

3. The pleading was signed in violation of that certification in that Mr. Macher and Macher Properties LLC and RLPJ Properties LLC knew or would have known after reasonable inquiry that the rent asserted to be due was in fact paid.

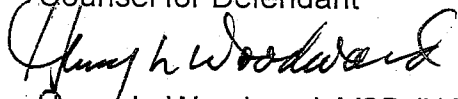
WHEREFORE judgment should be entered against Roland H. Macher and Macher Properties LLC, and RLPJ Properties LLC, jointly and severally, in favor of Anga Everett, for such sanctions as the court may direct pursuant to Virginia Code § 8.01-271.1, including damages to the defendant tenant and a reasonable attorney's fee of \$500 to be paid to their counsel the Legal Aid Society of Roanoke Valley for application in its program of indigent representation.

ANGA EVERETT by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Defendant

by



Henry L. Woodward, VSB #13548

132 Campbell Avenue SW Suite 200

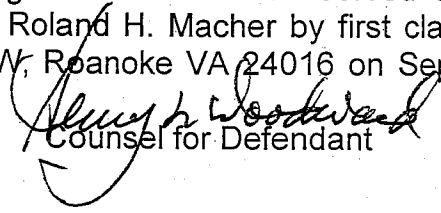
Roanoke, Virginia 24011-1206

(540) 344-2088; fax 342-3064

henry@lasrv.org

### CERTIFICATE OF SERVICE

I certify that the foregoing pleading and motion were served upon Macher Properties LLC, RLPJ Properties LLC, and Roland H. Macher by first class mailing to Roland H. Macher, 1925 Salem Avenue SW, Roanoke VA 24016 on September \_\_, 2017.



Counsel for Defendant

VIRGINIA: IN THE ROANOKE CITY GENERAL DISTRICT COURT

MACHER PROPERTIES LLC, RH  
MACHER Agent  
Plaintiff

\*

Civil No. GV18008552

\*

**PLEA IN BAR**

v.

WHITNEY DAVIS  
Defendant

\*

**AND  
MOTION FOR SANCTIONS**

**PLEA IN BAR**

1. Plaintiff landlord filed this action in unlawful detainer under the purely statutory basis set out in Virginia Code § 8.01-126, alleging Ms Davis unlawfully detains and withholds possession of a rented house at 702 Harrison Avenue NW in the City of Roanoke.

2. While Ms Davis acknowledges having once rented the premises, she will show she moved out and surrendered her key as directed by plaintiff landlord on August 2, 2018. Roland H. Macher, managing member and agent of Macher Properties LLC, knew on that day that Ms Davis was no longer in possession of the premises, told her to leave the key in the house mailbox, and berated her for abandoning the lease.

3. Thus as of the filing date of August 7, 2018, the statutory element of unlawful detention required for the exercise of the court's jurisdiction under the unlawful detainer statute, *Power v. Tazewells*, 66 Va. 786, 790 (1875), was not met, as any reasonable inquiry would have confirmed.

4. The jurisdiction of this court in eviction actions is limited to the parameters of § 8.01-126, and does not extend to ejectment that generally requires trial of title in the circuit court, *Davis v. Mayo*, 82 Va. 97, 98-99 (1886).

WHEREFORE Ms Davis asks that after hearing evidence limited to her plea in bar:

- A. The court dismiss the action as not within the court's jurisdiction; or
- B. In the alternative, the court dismiss the action because an essential element of the statutory claim cannot be proved.
- C. Should the court not grant either A or B, then Ms Davis asks that the claim for possession be dismissed as moot *ab initio*, and a bill of particulars as to the rest of the claim be ordered.

## MOTION FOR SANCTIONS

1. On the signature date of August 7 shown on the summons, plaintiff's counsel Melvin Hill has as a matter of law certified, for himself and for his client, as to the pleading: "...*(ii)* to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law, and *(iii)* it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," Virginia Code § 8.01-271.1.

2. The summons for unlawful detainer was not in fact well grounded in fact or warranted by existing law, in that:

A. It alleged possession to be in issue when plaintiff landlord knew otherwise, as a pretext to bring a statutory action without meeting the requisite element of unlawful detention; and

B. It alleged the premises address to be the residence of Ms Davis when plaintiff landlord knew she had moved from that address, creating an obvious likelihood that service posted at that address would not reach her; and in fact only by happenstance did she become aware that she had been sued so she could avoid default.

WHEREFORE judgment should be entered in favor of defendant Whitney Davis under Virginia Code § 8.01-271.1, jointly and severally against (1) plaintiff Macher Properties LLC, (2) Roland H. Macher as plaintiff's operative agent knowing of the misrepresentations, and (3) their counsel, unless he can show his reasonable inquiry into the facts of the situation, for such sanctions as the court may direct pursuant to Virginia Code § 8.01-271.1, including damages to the defendant tenant and a reasonable attorney's fee of \$250 to be paid to her counsel the Legal Aid Society of Roanoke Valley for application in its program of indigent representation.

WHITNEY DAVIS by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Defendant

by

Henry L. Woodward, VSB #13548  
132 Campbell Avenue SW Suite 200  
Roanoke, Virginia 24011-1206  
(540) 344-2088; fax 342-3064  
[henry@lasrv.org](mailto:henry@lasrv.org)

*Certif of Service  
submitted*

A-9

VIRGINIA: IN THE ROANOKE CITY GENERAL DISTRICT COURT

LOWES HOMES LLC

Plaintiff

v.

MORGAN BARROW and JOHN LINKOUS

Defendants

Civil No. GV19000995-00

**MOTION OBJECTING TO VENUE  
AND  
ORDER OF TRANSFER**

Defendants represent. that venue is improperly laid in this court because:

1. This action is filed as an unlawful detainer to terminate a lease for a residential rental in Vinton, Roanoke County, Virginia, as shown by the address of defendants furnished by plaintiff landlord on the summons.

2. Preferred venue for unlawful detainer under Virginia Code § 8.01-261(3)(g) lies only in Roanoke County where the land lies, not in the City of Roanoke.

Pursuant to Virginia Code § 8.01.264, defendants object to trial of the action in this court, and request transfer to the Roanoke County General District Court. Defendants also request an award of \$100 attorney fees under Virginia Code § 8.01-266 or § 8.01-271.1 for the necessity of making this transfer motion.

MORGAN BARROW and JOHN LINKOUS by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Defendants  
by *Henry L. Woodward*  
Henry L. Woodward, VSB #13548  
132 Campbell Avenue SW Suite 200  
Roanoke, Virginia 24011-1206  
(540) 344-2088; fax 342-3064  
henry@lasrv.org

**CERTIFICATE OF SERVICE**

I certify that a copy of this pleading was served upon counsel of record in this case, as required by Rule 7A:10 and 7A:3, by facsimile to Melvin L. Hill, Esq., 342-1853, on February 28, 2019.

*Henry L. Woodward*  
Counsel for Defendant

**ORDER**

Upon the motion presented, the court finds that venue is improperly laid and **ORDERS** the case transferred to the General District Court of Roanoke County. Final judgment is entered against plaintiff in favor of defendants for \$\_\_\_\_\_ in attorney fees payable to the Legal Aid Society of Roanoke Valley.

ENTER:

\_\_\_\_\_  
Judge

A-10  
2019 FEB 28 PM01:32

VIRGINIA: IN THE ROANOKE COUNTY GENERAL DISTRICT COURT

JACK CUMBIE  
Plaintiff

\*

Civil No. GV08-1339-00

v.  
ROSS ROBINSON and  
DESIREE ROBINSON  
Defendants

\*

MOTION TO DISMISS ON SPECIAL  
PLEA

\*

Defendants move for dismissal of the claim on special plea, and would show:

1. The rental property in issue is a ranch-style house owned by Mamie E. Webster, although it may have been rented for her by others. See Roanoke County real estate records attached.

2. The present action is brought by Jack Cumbie rather than in the name of the owner Mamie Webster, who is the real party in interest both for purposes of collecting any rent due, and for accepting liability for any breach of lease or of landlord duty imposed by common law or statute which may be implicated in defense or counterclaim.

3. Plaintiff Cumbie may sign pleadings as managing agent for owner Webster, if he can establish the requisite agency relationship, under Virginia Code § 55-248.4 (2007) (definition of landlord); but neither that section nor § 8.01-126 (2007) nor § 55-246.1 (2007) (when pleadings may be signed by non-attorneys) authorizes a managing agent to bring the action against defendant tenants of the true owner in his own name, rather than in the name of the owner. See attached decisions of this court in Macher Properties GP v. Eads, GV06-5001494 (Judge Talevi, 1/16/07); Macher Properties v. Moody and Shepherd, GV07-012645 (Judge King, 9/20/07).

4. If plaintiff Cumbie is only an agent of the owner, he is specifically barred by Virginia Code § 55-246.1 (2007) from maintaining in any name an action for unlawful detainer against a tenant defendant who is not in default in the action.

5. The misnaming of the plaintiff in this case in effect disguises the unauthorized practice of law by plaintiff Cumbie on behalf of the true owner.

A-11

6. Naming as sole plaintiff an entity which has no capacity or standing to bring the case is fatal to the action, which must be dismissed, Chesapeake House on the Bay, Inc. v. Virginia National Bank, 231 Va. 440 (1986). While Virginia Rule 1:8 permits liberal amendment, and Va. Code § 8.01-5 (2007) permits cure for misjoinder, those provisions have always been subject to the limitation that a new plaintiff may not be substituted for an original plaintiff who lacked standing, Chesapeake House on the Bay at 442; Bardach Iron Co. v. Tenenbaum, 136 Va. 163 (1923). The substitution of the correct party for the improper one has been equated with the assertion of a new cause of action and held to be reversible error, Norfolk So. R. Co. v. Greenwich Corp., 122 Va. 631 (1918). Nor may the error be cured by calling the mistake a misnomer, § 8.01-6 (2007); where the wrong person is named, it cannot be corrected by labeling it a misnomer, Rockwell v. Allman, 211 Va. 560, 561(1971).

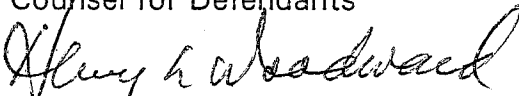
WHEREFORE defendants ask for dismissal of the unlawful detainer.

ROSS ROBINSON et ux. by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Defendants

by



Henry L. Woodward

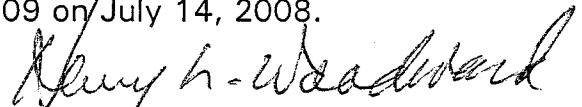
132 Campbell Avenue SW Suite 200

Roanoke, Virginia 24011-1206

(540) 344-2088; fax 342-3064

#### CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon Correy A. Diviney, counsel for plaintiff, by facsimile to 342-2909 on July 14, 2008.



Counsel for Defendant

## County of Roanoke, Virginia

|      |           |          |       |      |              |
|------|-----------|----------|-------|------|--------------|
| Land | Structure | All Data | Print | Help | Close Window |
|------|-----------|----------|-------|------|--------------|

Parcel Id: 079.03-05-81.00-0000

Property Address: 3513 BUSHDALE RD Unit#

Building Name:

Owner Name: WEBSTER MAMIE E

Billing Address: 1011 MOREHEAD AVE S E

ROANOKE VA 24013

Legal Description: PT PAR 1 FAMILY SUBD FOR MAMIE E WEBSTER

Neighborhood: 40033

Appraiser: 04

Utilities:

[Click here for contact information](#)

2008 Land Value: \$38,000

2008 Building Value: \$40,200

2008 Total Market Value: \$78,200

[Click here for  
2008 Values](#)

Jurisdiction: COUNTY

Card Number: 001 of 001

Magisterial District: VINTON

Census Block: 511610310002010

Deeded Acre (AC) or Lot (LT): 3.1 AC Calculated Acreage:

In Land Use: N

Use Model: SINGLE FAMILY RESIDENCE

Year Built (Est): 1960 Style: RANCH W/BAS

Billing Type Class:

Flood Certificate:

Zoning: R1

Zoning Conditions:

| Transfers  |             | Instrument References |           |
|------------|-------------|-----------------------|-----------|
| Year/Month | Sales Price | Type                  | Number    |
|            |             | PLAT                  | 002400010 |
|            | \$0         | DEED                  | 009110301 |
|            | \$0         |                       |           |
|            | \$0         |                       |           |
|            | \$0         |                       |           |
|            | \$0         |                       |           |

Bed Rooms: Lower 0, Base 1, Upper 0, Total 1

Full Baths: Lower 0, Base 1, Upper 0, Total 1

Half Baths: Lower 0, Base 0, Upper 0, Total 0

Foundation: CONT FOOTING

Sub Floor: PLYWOOD

Floor Cover #1: PINE

Floor Cover #2:

Interior Wall #1: DRYWALL

Interior Wall #2: PLYWOOD PANEL

Exterior Wall #1: ALUM/VINYL

Exterior Wall #2:

Commercial Structure Frame:

Fire Place Description: NONE

Roof Structure: GABLE

Roof Cover: ASP/COMP SHNG

Heat Fuel: OIL/WOOD/COAL

Heat Type: AIR-DUCTED

Air Condition Type: NONE

Apartment Units:

| Sub Area Description     | Sq. Ft. |
|--------------------------|---------|
| BASE                     | 500     |
| PORCH-ENCLOSED UNFINISHE | 60      |
| PORCH-OPEN UNFINISHED    | 40      |
| PORCH-OPEN FINISHED      | 161     |
| BASEMENT-UNFINISHED      | 500     |

NOTICE: Every effort is made to produce and publish the most current and accurate information possible. No warranties, expressed or implied, are provided for the data herein.

A-13



# COMMONWEALTH of VIRGINIA

Chief Judge  
JULIAN H. RANEY, JR.

Judges  
GEORGE W. HARRIS, JR.  
VINCENT A. LILLEY  
JACQUELINE F. WARD TALEVI  
FRANCIS W. BURKART, III

23RD JUDICIAL DISTRICT  
**CITY OF ROANOKE GENERAL DISTRICT COURT**  
SECOND FLOOR, 315 W. CHURCH AVENUE  
ROANOKE, VIRGINIA 24016-5007

RONALD S. ALBRIGHT  
Clerk

January 16, 2007

R. H. Macher  
Macher Properties GP  
405 Campbell Ave., S.W., Suite A  
Roanoke, VA 24016

Henry L. Woodward, Esq.  
Legal Aid Society of Roanoke Valley  
132 Campbell Ave., S.W. Suite 200  
Roanoke, VA 24011-1206

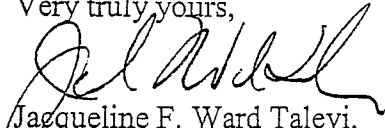
In RE: Macher Properties GP, RH Macher v. Eads

Dear Mr. Macher and Mr. Woodward:

Reference is made to the above captioned case. On January 4, 2006, the court heard oral argument on defendant's motion and invited plaintiff's response. The court has reviewed the applicable law on the issue argued.

The court sustains the defendant's demurrer to plaintiff's claim on the grounds that the plaintiff, Macher Properties GP, RH Macher, is not the true owner of the subject property. According to the argument of counsel that was not rebutted by the plaintiff, Shakie L. Macher not Macher Properties GP owns the subject property. Under Virginia Code Section 8.01-126, a managing agent may file an unlawful detainer warrant when supported by a sworn affidavit, but the agent cannot bring the action in the name of a non owner. Accordingly, the court dismisses the claim without prejudice so the proper plaintiff may file another unlawful detainer if that plaintiff be so advised.

Very truly yours,

  
Jacqueline F. Ward Talevi,  
Judge

**RECEIVED**

JAN 18 2007

LEGAL AID SOCIETY  
OF ROANOKE VALLEY A-14

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

MACHER PROPERTIES RH Macher  
Agent

Plaintiff

v.

JODY MOODY and SOPHIA SHEPHERD  
Defendants

Civil No. 07012645

ORDER

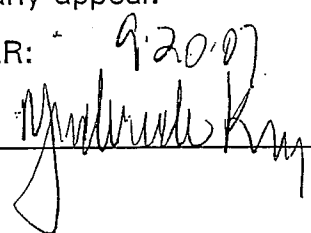
This matter was before the court on August 29, 2007, on defendants' motion for sanctions under Virginia Code § 8.01-271.1. Plaintiff's unlawful detainer proceeding was nonsuited prior to the hearing, but the sanctions motion was filed before plaintiff's nonsuit, and survives for this court's disposition, Williamsburg Peking Corp. v. Kong, 370 Va. 350 (2005).

The court finds that the unlawful detainer proceeding was signed by Roland H. Macher and names as plaintiff "Macher Properties RH Macher Agent." Plaintiff concedes that the action is for collection of rent on a property owned not by Macher Properties but by Shakie Macher, and that Macher Properties was merely managing the property for the owner. The court holds this misnaming or nondisclosure of the true party in interest was the same practice proscribed to this same plaintiff in a decision by Judge Talevi of this court on January 16, 2007, in dismissing a similar action. In its defense plaintiff says that Judge Talevi's decision did not warn of the risk of sanctions if that ruling was disregarded, but advances no plausible basis for excusing disregard of the decision. Upon inquiry by the court, the plaintiff could not assure the court that the prohibited practice does not continue in other cases initiated by the plaintiff.

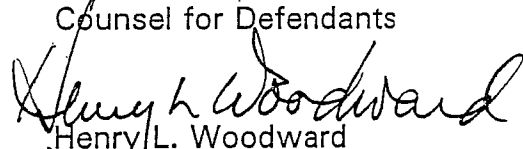
The court finds that Roland H. Macher's signing of the unlawful detainer summons was in violation of the standard imposed by § 8.01-271.1 upon attorneys and self-represented litigants alike, that "to the best of his knowledge, information and belief, formed after reasonable inquiry, [such pleading] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." The court finds that defendants and their counsel have been put to needless increase in the cost of litigation, and that

deterrence is necessary, and so adjudges that sanctions are appropriate. The court finds inadequate evidence for award of damages to the defendants personally, but upon submission by their counsel finds \$684 to be a reasonable award of defendants' attorney's fees.

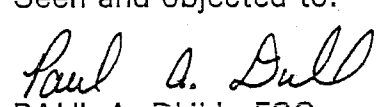
It is therefore ORDERED that pursuant to Virginia Code § 8.01-271.1, defendants are granted judgment against Macher Properties and Roland H. Macher individually for their attorney fees of \$648, to be paid to the Legal Aid Society of Roanoke Valley. No costs have been incurred and none are awarded. This order shall run from the date of its entry for purposes of any appeal.

ENTER: 9.20.07  


Requested:  
LEGAL AID SOCIETY OF ROANOKE VALLEY  
Counsel for Defendants

by   
Henry L. Woodward  
132 Campbell Avenue SW Suite 200  
Roanoke, Virginia 24011-1206  
(540) 344-2088; fax 342-3064

Seen and objected to:

  
PAUL A. DULL, ESQ.  
Counsel for Plaintiff  
P O Box 4845  
Roanoke VA 24015  
(540) 344-3009; fax 344-3066

VIRGINIA: IN THE ROANOKE CITY GENERAL DISTRICT COURT

MACHER PROPERTIES LLC and  
RLPJ PROPERTIES LLC  
Plaintiffs

Civil No. GV17 -8915

**COUNTERCLAIMS**

v.  
ANGA EVERETT  
Defendant

For her counterclaims to the claims of plaintiffs in GV17006672 (or in the alternative her own complaint against those entities, with the caption reversed), defendant Anga Everett alleges:

**COMMON FACTS**

1. Defendant Anga Everett sought a home for herself and her teenage son after moving from Richmond to Roanoke. In mid-June 2017 she responded to an advertisement on Craigslist (Attachment 1) for the rental of a single family house at 33 14<sup>th</sup> Street NE in the City of Roanoke, Virginia.
2. The Craigslist advertisement described the house as "just Rehabbed today" and "available today."
3. Relying upon the description, she called the number on the listing, spoke to Roland H. Macher who had advertised the property, and arranged for him to show her the premises on June 19.
4. Upon their meeting at the 33 14th Street house, Macher did not have a key and walked around the perimeter seeking an unlocked window or door for entry.
5. Noticing his presence, neighbors called to Ms Everett "Don't rent this place". Macher proceeded to shout back, threatening charges against the neighbors.
6. Macher contacted someone to bring a key, and eventually he and Ms Everett entered the property. The interior of the house was in disarray, with a multitude of unfinished repairs, insect infestations, and other obvious conditions issues.
7. Ms Everett expressed concern to Macher about the unsuitable state of the property, but Macher assured her that all issues would be resolved prior to a July 1 occupancy.
8. Ms Everett was also facing urgent need to transition from a family member's

residence where she felt she and her son were imposing, and knowing nothing of Macher's reputation, she decided to trust that Macher was earnest in his promises.

9. Relying upon Macher's oral representations, Ms Everett signed a woefully duplicative and confusing one year lease (Attachment 2) with a term beginning July 1, and paid an initial \$500 towards required security deposit of \$200 and July rent of \$600. She paid the remaining \$300 on June 22 (receipts are Attachment 3).

10. Although the lease is ambiguous as to the role of the plaintiffs, in fact plaintiff RLPJ Properties LLC is the title owner of the property, plaintiff Macher Properties LLC acts as agent of RLPJ Properties LLC for rental and management (including bringing legal actions), and Roland H. Macher is the managing member of both entities and has acted for them in all dealings with Ms Everett.

11. The knowledge and actions of Mr. Macher are in all cases attributable to those entities for which he has acted as managing member.

12. Shortly after the leasing, Ms Everett met Macher's maintenance man at the rented house and he changed the locks and provided her a key.

13. While Ms Everett was at the house, a man later identified as ~~William~~ <sup>Ronald</sup> Hurt approached Everett and informed her that he had also had a lease on the property but could not move in due to the unsafe and unrepaired condition of the premises. ← my error

14. After a short discussion with Ms Everett, Mr. Hurt contacted the police regarding the double rental of the property. The police arrived and advised that the double rental was a civil matter and was outside of their jurisdiction.

15. Ms Everett was rattled by this additional discovery but had already committed financially to the lease and considered herself bound, so she began to prepare the premises for her relocation on July 1.

16. Ms Everett had the water turned on and placed in her name at the property. She also purchased numerous cleaning supplies and stored them at the property for future use.

17. On July 3 the water company notified Ms Everett that meter readings indicated a serious leak in the water supply system, and she had the water turned off pending repairs.

18. Upon returning to the property to check on the status of Macher's repairs, Ms

Everett found an envelope on the door with her name. Inside was a June 20 City of Roanoke Code Enforcement violations notice for the property (Attachment 4), annotated by Macher, and showing that he had received written notice of defects in the premises and did not appeal it.

19. Macher's annotations represented to Ms Everett that 33 14th Street was not uninhabitable despite the extensive violations, so she must place electric service to the house in her name. In fact the property still had serious numerous issues, many of them as outlined in the violations notice.

20. After a curt discussion through text messages with Macher regarding the status of repairs, Ms Everett contacted Inspector Brad Wilson, whose name she found on the code violations notice, on or about July 7th.

21. Inspector Wilson advised Ms Everett that the property located at was not in habitable condition and had no rental certificate.

22. Because of the delay in the house being ready for occupancy, Ms Everett had to pay \$188.40 to rent a storage building for much of her personal property for the same period (July) on which she had paid rent on the house.

23. Ms Everett visited the property to recover her cleaning supplies valued at \$50, but discovered they were missing.

24. Instead of returning her payments and supplies, Macher on July 11 filed an unlawful detainer action for the plaintiff entities falsely alleging Ms Everett's liability for the July rent and security deposit she had already paid.

25. On July 22, Macher listed the property again on Craigslist (Attachment 5) and thereafter leased the property to yet another tenant, creating the third overlapping tenancy for the same house.

26. The house at 33 14th Street is within the area subject to Roanoke City's rental inspection program, requiring compliance inspection and certification before rental, Roanoke City Code § 7-48.

27. The property previously had a rental certificate that expired in November 2015, and plaintiff RLPJ Properties LLC was sent notice to that effect by Code Enforcement (Attachment 6). There was no rental certificate for the premises when rented to Ms Everett or her predecessor Mr. Hurt, or when Macher advertised it again

as "available now" and "ready to go." Macher and the plaintiff Macher entities were on notice at all relevant times of this deficiency.

28. These facts are incorporated in each of the claims that follow.

#### **FIRST COUNTERCLAIM – UNLAWFUL CONTRACT OF LEASE**

29. Upon the facts alleged, the lease was illegal from the outset as contrary to the City of Roanoke's rental inspection ordinance intended to protect tenants such as Everett from unsafe and unsanitary living conditions, and is unenforceable by the knowing and culpable party but voidable by the innocent injured party, who may recover their damages, Cohen v. Mayflower Corp., 196 Va. 1153 (1955).

WHEREFORE Anga Everett asks for judgment under the common law of contract jointly and severally against plaintiffs Macher Properties LLC and RLPJ Properties LLC for

A. Damages of \$1038.40, consisting of \$800 in rent and security paid, the \$50 value of lost cleaning supplies, and the \$188.40 cost of renting July storage space;

B. Voiding of the lease; and

C. Her costs and interest from date of judgment.

#### **SECOND COUNTERCLAIM – VIOLATION OF THE VRLTA**

30. In the alternative, the lease in question was subject to the Virginia Residential Landlord and Tenant Act ("VRLTA"), § 55-248.2 et seq.

31. Upon the facts alleged, plaintiffs Macher Properties LLC and RLPJ Properties LLC willfully failed (1) to comply with applicable building and housing codes, including both the Roanoke City rental inspection requirements and the Existing Housing Maintenance Code, and (2) to put the premises in fit and habitable condition prior to rental, in violation of VRLTA §§ 55-248.13A1 and A2.

WHEREFORE Ms Everett asks for judgment pursuant to VRLTA § 55-248.21 jointly and severally against plaintiffs Macher Properties LLC and RLPJ Properties LLC for:

A. Damages of \$1038.40, consisting of \$800 in rent and security paid, the \$50 value of lost cleaning supplies, and the \$188.40 cost of renting July storage space;

B. Voiding of the lease; and

C. Her costs, interest, and reasonable attorney fees pursuant to VRLTA § 55-

248.21 to be paid to the Legal Aid Society of Roanoke Valley for application to its program of indigent representation.

### **THIRD COUNTERCLAIM – VIOLATIONS OF THE VCPA**

32. Upon the facts alleged:

A. The lease in question was a “consumer transaction” (an advertisement or lease of real property for personal or household use) as defined by the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 et seq., at § 59.1-198.

B. Plaintiffs Macher Properties LLC and RLPJ Properties LLC were “suppliers” within the meaning of VCPA § 59.1-198.

C. In leasing to Anga Everett, plaintiffs Macher Properties LLC and RLPJ Properties LLC committed acts or practices prohibited by VCPA § 59.1-200 by:

(1) misrepresenting in their Craigslist advertisement that the house was “rehabbed” and “available today” when the premises were unfit to live in because of numerous building code violations, in violation of VCPA §§ 59.1-200A.2, .5, .6, .7, .10, and .14;

(2) misrepresenting that the house could lawfully be rented July 1, when plaintiff RLPJ Properties LLC had no current valid rental inspection certificate for the property, in violation of VCPA §§ 59.1-200A.2, .5, .6, .7, .10, and .14; and

(3) misrepresenting that the house was available for rent when in fact there was an outstanding lease for the same premises held by Mr. Hurt, in violation of VCPA §§ 59.1-200A.14.

33. These misrepresentations were knowingly or recklessly false, were material to Ms Everett’s decision to lease, were made with the intent of plaintiffs that Ms. Everett rely upon them, Ms. Everett relied upon them, and Ms. Everett was actually injured by the loss of her rental and security payments and cleaning supplies and cost of storage.

WHEREFORE Ms Everett asks for judgment jointly and severally against Macher Properties LLC and RLPJ Properties LLC pursuant to VCPA § 59.1-204 for:

A. Actual damages of \$1038.40; but not less than

B. Treble that amount, or \$3115.20, as statutory damages under § 59.1-204A, for willful violation of the VCPA;

C. Her costs, interest, and reasonable attorney fees pursuant to VCPA § 59.1-204B, to be paid to the Legal Aid Society of Roanoke Valley for application in its

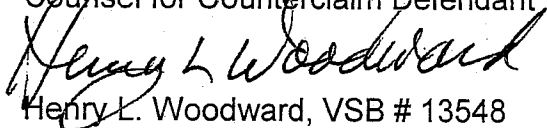
program of indigent representation.

ANGA EVERETT by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Counterclaim Defendant

by



Henry L. Woodward, VSB # 13548

132 Campbell Avenue SW Suite 200

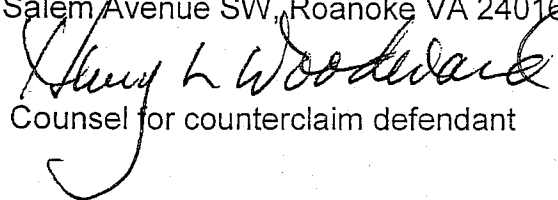
Roanoke, Virginia 24011-1206

(540) 344-2088; fax 342-3064

[henry@lasrv.org](mailto:henry@lasrv.org)

#### CERTIFICATE OF SERVICE

I certify that this pleading was served upon plaintiffs by first class mailing on September 7, 2017, to Roland H. Macher, 925 Salem Avenue SW, Roanoke VA 24016.



Counsel for counterclaim defendant

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

MACHER PROPERTIES, Roland H.  
Macher, Agent  
Plaintiff

\*

\*

Civil No. 06019697-00

v.

JUSTIN SHAW and BILLIE SHAW  
Defendants

\*

GROUND OF DEFENSE,  
COUNTERCLAIMS, AND THIRD  
PARTY CLAIMS

v.

\*

ROLAND H. MACHER

Serve: 405 Campbell Ave. SW Suite A  
Roanoke VA 24016

\*

SHAKIE L. MACHER

\*

Serve: 3556 Pinnacle Ridge Rd NE  
Roanoke VA 24012

\*

Third party defendants

GROUND OF DEFENSE

Defendants Justin and Billie Shaw are advised they have defenses upon the following facts and law:

1. Defendants Mr. and Mrs. Shaw rented the property in question from plaintiff partnership Macher Properties under the attached lease of October 5, 2006. The property is owned by Shakie L. Macher, a partner in the Macher Properties general partnership.

2. As part of a multi-unit apartment building with common services, the property and rental are subject to the Virginia Residential Landlord and Tenant Act ("VRLTA"), Virginia Code §§ 55-248.2 et seq.

3. Heat in the apartment was to be provided by the lessor under the lease at ¶3. Immediately upon moving in, the Shaws realized that the apartment had a deficient central heating system incapable of heating their apartment.

4. That same day, the Shaws told plaintiff partner Roland Macher of the problem and he told them to get themselves some electric space heaters at their own expense. Though they did get one space heater, it did not provide adequate heat to make the apartment habitable in cold weather, and they could not afford the extra cost of electricity to use it.

5. As a result of the unwillingness of plaintiff partnership to provide heat as required by the lease, the Shaws were forced to take temporary shelter with Mrs. Shaw's father, but returned to the apartment regularly because they had located no other place for their furniture and belongings.

6. Plaintiff partnership was fully aware from the outset of their complaints

and their reasons for withholding rent, but nonetheless refused to remedy the conditions.

7. In early November plaintiff partnership entered or engaged others to enter the Shaws' apartment, and removed the refrigerator furnished by lessor under ¶4 of the lease, all without the Shaws' prior knowledge or consent, further rendering the apartment uninhabitable.

8. The Shaws paid a security deposit of \$200 and the first week's rent of \$125 at the outset of the lease, but after discovering that they had no heat, and later no refrigerator, they attempted without legal advice to induce plaintiff partnership to provide those utilities and facilities by paying no further rent.

9. Rental of the premises was illegal from the outset in that plaintiff partnership rented it knowing the heating system was deficient, and with intent to illegally pass off to the tenants the fundamental statutory duty imposed on landlords by VRLTA § 55-248.13 to maintain fit premises. Such an illegal contract is not enforceable by the culpable party, Cohen v. Mayflower Corp., 196 Va. 1153 (1955).

10. Plaintiff partnership failed to correct illegal conditions which it knew about both from the outset and after repeated demand for correction, so that the Shaws are entitled to termination of the lease and setoff of any rent claimed, VRLTA § 55-248.25, and no rent is due.

11. The claim for reimbursement of electric utilities allegedly paid by the plaintiff partnership fails with the rent claim, and would represent unjust enrichment in any event to the extent that it represents the cost of operating space heaters as a substitute for lessor-provided heat as called for by the lease.

12. The requested late fees of \$50 on \$450 rent per month, without regard to actual loss, are unenforceable because the fees requested and the lease provision authorizing them are unreasonable in violation of the VRLTA § 55-248.15:1; and a penalty unenforceable at common law because unrelated to actual loss, Bethel v. Salem Home Improvement Co., 93 Va. 354, 25 S.E. 304 (1896); Taylor v. Saunders, 233 Va. 73, 353 S.E.2d 745 (1987); Highgate Associates Ltd. v. Merryfield, 597 A.2d 1280 (Vermont 1991). They are also usurious in violation of the 12% per year contract interest limit of § 6.1-330.55 and the 5% late charge limit of § 6.1-330.80. Where the parties have not agreed on a lawful and viable late fee scheme, it is not for the court to construct a better contract for them. Cf. Wilson v. Holyfield, 227 Va. 184, 187 (1984).

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13. The Shaws' liability if any for rent is offset by their entitlement to damages under the counterclaims which follow.

14. Despite the illegal invasion described in their counterclaims, the Shaws do not wish to be restored to possession so that claim is moot.

WHEREFORE judgment should be entered for defendants Justin and Billie Shaw on plaintiff partnership's claims, with their costs.

### COUNTERCLAIMS

The counterclaims incorporate the allegations of fact in the grounds of defense.

#### FIRST COUNTERCLAIM – VRLTA AND LEASE VIOLATIONS

1. Plaintiff partnership's failure to provide agreed heat and removal of the refrigerator from the Shaws' apartment as alleged above represent violations of VRLTA at § 55-248.13A2, A4, A7 (Supp 2006), the VRLTA at § 55-248.10:1; ¶¶ 3 and 4 of the lease, and the implied covenant of quiet enjoyment imposed by the common law.

WHEREFORE judgment should be entered under VRLTA §§ 55-248.21 and 55-248.10:1 in favor of the Shaws against Macher Properties and its partners for the full value of the leasehold, including refund of \$325 actually paid for rent and security, with interest from judgment and reasonable attorneys' fees payable to the Legal Aid Society of Roanoke Valley for application in its program of indigent representation.

#### SECOND COUNTERCLAIM – TRESPASS, CONVERSION, AND INFLICTION OF EMOTIONAL DISTRESS

1. On November 27, 2006, this court entered judgment under Virginia Code § 8.01-128 giving possession to plaintiff partnership, and subject to further hearing on issues of damages.

2. The court instructed the parties that the judgment could not be enforced by writ of possession for ten days, or before December 7, 2006, and did not authorize immediate possession in its order.

3. Without bothering to obtain a writ of possession, plaintiff partnership and its agents on December 4 re-entered the premises without the Shaws' knowledge and consent, and leased the premises to a subsequent tenant who assumed immediate occupancy and removed all their property at the instruction of plaintiff partnership.

4. When the Shaws returned to their apartment late on December 4, they found that their remaining belongings were heaped by the curb, that everything of value had been looted by persons unknown, and that the rest was so damaged as to be

irretrievable.

5. The items known to have been thus taken and lost in this unlawful invasion by plaintiff partnership, and their values, are as shown in the attached list, consisting of the great bulk of household possessions of the Shaws and their two children.

6. As a direct consequence of loss of the bulk of their possessions and the aggravating circumstances surrounding plaintiff partnership's illegal invasion and dispossession of their premises, the Shaws have also suffered emotional distress as foreseeable and intended by plaintiff partnership. Johnson v. Marcel, 251 Va. 58 (1996).

WHEREFORE judgment should be entered in favor of the Shaws against Macher Properties and its partners for

- A. \$1000 for each instance of entry without consent by plaintiff partnership or its agents;
- B. \$3120 in damages from loss of their property;
- C. \$10,000 for intentional infliction of emotional distress.
- D. Costs and interest from date of judgment.

#### THIRD COUNTERCLAIM – PUNITIVE DAMAGES

1. Plaintiff partnership's tortious conduct described above was intentional, malicious and in knowing disregard of the Shaws' rights as tenants under the law, their lease, and the order of this court.

WHEREFORE punitive damages to the limit of the court's jurisdiction should be awarded to the Shaws against Macher Properties and its partners to deter them from such conduct in the future.

#### THIRD PARTY CLAIM

1. Though plaintiff Macher Properties is a general partnership of Roland H. Macher and Shakie L. Macher, it has sued only in the partnership name.

2. As general partners the individual Machers are jointly and severally liable for all obligations of the partnership, including those asserted as counterclaims in this action, Virginia Code § 50-73.96.

3. As general partners the Machers must be named individually in order to sustain individual liability for the debts of the partnership, Virginia Code § 50-73.97.

4. The counterclaims of the Shaws against Macher Properties are incorporated against the partners individually as if repeated here.

WHEREFORE judgment should be entered against Roland H. Macher and

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Shakie L. Macher jointly and severally to the same extent as against the partnership Macher Properties on the Shaws' counterclaims.

JUSTIN SHAW and BILLIE SHAW by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY  
Counsel for Defendants

by

Henry L. Woodward  
132 Campbell Avenue SW Suite 200  
Roanoke, Virginia 24011-1206  
(540) 344-2088; fax 342-3064

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon plaintiff in this case, as required by Rules 7A:10 and 7A:3, by mailing first class on December 29, 2006.

Counsel for Defendants

A-27



# COMMONWEALTH of VIRGINIA

Chief Judge  
JULIAN H. RANEY, JR.

Judges  
GEORGE W. HARRIS, JR.  
VINCENT A. LILLEY  
JACQUELINE F. WARD TALEVI  
FRANCIS W. BURKART, III  
April 2, 2007

23RD JUDICIAL DISTRICT  
**CITY OF ROANOKE GENERAL DISTRICT COURT**  
SECOND FLOOR, 315 W. CHURCH AVENUE  
ROANOKE, VIRGINIA 24016-5007

RONALD S. ALBRIGHT  
Clerk

Henry L. Woodward, Esq.  
Legal Aid Society  
132 Campbell Ave., Suite 200  
Roanoke, VA 24011-1206

Christopher Lambert, Esq.  
Brumberg, Mackey and Wall, PLC  
Professional Arts Building, Suite 800  
30 Franklin Road, S.W.  
Roanoke, VA 24011

In RE: Shaw v. Macher Properties & Roland H. Macher and Shakie L. Macher  
Counterclaim

Dear Gentlemen:

Reference is made to the above captioned case that was tried by the court on March 16, 2007 and March 30, 2007.

Regarding the first counterclaim alleging violations of the Virginia Residential Landlord Tenant Act (VRLTA) and the lease, the court finds in favor of the counterclaim plaintiffs and awards the return of the rent money and the security deposit paid; the award amount is \$325.00. The court finds from the evidence that at all times during the lease agreement the landlord failed to furnish heat to the premises in violation of VRLTA at Section 55-248.13 A4, A7 (Supp 2006), VRLTA Section 55-248.10:1 and clauses 3 and 4 of the lease.

Regarding the second counterclaim for trespass, conversion and infliction of emotional distress, the court finds in favor of the counterclaim plaintiffs on the issues of trespass and conversion. The court finds no evidence to support the claim for infliction of emotional distress. The court finds the landlord or his agent unlawfully entered the apartment without tenant's permission and removed the refrigerator from the subject premises.

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APR 03 2007

LEGAL AID SOCIETY  
OF ROANOKE VALLEY

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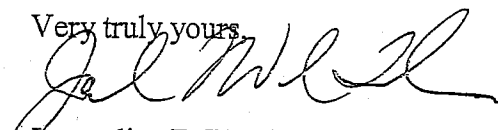
The evidence further showed that landlord re-leased the apartment to another tenant prior to obtaining lawful possession of the property from the Shaws. On November 27, 2006, Roland Macher, agent for Macher Properties attended a hearing before the General District Court regarding an unlawful detainer warrant filed by Macher Properties. The court awarded possession of the premises to the landlord to commence ten days later. On December 4, 2006, the new tenant secured a written lease from the landlord commencing that same date, paid a month's rent for the subject premises, obtained a key to the premises, and removed personal property from the apartment which belonged to the Shaws without their permission. The court finds the Shaws were at that time lawfully in possession of the subject premises. The court rejects landlord's argument that the new tenant removed the property at his peril and without permission from the landlord or his apparent agents. The court finds from the facts the landlord is responsible for damages to the Shaws' property that occurred after the property was unlawfully removed from the premises. The court awards the counterclaim plaintiffs \$2790. for damage to their property; \$1000. for the trespass entries; the claim for infliction of emotional distress is dismissed.

Regarding the third counterclaim for punitive damages, the court finds in favor of the counterclaim plaintiffs. The court finds the landlord willfully and maliciously acted in violation of the tenants' possessory right to the subject premises when he or his agent entered the property without tenants' consent, removed the refrigerator leaving the tenants with no refrigerator, re-rented the subject premises to a new tenant contrary to court order, and approved either expressly or implicitly the removal of personal property from the premises which belonged to the Shaws. The court finds the evidence supports the conclusion that the landlord's misconduct was particularly aggravated and the court awards punitive damages in the amount of \$9,000.

Lastly, the court awards attorney fees to Legal Aid Society of Roanoke Valley for the representation of the tenants in the amount of \$2016. The court awards judgment against Roland H. Macher and Shakie L. Macher individually as individual partners and the court awards judgment against the partnership of Macher Properties. The court asks the Legal Aid Society of Roanoke Valley to draft an order consistent with this opinion and present it to counsel and the court for endorsement.

The court shall enter judgment once the order is endorsed and the appeal period shall begin to run from that date. The court shall provide the parties with a copy of the endorsed order.

Very truly yours,

  
Jacqueline F. Ward Talevi,  
Judge

VINE AND BRANCH PROPERTIES, \*  
INC. and JORGE PARROTT

## GROUND'S OF DEFENSE AND

## COUNTERCLAIMS

MICHAEL F. FARRELL JR.

For his grounds of defense defendant tenant says:

3. The premises have been condemned as unfit for habitation as a result of the plaintiffs' refusal to make required repairs, see the attached notice, and Mr. Farrell expects to be out of possession by the first hearing date.

B. No rent or late fees may be awarded on a void lease or a property condemned for failure of the owner to maintain;

## COUNTERCLAIMS

1. Mr. Farrell has paid at least \$850 in rent since the outset of the illegal

and void lease, and is entitled to restitution thereof, with his reasonable attorney fees, under VRLTA § 55-248.21.

2. In addition Mr. Farrell has performed extensive labor to repair the premises for the ultimate benefit of plaintiffs, and is entitled to restitution thereon in an amount to be fixed by the court, with reasonable attorney fees, under the same VRLTA provision.

3. In addition Mr. Farrell will by the hearing of this action have incurred expenses of relocation necessitated by the plaintiffs' maintenance failures and condemnation of the property, so that he is entitled to recovery of those expenses under the same VRLTA provision.

4. The illegal rental to Mr. Farrell by plaintiffs was knowing, intentional, reckless and malicious on the part of plaintiffs, entitling him to recover in tort for willful injury to himself and his family in an amount adequate to compensate them for their suffering and inconvenience, and an additional amount of punitive damages adequate to deter plaintiffs from such illegal conduct in the future.

WHEREFORE Mr. Farrell demands judgment against plaintiffs jointly and severally for relief as follows:

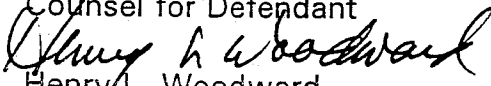
- A. Return of \$850 in rent payments;
- B. Compensation for his labors of approximately \$4000;
- C. Expenses of relocation as established at trial;
- D. Damages in tort of \$5000;
- E. Punitive damages not to exceed the court's jurisdictional limits; and
- F. Reasonable attorney fees payable to the Legal Aid Society of Roanoke Valley to be applied in its program of indigent representation.

MICHAEL F. FARRELL JR. by counsel

LEGAL AID SOCIETY OF ROANOKE VALLEY

Counsel for Defendant

by

  
Henry L. Woodward

132 Campbell Avenue SW, Suite 200  
Roanoke, Virginia 24011-1206  
(540) 344-2088; fax 342-3064

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served upon counsel of record in this case, as required by Rules 7A:10 and 7A:3, by mailing on January 30, 2004.

*Glenn Woodward*  
Counsel for Defendant

*Judgment for Defendant against  
Plaintiffs in the amount of \$850.00. Fees  
awarded to the Legal Aid Society of Roanoke  
Valley in the amount of \$2345.00.*

*6/7/04*

*Renee*

*Judge*

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I hereby certify that the document to which this authentication is affixed is a true copy of a record in the City of Roanoke General District Court and that I have custody of that record.

*S. Gregory*  
☐ Clerk ☒ Deputy Clerk