

APPLICATION FEES

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A frequent source of tenant-landlord misunderstanding is the application fee and the conditions under which the prospective tenant may recover it.



ARLINGTON
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APPLICATION FEES

WHAT IS AN APPLICATION FEE?

- The Virginia Residential Landlord and Tenant Act (VRLTA), which covers all landlords except those who own no more than four single-family houses or condominium units, defines an application fee as follows:
 - " 'Application fee' means any deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord, lessor, or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit." (Section 55-248.4)
- Money paid to a landlord by a prospective tenant, which would be applied later to the security deposit or rent, is an application fee until the tenant takes possession.

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VRLTA SECTION ON APPLICATION FEES

- **"Application Fees.** Any landlord may require an application fee. If the applicant fails to rent the unit applied for and the application fee exceeds thirty two dollars, the landlord shall refund to the applicant within twenty days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application fee or deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within ten days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the fee wrongfully withheld and reasonable attorney's fees.." (Section 55-248.6:1)

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IF THE TENANT FAILS TO RENT

- Some applications state that the application fee will be forfeited if the tenant fails to rent the unit. Under VRLTA such clauses are probably not enforceable. However, by depositing money on a rental unit a prospective tenant indicates his firm intention to rent if the landlord accepts him. This, in effect, takes the unit off the rental market, making the tenant responsible for actual losses incurred by the landlord if the tenant later decides not to rent.

IF THE LANDLORD REFUSES THE TENANT

- If the landlord decides not to accept an applicant, he has a claim for the cost of his credit check. After deducting that amount, he should return the balance of the application fee.

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PERMISSIBLE DEDUCTIONS FROM FEE

- The law permits a landlord to deduct his actual expenses from the fee and requires that he furnish an itemized list of these deductions, which he should be able to document. Common deductions the landlord can claim are:
 - Rent loss. The law does not address the period of tenant liability, which may be:
 - The amount of time the unit was held off the market (from the date of the tenant's application to the date he gave notice he would not rent); or
 - The period of total rent loss (from the date tenancy was to have begun to the date the unit was occupied by another tenant).
 - If the unit is rented to someone else by the date the applicant was to begin occupancy, the landlord has no rent loss. The landlord is always expected to try to re-rent the unit so as to minimize rent loss for which the original applicant is liable. (To return the fee within 20 days, however, limits the amount of rent loss a landlord can claim.)
 - Re-renting costs, such as newspaper ads
 - Credit and rental reference checks of the prospective tenant.

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REFUND

- The law specifies return of the application fee within 20 days after the tenant's failure to rent the unit (10 days if the application fee was paid by cash, certified check, cashier's check or postal money order). The law is imprecise as to whether this period begins when the tenant notifies the landlord that he does not want the unit, or when the lease was to have begun.
- A tenant whose application fee is not refunded should send the landlord a letter, keeping a copy for himself. The letter should include:
 - a chronology of the pertinent dates:
 - date of the application,
 - date the tenancy was to have begun,
 - date of applicant's notice that he would not be renting the unit;
 - the amount of the payment;
 - any other relevant facts, such as the applicant's reason for not renting the unit; and
 - reference to the application fee section of the state law and its requirements.

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LEGAL REMEDY

- If the prospective tenant contests the deductions or the landlord fails to document them to the tenant's satisfaction, the tenant may sue in Court to recover that portion of the fee rightfully due him, plus reasonable attorney's fees.