

# EVICTION DEFENSE CENTER

## Guide to Challenging Attorney Fees

Landlords often ask a judge to make you pay their attorney fees in an eviction case. Sometimes they ask for too much money and sometimes you shouldn't have to pay any of it. This guide explains how to ask a judge to deny or limit the attorney fees you may have to pay.

To start, look at your Summons in the "Claim and Affidavit" section to see if your landlord is asking for attorney fees and how much. It may show a dollar amount or it may simply say "reasonable." Either way, it means they're asking the judge to make you pay their attorney fees.

unlawfully detains and withholds from Plaintiff(s):  
 EET, RICHMOND, VA 23224  
 PTION OF DETAINED PROPERTY  
 possession based on the following:  
 es have been incurred as follows:  
 - NOV 2021 and \$ 300.00 late fee  
 IOD  
 with interest 6% DATE OF JUDGMT  
 RATE(S) AND BEGINNING DATE(S)  
 civil recovery and \$ 200.00 attorney's fees.

### 1. Should you have to pay any attorney fees?

If you can show the judge good reasons why you haven't been able to move out or pay all the rent you owe, they should not make you pay the attorney fees.

- Have you not had enough money to pay your landlord and also pay for other essentials—things like food, childcare, medical expenses, or transportation for work?
- Have you tried but can't find other housing you can afford?
- Do you have another compelling reason you haven't been able to pay or move out?

If you can show a good reason, you can ask the judge to not make you pay attorney fees.

- Use the attached script and form in court.
  - Script: **Asking the Judge to Deny All Attorney Fees**
  - Form: **Objection to Landlord's Request for Attorney Fees** (take 3 copies to court)

### 2. Is the landlord asking for too much in attorney fees?

If the landlord is asking for more than around \$250 in attorney fees, you may want to object and ask the judge to limit the amount.

- Use the attached script and form in court.
  - Script: **Asking the Judge to Limit Attorney Fees**
  - Form: **Request to Limit Attorney Fees** (take 3 copies to court)

*This is general legal information, not legal advice.*

*For individual advice about your case, please contact Legal Aid (866-534-5243).*

(4/1/2024)

# Script: Asking the Judge to Deny All Attorney Fees

*If you are raising other defenses at the beginning of the hearing, you should do those first. For example, if your landlord didn't give you a correct notice before filing the eviction case. You can bring up the attorney fees after those other issues.*

To ask the judge to not make you pay attorney fees, here is what you should say to the judge.

•  
§ 11)

Your honor, I want to object to the landlord's request for attorney fees.

I believe I should not have to pay attorney fees because I qualify for the defense found in the Virginia Residential Landlord and Tenant Act.

I am not a lawyer, but I have a written objection that explains it all.

May I please give this to you instead of reading my objection out loud to you?

If the judge will not let you give them the written document, here is a simpler version you can read out loud to the judge.

(Read only the bulleted statements that are true in your case.)

•  
§ 11)

Your honor, my defense is in section 55 point 1 dash 1245 paragraph H4. (55.1-1245(H)(iv))

It says that I may have to pay attorney fees provided for in the lease or the law unless I show that my failure to pay rent or vacate was reasonable.

- I testify that I have not paid the balance I owe my landlord because I have not had enough money to pay that and also pay for other essentials—like food, childcare, medical expenses, or transportation for work.
- I testify that I haven't moved out of the property because I have searched but I haven't found other decent and affordable housing to move into.
- I testify that other compelling reasons have kept me from paying the balance and moving out. [Explain the reasons to the judge.]

If the Court requires more evidence on this defense, I request a trial to present the evidence.

But I would ask the Court to accept my testimony as enough proof and deny my landlord's request for attorney fees.

**Instructions:** To ask the judge to not make you pay attorney fees, complete this and give it to the judge when they allow you to speak. Mark with an X the checkboxes that are true for you. Bring three copies to court and give one to the judge.

### OBJECTION TO LANDLORD'S REQUEST FOR ATTORNEY FEES

I hereby request the Court deny the Plaintiff's request for an award of attorney fees in this case under the defense provided in the Virginia Residential Landlord and Tenant Act (VRLTA).

If a landlord prevails in a lawsuit like this, the VRLTA states that the court shall award damages which may include "reasonable attorney fees as contracted for in the rental agreement or as provided by law, *unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable....*" Va. Code § 55.1-1245(H)(iv) (emphasis added).

In support of that defense, I declare that the following are true.

- I have not paid the balance I owe my landlord because my present income and available resources have not been enough to cover what I owe the landlord and other immediate, essential expenses.
- I have not vacated the property because I have searched but have been unable to find other suitable and affordable housing to move into.
- I have other compelling reasons why I have been unable to pay my balance or vacate, which I can describe in testimony.

WHEREFORE, I ask the Court to deny the landlord's request for an award of attorney fees in this case.

Signature of Defendant/Tenant: \_\_\_\_\_

## Script: Asking the Judge to Limit Attorney Fees

*If you are raising other defenses at the beginning of the hearing, you should do those first. For example, if your landlord didn't give you a correct notice before filing the eviction case, start with that. You can bring up the attorney fees after those other issues.*

To ask the judge to limit the attorney fees, here is what you should say to the judge.



Your honor, I challenge the request for attorney fees in this case.

The amount is unreasonable and out of proportion to the actual damages sustained.

I am not a lawyer, but I have here a written objection with the legal authority supporting my challenge.

May I please give this to you instead of reading my request out loud to you?

If the judge will not let you give them the written document, here is a simpler version you can read out loud to the judge.



I challenge the attorney fees because the amount is unreasonable.

The Virginia Supreme Court has said, “The party claiming the legal fees has the burden of proving prima facie that the fees are reasonable and were necessary.”

If the Court would use a formula like a percentage of damages, I challenge that. The Virginia Supreme Court has stated that a court may not QUOTE “shirk its duty to assess what amount of attorney’s fees is reasonable in the specific case before it.” END QUOTE.

If they say that the amount of fees is based on something in the lease defining it as a specific amount or percentage, I challenge that as an invalid penalty clause.

The Virginia Supreme Court has said “A liquidated damages clause will be construed as an unenforceable penalty ... where the stipulated amount would be grossly in excess of actual damages.”

My request is this.

(continued on next page)



One: The Court deny the attorney fees in this case.

Or Two: Hold a hearing on the issue of attorney fees.

- The Virginia Supreme Court has said, “Where, as here, the contracts provided for attorney's fees, but did not fix the amount thereof, a fact finder is required to determine from the evidence what are reasonable fees under the facts and circumstances of the particular case.”

And Three: If they say the fee amount is in the lease, the Court should set the hearing at least one month in the future, so I can try to get an attorney and subpoena records related to the case.

- The Virginia Supreme Court has said that a party challenging this type of lease clause “is entitled to conduct discovery and present relevant evidence that the damages resulting from breach of the contract ... are grossly in excess of the actual damages suffered by the nonbreaching party.”

**Instructions:** To ask the judge to limit the amount of attorney fees you have to pay, sign this and give it to the judge when they allow you to speak. Bring three copies of this form to court.

## REQUEST TO LIMIT ATTORNEY FEES

I challenge the attorney fees Plaintiff requested in the summons as unreasonably high in this case and unjustified by evidence.

The Supreme Court of Virginia has held, “A prevailing party who seeks to recover attorneys’ fees pursuant to a contractual provision ... has the burden to present a prima facie case that the requested fees are reasonable and that they were necessary.” *W. Square, L.L.C. v. Commc'n Techs., Inc.*, 274 Va. 425, 433, 649 S.E.2d 698, 702 (2007).

### **Quantity Not Set in Lease**

If the lease authorizes assessing reasonable attorney fees but the Court would use a formula for awarding attorney fees in this case (e.g., a fixed percentage of total damages awarded), I argue that such a practice would be an abuse of discretion.

The Supreme Court of Virginia has stated that a court may not “shirk its duty to assess what amount of attorney’s fees is reasonable in the specific case before it.” *Lambert v. Sea Oats Condo. Ass’n, Inc.*, 293 Va. 245, 257-58 (2017). Furthermore, “it is the court’s duty to assess the necessity of [the attorney’s] tasks, the time spent on them, and the rate charged under the facts and circumstances of the particular case.” *Id.* at 257 (internal quotes and citations omitted).

### **Quantity Set in Lease**

Alternatively, if Plaintiff in this case claims that the quantity of attorney fees requested is based on a lease provision calculating fees as a specific amount or as a percentage of damages, I challenge that as an unenforceable penalty clause.

“[A] liquidated damages clause will be construed as an unenforceable penalty ... where the stipulated amount would be grossly in excess of actual damages.” *O’Brian v. Langley Sch.*, 256 Va. 547, 551 (1998); see also *Boots, Inc. v. Prempal Singh*, 274 Va. 513, 518 (2007) (such a provision invalid if “the stipulated amount is out of all proportion to the actual damages.”).

Such a lease provision would be invalid and unenforceable in this case because the amount sought is grossly in excess of, and out of all proportion to, the legal work performed.

WHEREFORE, I hereby request the Court do the following:

1. Deny the attorney fees sought in this case; or
2. Hold a hearing on the issue of attorney fees before awarding any fees, per *Mullins v. Richlands Nat. Bank*, 241 Va. 447, 449 (1991) (“Where, as here, the contracts provided for attorney’s fees, but did not fix the amount thereof, a fact finder is required to determine from the evidence what are reasonable fees under the facts and circumstances of the particular case.”); and
3. If Plaintiff bases its quantity of attorney fees on a provision of the lease, the Court set the hearing at least one month in the future, so I may try to retain an attorney and timely issue (or request the Court issue) *subpoenas duces tecum* related to the case. (The Virginia Supreme Court has held that a party challenging a liquidated-damages provision “is entitled to conduct discovery and present relevant evidence that the damages resulting from breach of the contract ... are grossly in excess of the actual damages suffered by the nonbreaching party.” *O’Brian v. Langley School*, 256 Va. 547, 551 (1998).)

Signature of Defendant/Tenant: \_\_\_\_\_