



# CENTRAL VIRGINIA LEGAL AID SOCIETY

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## **Right to Counsel (RTC) for Tenants Facing Eviction in Richmond, VA**

### **I. Why is a right to counsel for tenants facing eviction needed?**

Richmond has an eviction crisis. The impact of this crisis is severe. Tenants who have been evicted do not just lose their immediate housing. They also face losses of mental and physical health, child custody, education, employment, public benefits, and personal property.

These consequences are not experienced equally. Black female renters face eviction twice as often as white tenants. Yet when facing an eviction, on average only 3% of tenants are represented, compared to 81% of landlords. Tenant representation decreases the likelihood and overall impact of these consequences. Here's just a sampling of what is known about the effectiveness of right to counsel:

- New York City: 84% of represented tenants have remained in their homes. The filing rate and default rate have decreased by 30%.

- San Francisco: 59% of represented tenants have remained in their homes. Of the 30% who did not remain in their unit, 70% received a favorable settlement.

- Cleveland: 93% of clients avoided an eviction judgment or an involuntary move. 83% of clients who desired rental assistance were able to obtain it. Of the 21% of clients who were unaware of rental assistance at the time they contacted legal aid, approximately 98% wanted rental assistance and legal aid helped 81% of those clients obtain it.

- Boulder: 63% of represented cases avoided eviction. This was a 26% increase.

- Kansas City: The pre-RTC eviction rate was 99% and in the first 3 months of RTC it was less than 20%. Most recently, of all the resolved cases, 91.5% of tenants have avoided eviction. This compares to the 99% of tenants who were evicted before RTC.

- Toledo: Nearly 88% of tenants in closed cases avoided eviction.

- Connecticut: Of the 82% of clients that wanted to prevent an involuntary move, 71% achieved that goal.

- Washington State: Tenants remained in their homes in more than 50% of closed cases where the result is known.

[http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf).

Similar results have been reported in Virginia. In December 2017, the National Center for State Courts released the Virginia Self-Represented Litigant Study. The study found that defendant tenants win 10-14% of the time when represented, and less than 1% of the time when unrepresented. <https://brls.org/wp-content/uploads/2018/03/Outcome-Report.pdf>.

In November 2021, the RVA Eviction Lab at Virginia Commonwealth University released a report titled Eviction, Legal Counsel, and the Courthouse. Examining data from Richmond, Henrico, and Chesterfield, the study found that tenants who have representation receive a more favorable outcome in 18.4% of cases versus 2.4% of the time for those where tenants are not represented. <https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2021/11/Eviction-Legal-Counsel-and-the-Courthouse-1.pdf>.

The data is clear and undisputable. The most effective way to reduce evictions is to provide the tenant with an attorney.

## **II. How would a right to counsel for tenants facing eviction work in Richmond?**

This can be modelled after how a right to counsel works in criminal cases in Richmond. Defendants who cannot afford an attorney are appointed one from the Richmond Public Defenders Office. One crucial difference exists. In criminal cases, the first court appearance is an arraignment – usually within a few days of the arrest or charges having been filed. The defendant must appear at this first hearing.

At the arraignment, the defendant is asked whether they have an attorney, and if not, whether they can afford one. If the defendant cannot afford one, the judge determines whether the defendant financially qualifies for one. If so, one is appointed. *See*, Code of Virginia §19.1-159.

In a Summons for Unlawful Detainer (an eviction lawsuit), the defendant is not required to appear at the first hearing, known as the return date. According to the Virginia Self-Represented Litigant Study, 42% do not. Reasons for the non-appearance are not fully known. Undoubtedly many tenants either have moved or plan to do so, have made some arrangements with the landlord to stay, or believe that going to court would be futile.

More than half of tenant defendants (58%) appear at the return date. This percentage would increase if tenants were informed of the right to counsel in an eviction when they received the court papers. This would work the same way a document currently is attached to the court papers informing tenants about the Eviction Diversion Pilot Program in Richmond and three other cities. *See*, [https://www.vacourts.gov/forms/district/edp\\_1.pdf](https://www.vacourts.gov/forms/district/edp_1.pdf).

Under a right to counsel in an eviction, the judge would ask a tenant who appeared at the return date if they had an attorney or could afford one. If not, the judge would determine if the tenant financially qualified for one. If so, the case would be scheduled for another return date in a few weeks.

The entire eviction case file would be scanned and emailed to a “Richmond Eviction Defenders Office.” This could be affiliated with or part of an existing legal aid program such as Central Virginia Legal Aid Society. The office would promptly assign the case to an attorney for representation.

### **III. How much would a right to counsel for tenants facing eviction in Richmond cost?**

There are two ways to derive the cost. Both arrive at similar answers. Other localities which have implemented the right to counsel on a cost per case basis have used a minimum base figure of \$750 per case. According to statistics reported by the Legal Services Corporation taken from the Virginia Judicial System website, through the first 36 weeks of 2023, a total of 8,779 eviction lawsuits have been filed in Richmond. This projects an annual total of 12,681.

If a right to counsel in an eviction case were asserted by every tenant who appeared in court (58%), the number of appointments would be 7,355. The initial annual cost would be about \$5,516,250.

The other way is to determine how many attorneys would be needed to handle 7,355 appointments of counsel annually. Our experience shows that a legal aid attorney can handle about 200 eviction defense cases a year. That translates to about 37 attorneys. The cost of each additional legal aid attorney for base salary, benefits, office space & equipment, and administrative support staff is a minimum of \$150,000 per year per attorney. With these figures, the annual cost would be about \$5,550,000.

Providing a right to counsel with appointment of a private attorney is significantly more expensive than with a legal aid model. To properly investigate whether a case has a meritorious defense takes a minimum of two hours. Negotiating a settlement takes a minimum of four hours. Doing a trial takes a minimum of eight hours.

For a legal aid attorney, the cost is about \$750 per case. For a private attorney, the minimum rate in Richmond is \$250/hour. This would provide only three hours of representation – clearly insufficient for an effective defense.

As word spread of the right to counsel in an eviction case, the number of appointments and the cost would increase. Even if every tenant appeared and were eligible for appointed counsel (both assumptions very unlikely), the annual cost would be about \$9.5 to 9.6 million. This increased cost would be offset by a decrease in eviction filings as experienced in other localities with right to counsel.

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