

SUBJECT: The SCRA – Liquidated Damages/Early Termination Charges Prohibited

1. Purpose. To provide information about the prohibition against charging Servicemembers liquidated damages or early termination fees when they terminate a residential lease early under the Servicemembers Civil Relief Act (SCRA).
2. Servicemembers in Virginia who must relocate due to military service and must terminate a residential lease are protected under both the SCRA and the Virginia Residential Landlord and Tenant Act (VRLTA). The VRLTA largely mirrors the SCRA in its protections, though there are some differences. Because the SCRA is a Federal Statute, Virginia is free to provide greater protections, but cannot enact laws that provide fewer protections. In any instance where the VRLTA contradicts the SCRA to the Servicemembers' detriment, the SCRA will control.
3. Landlords are prohibited from imposing "any early termination charge" (SCRA) or "any liquidated damages" (VRLTA) as a result of early termination due to military service. These prohibitions are predicated on the fact that when a Servicemember invokes the SCRA or VRLTA to terminate a lease, there is no breach of contract. Therefore, no damages for breach of contract are appropriate or allowed.
4. Landlords frequently attempt to avoid SCRA/VRLTA prohibitions by imposing fees that are a direct result of the early termination, but are not specifically called "damages" or an "early termination charge". The most frequent examples of these "hidden" early termination fees are exorbitant rent charged for partial month tenancy and so called "rent concessions" or "incentives".
5. Charging exorbitant rent for a Servicemember who stays in the residence for a few days or weeks past the last monthly rental period is specifically prohibited by the SCRA. The SCRA (50 USC 3955(e)(1)) provides that any "unpaid [rent] for the period preceding the effective date of the lease termination shall be paid [by the Servicemember] on a prorated basis." Therefore, if the Servicemember pays his or her last full months' rent and remains in the residence for a matter of days or weeks prior to the effective date of the lease termination, rent for those extra days or weeks must be prorated based on the normal monthly rental amount. The landlord may not charge the Servicemember a special "daily" fee that is not prorated based on the monthly rent.
6. Charging rent concessions or incentives is also prohibited under the SCRA. These charges are only imposed upon the early termination of the residential lease and are, therefore, clearly liquidated damages or early termination charges. A recent case brought by the Department of Justice (DOJ) supports this interpretation. In the case of *US v. Twin Creek Apartments*, the DOJ brought suit against a landlord for imposing early termination charges on Servicemembers, specifically "concession fees". Instead of going to trial, the landlord decided to settle the case, agreeing to repay all rent concessions collected from the Servicemembers and to stop "requiring [S]ervicemembers to repay rent concessions or other lease discounts or incentives received at lease signing when they terminate their leases pursuant to the SCRA".
7. The Fort Lee Client Services Division is ready, in appropriate cases, to coordinate with local DOJ representatives to bring suit to recover "concessions" charged to Servicemembers and seek an appropriate civil penalty for landlords that violate the SCRA. [In *US v. Twin Creek Apartments* the landlord was assessed a \$20,000 penalty for violations of the SCRA.]