

1 H.772

2 Representative LaLonde of South Burlington moves that the report of the
3 Committee on General and Housing be amended as follows:

4 First: By striking out Sec. 2, 12 V.S.A. § 663, in its entirety and inserting in
5 lieu thereof a new Sec. 2 to read as follows:

6 Sec. 2. 12 V.S.A. § 663 is added to read:

7 § 663. ALTERNATE SERVICE OF PROCESS; EJECTMENT

8 When a motion for alternative service of process is filed pursuant to Rule
9 4(d)(1) of the Vermont Rules of Civil Procedure in an action under 10 V.S.A.
10 chapter 153, 11 V.S.A. chapter 14, or 12 V.S.A. chapter 169, the court shall
11 rule on the motion promptly.

12 Second: By striking out Sec. 3, 12 V.S.A. chapter 169, in its entirety and
13 inserting in lieu thereof a new Sec. 3 to read as follows:

14 Sec. 3. 12 V.S.A. chapter 169 is amended to read:

15 CHAPTER 169. EJECTMENT

16 * * *

17 Subchapter 3. Superior Court Ejectment

18 * * *

19 § 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

20 [~~Subsection (a) as amended by 2007, Act No. 125 (Adj. Sess.), § 1.~~]

~~[Subsection (a) as amended by 2007, Act No. 176 (Adj. Sess.), § 51.]~~

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1 (g) ~~The tenant may at any time by motion apply to the court to reduce the~~
2 ~~amount ordered to be paid into court under this section. The motion for~~
3 ~~reduction shall be accompanied by affidavit setting forth particular facts in its~~
4 ~~support.~~ [Repealed.]

5 * * *

6 (i) Notwithstanding subsection (d) of this section, the parties may come to
7 an agreement and at any time by motion apply to the court to reduce the
8 amount ordered to be paid into court under this section. The motion for
9 reduction shall be accompanied by affidavit setting forth particular facts in its
10 support.

11 * * *

12 § 4854a. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
13 EVICTION

14 (a) A landlord may dispose of any personal property remaining in a
15 dwelling unit or leased premises without notice or liability to the tenant or
16 owner of the personal property:

17 (1) ~~15 days after a writ of possession is served pursuant to this chapter~~
18 ~~or~~ immediately upon the landlord being legally restored to possession of the
19 dwelling unit or leased premises pursuant to this chapter, ~~whichever is later;~~ or

20 (2) in the case of an eviction brought pursuant to 10 V.S.A. chapter 153,
21 40 days after a writ of possession issued for failure to pay rent into court

1 pursuant to subsection 4853a(h) of this title is served or upon the landlord
2 being legally restored to possession of the leased premises by a writ of
3 possession issued for failure to pay rent into court pursuant to subsection
4 4853a(h) of this title, whichever is later.

5 (b) Notwithstanding subsection (a) of this section, if the court stays the
6 execution of a writ of possession issued pursuant to this chapter, then a
7 landlord may dispose of any personal property remaining in a dwelling unit or
8 leased premises without notice or liability to the tenant or owner of the
9 personal property ~~one day~~ immediately after the landlord is legally restored to
10 possession of the dwelling unit or leased premises.

11 * * *

12 Subchapter 4. Superior Court Ejectment for Nonpayment or Breach
13 § 4861. ISSUANCE OF PROCESS BY SUPERIOR JUDGE FOR
14 NONPAYMENT OR BREACH

15 When the lessee of lands or tenements, either by parole or written lease, or a
16 person holding under the lease, holds possession of the demised premises
17 without right, after the termination of the lease under 9 V.S.A. § 4467(a) or (b),
18 the person entitled to the possession of the premises may have from the
19 presiding judge of the Superior Court a writ to restore the person to the
20 possession thereof.

1 § 4862. MODE AND SERVICE OF PROCESS; TRIAL BY JURY

2 (a) The process may issue as a summons, requiring the defendant to appear
3 and answer to the complaint of the plaintiff, which shall state that the
4 defendant is in the possession of the lands or tenements in question, with a
5 description thereof, that the tenant holds unlawfully and against the right of the
6 plaintiff. A copy of the rental agreement, if any, and any notice to terminate
7 the defendant's tenancy, including the affidavit required by 9 V.S.A.
8 § 4467(b)(2)(B), shall be attached to the complaint. If the complaint is based
9 on a termination under 9 V.S.A. § 4467(a), the complaint shall include a copy
10 of the rent ledger.

11 (b) Either party shall have the right to a trial by jury.

12 § 4863. ANSWER; PERIOD TO CURE; HEARING

13 (a) An answer to a complaint filed under this subchapter shall be
14 accompanied by an affidavit setting forth particular facts in opposition to the
15 complaint.

16 (b)(1) If the complaint is based on a termination under 9 V.S.A. § 4467(a),
17 the defendant may cure the action by paying all rents owed, court costs, and
18 service fees by the answer date. If payment is not received by the answer date,
19 the defendant shall lose the right to cure the complaint as a matter of law. A
20 plaintiff may accept payment in whole or in part and dismiss the complaint. A

1 defendant shall not have the right to cure in a subsequent action brought by the
2 plaintiff for termination under 9 V.S.A. § 4467(a).

3 (2) Notwithstanding subdivision (1) of this subsection, the parties may
4 at any time prior to the issuance of a writ of possession come to an agreement
5 to cure the action and dismiss the complaint.

6 (c)(1) Upon receipt of an answer to a complaint based on a termination
7 under 9 V.S.A. § 4467(a) or (b), the court shall set a final hearing date not later
8 than 90 days after the date of service of the answer absent good cause.

9 (2) The timeline in this subsection shall not apply when the plaintiff is in
10 possession of the lands or tenements in question or has received from the court
11 a writ of possession for the lands or tenements.

12 § 4864. DEFAULT

13 If the defendant fails to file an answer in the time provided pursuant to Rule
14 12 of the Vermont Rules of Civil Procedure, the plaintiff may file a motion for
15 a default judgment in accordance with Rule 55 of the Vermont Rules of Civil
16 Procedure. The court shall rule on the motion promptly.

17 § 4865. THREATENING BEHAVIOR; EXPEDITED HEARING

18 (a)(1) In an action for ejectment based on a termination under 9 V.S.A.
19 § 4467(b)(2), the plaintiff may file a motion for a judgment that the plaintiff is
20 entitled to immediate possession of the premises on the grounds that the
21 defendant's continued occupation of the lands or tenements is threatening the

1 health or safety of other residents, the landlord or the landlord's agent, or
2 neighbors.

3 (2) The motion may be filed and served with the complaint or at any
4 time after the complaint has been filed. The motion shall be accompanied by
5 an affidavit setting forth particular facts in support of the motion and a copy of
6 the lease agreement.

7 (b) A hearing on the motion shall be held promptly any time after 10 days'
8 notice to the parties but not later than 21 days after the motion is filed absent
9 good cause.

10 (c) At any time before the hearing, the defendant may oppose the motion
11 pursuant to Rule 7(b)(6) of the Vermont Rules of Civil Procedure by filing an
12 affidavit, a signed written statement, or a memorandum in opposition to the
13 motion. The affidavit, signed written statement, or memorandum shall set
14 forth particular facts to show that a genuine dispute of fact exists in relation to
15 the motion.

16 (d)(1) If the defendant fails to appear for the hearing, or to file an affidavit,
17 signed written statement, or memorandum in opposition to the plaintiff's
18 motion, or has failed to file an answer in the time provided pursuant to Rule 12
19 of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to
20 judgment by default for immediate possession of the premises.

1 (2) If the court finds that the defendant is a threat to the health or safety
2 of other residents, the landlord or the landlord’s agent, or neighbors, the court
3 shall grant the plaintiff’s motion and issue judgment in favor of the plaintiff for
4 immediate possession of the premises.

5 (e) If the court issues judgment in favor of the plaintiff pursuant to
6 subsection (d) of this section, the court shall, on the date judgment is entered,
7 issue a writ of possession directing the sheriff of the county in which the
8 property or a portion thereof is located to serve the writ upon the defendant
9 and, not sooner than five days after the writ is served, to put the plaintiff into
10 possession.

11 § 4866. COSTS; JUDGMENT FOR PLAINTIFF; POSSESSION

12 If the court finds the plaintiff is entitled to possession, the plaintiff shall
13 have a judgment for possession and rents due, if applicable, including damages
14 and costs, and when a written rental agreement so provides, the court may
15 award reasonable attorney’s fees. A writ of possession shall issue on the date
16 of judgment and shall direct any sheriff to serve the writ upon the defendant
17 and, not earlier than 14 days after the writ is served, put the plaintiff in
18 possession.

19 § 4867. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
20 EVICTON

1 A landlord may dispose of any personal property remaining in a dwelling
2 unit or leased premises without notice or liability to the tenant or owner of the
3 personal property upon the landlord being legally restored to possession of the
4 dwelling unit or leased premises pursuant to this subchapter.

5 § 4868. TRESPASS ORDERS

6 After being legally restored to possession of the dwelling unit or leased
7 premises pursuant to this chapter, the plaintiff may issue the defendant an order
8 against trespass for the entire premises subject to the ejectment action in
9 accordance with 13 V.S.A. § 3705.

10 Third: In Sec. 5, 13 V.S.A. § 3705, by striking out subdivision (g)(2) in its
11 entirety and by renumbering the remaining subdivision to be numerically
12 correct.

13 Fourth: By striking out Sec. 6, 12 V.S.A. chapter 169, subchapter 5, in its
14 entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

15 Sec. 6. 12 V.S.A. chapter 169, subchapter 5 is added to read:

16 Subchapter 5. Sealing of Ejectment Records

17 § 4871. DEFINITIONS

18 As used in this subchapter:

19 (1) “Consumer reporting agency” has the same meaning as in 15 U.S.C.

20 § 1681a(f).

1 (2) “Ejectment record” means recorded information pertaining to an
2 ejectment case that is in the possession, custody, or control of a court or was in
3 the possession of a court.

4 (3) “Landlord” has the same meaning as in 9 V.S.A. § 4451(4).

5 (4) “Record” means any recorded information made or received
6 pursuant to law or in connection with the transaction of any official business
7 by a court, including all evidence received by the court in a case.

8 (5) “Rental agreement” has the same meaning as in 9 V.S.A. § 4451.

9 (6) “Tenant” has the same meaning as in 9 V.S.A. § 4451.

10 (7) “Tenant screening report” means any written, oral, or other
11 communication prepared by a consumer reporting agency that includes
12 information about an individual’s rental history for the purpose of serving as a
13 factor in establishing the individual’s eligibility for housing.

14 § 4872. SEALING OF EJECTMENT RECORDS

15 (a) Upon the expiration of the appeal period for an ejectment action
16 brought under this chapter, a court shall order the sealing of all ejectment
17 records, unless the court issued a writ of possession to the plaintiff, in which
18 case the ejectment records shall not be sealed.

19 (b) If the underlying ejectment action is appealed, the ejectment records
20 shall not be sealed until the final disposition of the case. Upon final
21 disposition, the court shall seal all ejectment records, unless the court issued a

1 writ of possession to the plaintiff, in which case the ejectment records shall not
2 be sealed.

3 § 4873. EFFECT OF SEALING; PROHIBITIONS

4 (a) Order. Upon entry of a sealing order, the order shall be legally effective
5 immediately and the person whose record is sealed shall be treated in all
6 respects as if the person had never been ejected.

7 (b) Effect. The response from the court to an inquiry from any member of
8 the public regarding a sealed ejectment record shall be that “NO RECORD OF
9 AN EJECTMENT EXISTS.”

10 (c) Process.

11 (1) The court shall bar viewing of the sealed ejectment records in any
12 accessible database that it maintains.

13 (2) Until the ejectment records on a docket have been sealed, the case
14 file shall remain publicly accessible.

15 (3) When all ejectment records on a docket have been sealed, the case
16 file shall become exempt from public access.

17 (d) Prohibition.

18 (1) A consumer reporting agency shall check Vermont court ejectment
19 records to determine whether they are sealed before including them in a tenant
20 screening report.

1 (2) A consumer reporting agency shall not include any ejectment record
2 in a tenant screening report if the court record is sealed or if the consumer
3 reporting agency has been directly notified that the record is sealed.

4 (e) Injury. Any tenant who suffers injury as a result of a violation of
5 subsection (d) of this section may bring an action for injunctive relief, actual
6 damages, or statutory damages of up to \$1,000.00 per violation, costs, and
7 reasonable attorney's fees.

8 § 4874. ACCESS TO SEALED RECORDS

9 An entity or person that possesses a sealed record, or an attorney for such
10 entity or person, may continue to use the record for any litigation or claim
11 arising out of the same rental agreement between the landlord and tenant or use
12 the record in reasonable anticipation of litigation. The entity or person shall,
13 before disclosing the record to another person for purposes of litigation,
14 provide the following notice to the recipient of the record: "SEALED -
15 KNOWINGLY ACCESSING OR DISCLOSING THIS RECORD WITHOUT
16 AUTHORIZATION IS A CIVIL VIOLATION SUBJECT TO A PENALTY
17 OF NOT MORE THAN \$1,000.00."