

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. The court may reduce the amount ordered to be paid into court under
5 this section upon a finding that:

6 (1) the tenant is financially unable to pay the full amount without undue
7 hardship; or

8 (2) the landlord is failing to comply with the landlord's obligations for
9 habitability or other requirements imposed by 9 V.S.A. chapter 137.

10 * * *

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

16 * * *

17 § 4854a. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
18 EVICTION

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

* * *

When the lessee of lands or tenements, either by parole or written lease, or a person holding under the lease, holds possession of the demised premises

1 without right, after the termination of the lease under 9 V.S.A. § 4467(a) or (b),
2 the person entitled to the possession of the premises may have from the
3 presiding judge of the Superior Court a writ to restore the person to the
4 possession thereof.

5 § 4862. MODE AND SERVICE OF PROCESS; TRIAL BY JURY

6 (a) The process may issue as a summons, requiring the defendant to appear
7 and answer to the complaint of the plaintiff, which shall state that the
8 defendant is in the possession of the lands or tenements in question, with a
9 description thereof, that the tenant holds unlawfully and against the right of the
10 plaintiff. A copy of the rental agreement, if any, and any notice to terminate
11 the defendant's tenancy, including the affidavit required by 9 V.S.A.
12 § 4467(b)(2)(B), shall be attached to the complaint. If the complaint is based
13 on a termination under 9 V.S.A. § 4467(a), the complaint shall include a copy
14 of the rent ledger, if available.

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

16 § 4863. ANSWER; HEARING

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

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

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

7 § 4864. DEFAULT

8 If the defendant fails to file an answer in the time provided pursuant to Rule
9 12 of the Vermont Rules of Civil Procedure, the plaintiff may file a motion for
10 a default judgment in accordance with Rule 55 of the Vermont Rules of Civil
11 Procedure. The court shall rule on the motion promptly.

12 § 4865. THREATENING BEHAVIOR; EXPEDITED HEARING

13 (a)(1) In an action for ejectment based on a termination under 9 V.S.A.
14 § 4467(b)(2), the plaintiff may file a motion for a judgment that the plaintiff is
15 entitled to immediate possession of the premises on the grounds that the
16 defendant's continued occupation of the lands or tenements is threatening the
17 health or safety of other residents, the landlord or the landlord's agent, or
18 neighbors.

19 (2) The motion may be filed and served with the complaint or at any
20 time after the complaint has been filed. The motion shall be accompanied by

1 an affidavit setting forth particular facts in support of the motion and a copy of
2 the lease agreement.

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

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

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

17 (2) If the court finds that the defendant's continued occupation of the
18 lands or tenements is a threat to the health or safety of other residents, the
19 landlord or the landlord's agent, or neighbors, the court shall grant the
20 plaintiff's motion and issue judgment in favor of the plaintiff for immediate
21 possession of the premises.

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

7 (f) If the court has entered a judgment by default pursuant to subdivision
8 (d)(1) of this section and has issued a writ for immediate possession of the
9 premises, at any time prior to the execution of the writ of possession, the
10 defendant may file an affidavit, signed written statement, or a motion with the
11 court setting forth facts demonstrating that the defendant's occupation of the
12 lands or tenements is not a threat to the health or safety of other residents, the
13 landlord or the landlord's agent, or neighbors. The court shall treat an
14 affidavit, signed written statement, or a motion filed under this subsection as a
15 motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as
16 appropriate.

17 § 4866. COSTS; JUDGMENT FOR PLAINTIFF; POSSESSION

18 If the court finds the plaintiff is entitled to possession, the plaintiff shall
19 have a judgment for possession and rents due, if applicable, including damages
20 and costs, and when a written rental agreement so provides, the court may
21 award reasonable attorney's fees. A writ of possession shall issue on the date

1 of judgment and shall direct any sheriff to serve the writ upon the defendant
2 and, not earlier than 14 days after the writ is served, put the plaintiff in
3 possession.

4 § 4867. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
5 EVICTION

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

10 § 4868. TRESPASS ORDERS

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

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

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

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

21 Subchapter 5. Sealing of Ejectment Records

1 § 4871. DEFINITIONS

2 As used in this subchapter:

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

4 § 1681a(f).

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

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

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

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

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

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

18 § 4872. SEALING OF EJECTMENT RECORDS

19 (a) Upon the expiration of the appeal period for an ejectment action
20 brought under this chapter, a court shall order the sealing of all ejectment

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

3 (b) If the underlying ejectment action is appealed, the ejectment records
4 shall not be sealed until the final disposition of the case. Upon final
5 disposition, the court shall seal all ejectment records, unless the court issued a
6 writ of possession to the plaintiff, in which case the ejectment records shall not
7 be sealed.

8 § 4873. EFFECT OF SEALING; PROHIBITIONS

9 (a) Order. Upon entry of a sealing order, the order shall be legally effective
10 immediately.

11 (b) Effect. The person whose ejectment record is sealed shall be treated in
12 all respects as if the ejectment action had never been filed. The response from
13 the court to an inquiry from any member of the public regarding a sealed
14 ejectment record shall be that “NO RECORD OF AN EJECTMENT EXISTS.”

15 (c) Process.

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

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

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

1 (d) Prohibition.

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

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

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

12 § 4874. ACCESS TO SEALED RECORDS

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