

Vermont Superior Court
Chittenden Civil Division



www.vermontjudiciary.org

Representative Thomas Stevens, Chair
House Committee on General and Housing
Vermont Legislature
115 State Street
Montpelier, VT 05633

April 5, 2023

Re: H. 391 Follow-Up

Dear Representative Stevens:

As promised, I am writing to follow up on some points we discussed yesterday at your committee hearing. I mentioned my view that what is most needed is (1) money to assist in paying rent (similar to what VERAP has been doing but on a smaller scale), and (2) lawyers to represent tenants. I believe the need for the funds, and the estimate that a good percentage of eviction cases could be resolved by less than \$4,000 per case, is well set forth in the report that Vermont Legal Aid did in 2019, Eviction in Vermont, A Closer Look (available at <https://www.vtlegalaid.org/sites/default/files/Eviction-Report-VLA-3.18.19-web.pdf>).

As I said, I believe strongly that Vermont should be moving towards "Civil Gideon," meaning providing lawyers to low-income people in civil court as well as criminal court. For this general principle there is a lot of information available at http://civilrighttocounsel.org/highlighted_work/publications, and also at https://www.americanbar.org/groups/bar_services/publications/bar_leader/2007_08/3206/gideon/.

With respect to the impact that legal representation can have, one report has noted that "[h]ousing is one of the areas where it may be most critical for poor people to have access to legal representation in civil cases." Cassidy & Currie, The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program (March 2022). A former president of the New York State Bar Association has stated that "for every dollar spent on pre-eviction legal services, [New York City] will save \$4" that won't be spent on other city services, such as housing the homeless. "By paying for preventive legal services now, you save money," she said. Derocher, Access to Justice: Is Civil Gideon A Piece of the Puzzle? (available at https://www.americanbar.org/groups/bar_services/publications/bar_leader/2007_08/3206/gideon/). As another report notes:

Tenant advocates say the city's investment in legal counsel will save money in the long run. When people lose their housing, it can lead to a downward spiral-they can lose custody of their kids, lose their job, and wind up homeless or even in jail.

The goal of having legal representation isn't necessarily to stave off eviction. Sometimes the tenant's financial situation has changed and they just need more time or assistance to find a new place to live. Meanwhile, a lawyer can put tenants in touch with services that will help them find and keep stable housing, even if that means moving.

Ernde, Groundbreaking San Francisco Measure Guarantees Counsel to Tenants Facing Eviction at 18 (San Francisco Bar Association, Fall 2018) (available at <https://www.sfbar.org/wp-content/uploads/2021/06/prop-f-right-to-housing-counsel-SFAM-Q318.pdf>). The Vermont Legal Aid report makes a similar point:

[R]esearchers have found that even a year after eviction, evicted parents and children are more likely to suffer from depression, stress, and negative health outcomes than nonevicted peers. Housing loss has even been linked to higher rates of suicide in the United States. Eviction is a public health issue.

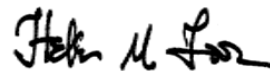
Eviction in Vermont: A Closer Look, at 4. As I stated to you, I believe that having lawyers for tenants often helps landlords as well, because cases can often be resolved significantly faster and with agreements that both sides can live with. I suspect that the experienced landlords' attorneys would agree.

As I mentioned, you may also wish to consider whether the time frames for moving out after a writ of possession is issued should be reconsidered (currently 5 business days if the tenant misses a payment to the court under a rent escrow order and 14 calendar days if they lose at trial). *See* 9 V.S.A. §§ 4853a(h) and 4854. There is also a 5 calendar day period for someone who is found to be an unapproved subtenant. *Id.* § 4853b(e).¹

If any of you would like to observe a day of landlord-tenant hearings in my court, you are welcome in person or by Webex (our equivalent to Zoom) any time. The next dates are Thursday April 13 and Thursday April 27 from 8:30-12:00. The court is at 175 Main Street in Burlington (the corner of Church and Main). I am attaching a copy of the sign-in instructions if you wish to attend remotely. If you do attend either way, I would also be happy to answer any questions during breaks or at the end of the morning.

Thank you for the opportunity to share my thoughts. Please let me know if I can be of any further assistance.

Sincerely,



Helen M. Toor
Superior Court Judge

¹ As an aside, it is very confusing that the landlord tenant laws are in both Title 12 and Title 9. *See* 9 V.S.A. §§ 4761-4855 and 12 V.S.A. §§ 4451-4475. It would be great to combine them all someday.