

1 S.257

2 Introduced by Senator Nitka

3 Referred to Committee on Economic Dev., Housing and General Affairs

4 Date: January 5, 2016

5 Subject: Commerce and trade; residential rental agreements; subleases

6 Statement of purpose of bill as introduced: This bill proposes to require a  
7 landlord's consent for all sublease agreements and to clarify that the statutory  
8 provisions governing residential rental agreements do not apply to individuals  
9 residing in a rented dwelling without either a rental agreement or the landlord's  
10 consent.

11 An act relating to residential rental agreements

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. 9 V.S.A. § 4451 is amended to read:~~

14 § 4451. DEFINITIONS

15 As used in this chapter:

16 \* \* \*

17 (4) "Landlord" means the owner, lessor, or where applicable, the  
18 ~~sublessor~~ or the owner's agent of a residential dwelling unit or the building of  
19 which it is a part.

20 \* \* \*

1 ~~(9) "Tenant" means a person entitled under a rental agreement with the~~  
2 ~~landlord to occupy a residential dwelling unit to the exclusion of others.~~

3 (10) "Subtenant" means a person entitled to occupy a dwelling unit to  
4 the exclusion of others pursuant to a rental agreement between the subtenant  
5 and a tenant, provided that the landlord has consented to the agreement.

6 Sec. 2. 9 V.S.A. § 4452 is amended to read:

7 § 4452. EXCLUSIONS

8 Unless created to avoid the application of this chapter, this chapter does not  
9 apply to any of the following.

10 \* \* \*

11 (7) transient residence in a campground, which ~~for the purposes of as~~  
12 used in this chapter means any property used for seasonal or short-term  
13 vacation or recreational purposes on which are located cabins, tents, or  
14 lean-tos, or campsites designed for temporary set-up of portable or mobile  
15 camping, recreational, or travel dwelling units, including tents, campers, and  
16 recreational vehicles such as motor homes, travel trailers, truck campers, and  
17 van campers; ~~or~~

18 (8) transient occupancy in a hotel, motel, or lodgings during the time the  
19 occupant is a recipient of General Assistance or Emergency Assistance  
20 temporary housing assistance, regardless of whether the occupancy is subject  
21 to a tax levied under 32 V. S.A. chapter 225; or

1 ~~(9) occupants of a dwelling unit who are unable to demonstrate either~~  
2 ~~that they are tenants or that they are occupying the dwelling unit with the~~  
3 ~~landlord's consent.~~

4 Sec. 3. STATUTORY REVISION

5 The Legislative Council, in its statutory revision capacity pursuant to  
6 2 V.S.A. § 424, is authorized to correct instances of the word “tenant”  
7 appearing in 9 V.S.A. chapter 137 to “tenant and subtenant” or “tenant or  
8 subtenant” as necessary to effect the intent of Sec. 1 of this act (amending  
9 9 V.S.A. § 4451).

10 Sec. 4. EFFECTIVE DATE

11 ~~This act shall take effect on July 1, 2016.~~

~~Sec. 1. 9 V.S.A. § 4451 is amended to read:~~

~~§ 4451. DEFINITIONS~~

~~As used in this chapter:~~

~~\* \* \*~~

~~(9) “Sublease” means a rental agreement, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises between two tenants, a sublessor and a sublessee.~~

~~(10) “Tenant” means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.~~

~~Sec. 2. 9 V.S.A. § 4452 is amended to read:~~

~~§ 4452. EXCLUSIONS~~

~~Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:~~

~~\* \* \*~~

~~(7) transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short term vacation or~~

~~recreational purposes on which are located cabins, tents, or lean tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers; or~~

~~(8) transient occupancy in a hotel, motel, or lodgings during the time the occupant is a recipient of General Assistance or Emergency Assistance temporary housing assistance, regardless of whether the occupancy is subject to a tax levied under 32 V. S.A. chapter 225; or~~

~~(9) occupancy of a dwelling unit without right or permission by a person who is not a tenant.~~

~~Sec. 3. 9 V.S.A. § 4456b is added to read:~~

~~§ 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND OBLIGATIONS~~

~~(a)(1) A landlord may condition or prohibit subleasing a dwelling unit under the terms of a written rental agreement, and may require a tenant to provide actual notice of the name and contact information of any sublessee occupying the dwelling unit.~~

~~(2) If the terms of a written rental agreement prohibit subleasing the dwelling unit, the landlord or tenant may give a person who is not a tenant and is occupying the dwelling unit without right or permission notice against trespass pursuant to 13 V.S.A. § 3705(a). This subdivision (2) shall not be construed to limit the rights and remedies available to a landlord pursuant to this chapter.~~

~~(b) In the absence of a written rental agreement, a tenant shall provide the landlord with actual notice of the name and contact information of any sublessee occupying the dwelling unit.~~

~~Sec. 4. 13 V.S.A. § 3705 is amended to read:~~

~~§ 3705. UNLAWFUL TRESPASS~~

~~(a)(1) A person shall be imprisoned for not more than three months or fined not more than \$500.00, or both, if, without right or permission, he or she is occupying a dwelling unit for which a written rental agreement has prohibited subleasing pursuant to 9 V.S.A. § 4456b as to which notice against trespass is given, or, without legal authority or the consent of the person in lawful possession, he or she enters or remains on any land or in any place as to which notice against trespass is given. Notice against trespass may be given by:~~

~~(A) actual communication by the person in lawful possession or his or her agent or by a law enforcement officer acting on behalf of such person or his or her agent;~~

~~\*\*\*~~

~~(D) in the case of a dwelling unit for which a written rental agreement has prohibited subleasing pursuant to 9 V.S.A. § 4456b, actual communication by the landlord or his or her agent or by a law enforcement officer acting on behalf of the landlord or his or her agent.~~

~~\*\*\*~~

*Sec. 5. EFFECTIVE DATE*

~~This act shall take effect on July 1, 2016.~~

*Sec. 1. 9 V.S.A. § 4451 is amended to read:*

*§ 4451. DEFINITIONS*

*As used in this chapter:*

~~\*\*\*~~

~~(9) "Sublease" means a rental agreement, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises between two tenants, a sublessor and a sublessee.~~

~~(10) "Tenant" means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.~~

*Sec. 2. 9 V.S.A. § 4452 is amended to read:*

*§ 4452. EXCLUSIONS*

*Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:*

~~\*\*\*~~

~~(7) transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers; ~~or~~~~

~~(8) transient occupancy in a hotel, motel, or lodgings during the time the occupant is a recipient of General Assistance or Emergency Assistance~~

*temporary housing assistance, regardless of whether the occupancy is subject to a tax levied under 32 V. S.A. chapter 225; or*

*(9) occupancy of a dwelling unit without right or permission by a person who is not a tenant.*

*Sec. 3. 9 V.S.A. § 4456b is added to read:*

*§ 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND OBLIGATIONS*

*(a)(1) A landlord may condition or prohibit subleasing a dwelling unit under the terms of a written rental agreement, and may require a tenant to provide written notice of the name and contact information of any sublessee occupying the dwelling unit.*

*(2) If the terms of a written rental agreement prohibit subleasing the dwelling unit, the landlord or tenant may bring an action for ejectment pursuant to 12 V.S.A. §§ 4761 and 4853b against a person that is occupying the dwelling unit without right or permission. This subdivision (2) shall not be construed to limit the rights and remedies available to a landlord pursuant to this chapter.*

*(b) In the absence of a written rental agreement, a tenant shall provide the landlord with written notice of the name and contact information of any sublessee occupying the dwelling unit.*

*Sec. 4. 12 V.S.A. § 4761 is amended to read:*

*§ 4761. WHEN MAINTAINABLE; PARTIES*

*A person having claim to the seisin or possession of lands, tenements or hereditaments shall have an action of ejectment, according to the nature of the case, which shall be brought as well against the landlord, if any, as against the tenant in possession of the premises, or against a person that is occupying a dwelling unit, for which subleasing is prohibited pursuant to a written rental agreement, without right or permission pursuant to 9 V.S.A. § 4456b(a)(2); and, if otherwise brought, on motion, the same shall be abated. Tenants in common of lands may join in an action concerning their common interest in such lands.*

*Sec. 5. 12 V.S.A. § 4853b is added to read:*

*§ 4853b. UNLAWFUL OCCUPANT; EXPEDITED HEARING*

*(a)(1) In an action for ejectment, the landlord, the landlord's agent, or the tenant may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that the defendant is a person that is occupying a dwelling unit without right or permission and the*

written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2).

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

(b) A hearing on the motion shall be held any time after 10 days' notice to the parties.

(c) At any time before the hearing, the defendant may oppose the motion pursuant to Rule 78(b) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion.

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

(2) If the court finds that the defendant is a person that is occupying the dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2), the court shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for immediate possession of the premises.

(e) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, no sooner than five days after the writ is served, to put the plaintiff into possession.

(f) At any time prior to the execution of the writ of possession, the defendant may file an affidavit, signed written statement, or a motion with the court setting forth facts demonstrating that the defendant is occupying the premises lawfully. The court shall treat an affidavit, signed written statement, or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as appropriate.

*Sec. 6. EFFECTIVE DATE*

*This act shall take effect on July 1, 2016.*