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April 13, 2016

Hon. Helen Head, Chairwoman
House Committee on General and Military Affairs
Statehouse
Montpelier, VT 05663

Dear Madame Chair and Members of the Committee,

Thank you for inviting additional testimony on S.257, "An act relating to residential rental agreements." Per the suggestion of the committee we have attempted to find common ground with others with respect to the bill. Unfortunately, we have been unable to reach consensus. I do think there is some agreement that the trespass provisions should come out of the bill.

The committee may wish to consider language that would amend Title 12 process with respect to unlawful tenants. However, our position is that if the committee elects to move in this direction, the due process rights of lawful occupants who could be caught up as defendants in that process must be preserved. Thus far, we have been unable to reach consensus on how to accomplish that given the multiplicity of scenarios which could conceivably arise under a new cause of action.

Because time is so short, Vermont Legal Aid suggests simply removing the provisions relating to trespass (proposed Sec. 4456b(2) of Sec. 3, and proposed Sec. 4). We would not oppose the bill if that were the result. Thank you for your consideration.

Sincerely,



Christopher J. Curtis
Staff Attorney
Vermont Legal Aid, Inc.

12 V.S.A. § 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 an unlawful occupant who enters into and remains in possession of land, building or a dwelling unit without legal right, without a rental agreement and without the permission of the property owner or lawful occupant in possession; 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.

12 V.S.A. § 4774. EJECTMENT FOR UNLAWFUL OCCUPANCY

In actions of ejectment for unlawful occupancy, the plaintiff shall provide actual notice of ejectment or termination of occupancy which shall be at least 14 days after the date of the actual notice. Before final judgment, if the plaintiff fails to provide a written lease agreement prohibiting subleasing, or if defendant in such action provides evidence of entry to the property pursuant to a rental agreement, a sublease agreement, or with permission of the owner, agent, or lawful occupant of the dwelling unit such action shall be discontinued.

12 V.S.A. § 4853a. PAYMENT OF RENT INTO COURT; UNLAWFUL OCCUPANCY; EXPEDITED HEARING

- (b) In any action of ejectment against an unlawful occupant, the owner, agent, or lawful occupant of the dwelling unit may file a motion for an order for immediate writ of possession. 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 affidavit setting forth particular facts in support of the motion and a copy of the lease agreement, if any. The motion shall be denied if the defendant submits testimony or a written filing raising a genuine dispute as to whether the defendant is an unlawful occupant. In all cases, a defendant shall have 20 days to answer the complaint.