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April 7, 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 testimony on S.257, "An act relating to residential rental agreements." We testified on this proposed legislation in the Senate Committee on Economic Development, Housing & General Affairs. In particular, Vermont Legal Aid testified that we do not oppose clarifications to the existing statute but that we oppose the provisions of the bill related to trespass. Our position has not changed.

Our understanding of the bill is that it has two basic goals: First to clarify the laws around subleasing and to deal with the issue of occupants who enter a premises unlawfully without right or permission (in common parlance "squatters"). As to the former, as previously stated while not inviting the bill we generally do not have an objection to clarifying the statute with respect to subleasing arrangements.

As to the provisions related to trespass we have several concerns and objections. First, the bill as written will not do what the drafters intend, second, rather than clarify the law in this area it will create confusion, and finally it is likely to frustrate tenants, landlords, law enforcement, and the courts. It is also worth noting that there are already two provisions related to unlawful occupants written into statute: the trespass statute itself, 13 V.S.A. § 1305, *et seq.*, and the unlawful entry and detainer provisions of 12 V.S.A. § 4911, *et seq.* both of which identify the substance and process required to exercise their provisions and the remedies available to aggrieved parties.

In the first instance, the section of the bill related to trespassers only applies to situations where "the terms of a written rental agreement prohibit subleasing the dwelling unit." So, by definition it may not do what the drafters intend in terms of occupants of previously vacant units (where there is no "written rental agreement" at all), or where there is simply an oral agreement with a prior occupant and subleasing is permissible.

Additionally, the language is confusing. What of the hapless occupant who believes they are taking possession lawfully in reliance on the prior tenant? Or, what about guests or invitees to whom a landlord may object, but who are there by permission of the tenant. The proposed language appears to interfere both the right of possession of the tenant and her right to quiet enjoyment of the premises if the landlord has a provision prohibiting subleasing (which may or

may not even be relevant to the situation at hand), and the landlord objects to a temporary occupant. In all events, it hardly seems appropriate to attempt to criminalize temporary guests, invitees, or unwitting occupants. It is well recognized that generally conflicts between landlords and tenants should be governed by civil, not criminal, statutes.

Finally, as written there is little doubt that both landlords and tenants are likely to be frustrated by the language of the proposed passages. Landlords seeking to exercise their rights are likely to discover that because the tenant is the person in "lawful possession" of the rental unit the landlord's interest in putting someone out is likely to be deemed secondary to anyone occupying the dwelling unit by right or permission of the tenant. Pro se landlords may be likely to misconstrue the meaning of this passage altogether. Law enforcement are unlikely to want to intervene in disputes and the courts are likely to have to interpret the meaning of the statute in this respect. You may want to ask law enforcement and/or local prosecutors their view of these provisions given the risk of confusion. For all these reasons, it would be more clear and consistent to simply continue to rely on existing law relating to trespass and unlawful entry and detainer.

Vermont Legal Aid suggests simply removing the provisions relating to trespass. If the committee moves in that direction we would not oppose the bill. Thank you for your consideration.

Sincerely,



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