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S.333

Introduced by Senators McCormack, Hooker and Nitka

Referred to Committee on Economic Development, Housing and General
Affairs

Date: January 22, 2020

Subject: Housing; landlord and tenant

Statement of purpose of bill as introduced: This bill proposes to create an
expedited eviction process for a tenant who vandalizes property.

~~An act relating to expediting evictions for owner-occupied rental properties~~

*An act relating to establishing a moratorium on ejectment and foreclosure
actions during the COVID-19 emergency*

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

~~Sec. 1. 9 V.S.A. § 4467 is amended to read:~~

§ 4467. TERMINATION OF TENANCY; NOTICE

* * *

(b) Termination for breach of rental agreement.

(1) The landlord may terminate a tenancy for failure of the tenant to
comply with a material term of the rental agreement or with obligations
imposed under this chapter by actual notice given to the tenant at least 30 days
prior to the termination date specified in the notice.

(2) When termination is based on criminal activity, illegal drug activity,
~~or acts of violence, any of which threaten the health or safety of other~~

1 ~~When the landlord may terminate the tenancy by providing actual notice to the~~
2 tenant of the date on which the tenancy will terminate, which shall be at least
3 14 days from the date of the actual notice.

4 (3) When termination is based on damage to the premises in violation of
5 subsection 4456(c) of this title, the landlord may terminate the tenancy by
6 providing actual notice to the tenant of the date on which the tenancy will
7 terminate, which shall be at least 24 hours from the date of the actual notice.

8 * * *

9 Sec. 2. 12 V.S.A. § 4853c is added to read:

10 § 4853c. EXPEDITED EVICTION OF TENANT WHO VANDALIZES

11 PROPERTY

12 (a) Right to expedited eviction. Notwithstanding any provision of this
13 subchapter or the Vermont Rules of Civil Procedure to the contrary, in an
14 action for ejection, the landlord of a rental property may file a motion for a
15 judgment that the landlord is entitled to immediate possession of a dwelling
16 unit if the landlord terminated the tenancy for damage to the property pursuant
17 to 9 V.S.A. § 4467(b)(3).

18 (b) Commencement; service of process.

19 (1) A landlord may commence an action by delivering to the defendant

20 ~~a complaint, summons, motion for possession, and an affidavit supporting the~~

1 ~~motion, which the landlord may serve on the defendant by certified mail, or by~~
2 ~~leaving a copy, at the address of the dwelling unit the defendant occupies.~~

3 (2) The landlord shall file the complaint, summons, motion, and
4 supporting affidavit with the court, along with a certificate of service
5 specifying the method and date of delivery to the defendant, not later than 10
6 days after the completion of service.

7 (c) Hearing. The court shall hold a hearing on the motion not later than
8 10 days after the landlord files the complaint, summons, motion, affidavit, and
9 certificate with the court.

10 (d) Judgment and possession. The court shall issue judgment and a writ of
11 possession in favor of the landlord for immediate possession of the dwelling
12 unit:

13 (1) by default if the defendant fails to appear at the hearing;

14 (2) by default if the defendant fails to oppose the landlord's motion and
15 file an answer at or prior to the hearing; or

16 (3) if the court finds that the defendant has damaged the property in
17 violation of 9 V.S.A. § 4456(c).

18 (e) Execution. The sheriff or other person authorized by law shall serve
19 the writ of possession on the defendant in person or by leaving a copy at the
20 dwelling unit and shall put the landlord into possession of the dwelling unit, not
21 later than 24 hours after the writ is served.

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~~Sec. 2. EFFECTIVE DATE
This act shall take effect on July 1, 2020.~~

** * * Ejectment and Foreclosure Actions; Moratoria * * **

*Sec. 1. LANDLORDS AND TENANTS; HOUSING LENDERS;
TEMPORARY HOUSING-RELATED MORATORIA*

(a) Definitions. As used in this section:

(1) "Emergency period" means the period beginning with the Governor's declaration of a state of emergency on March 13, 2020, arising from COVID-19, and ending 30 days after the Governor terminates the state of emergency by declaration.

(2) "Ejectment" refers to an ejectment action brought under 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169 against the tenant of a residential dwelling unit, or under 10 V.S.A. chapter 153 against a mobile home park resident.

~~*(2) "Foreclosure" refers to a foreclosure action brought under 12 V.S.A. chapter 172 against a dwelling house, as defined in 12 V.S.A. § 4931(2).*~~

(3)(A) "Foreclosure" refers to a foreclosure action brought under 12 V.S.A. chapter 172 against a dwelling house, as defined in 12 V.S.A. § 4931(2), that is occupied.

(B) For purposes of this act, a dwelling house is deemed to be occupied unless all of the following are true:

(i) There are circumstances that would lead a reasonable person to believe that the dwelling house is not occupied as a full-time residence, including evidence that utilities are disconnected, mail is not being delivered, or the dwelling house is empty of necessary household furnishings.

(ii) The mortgage on the dwelling house is not current.

(iii) The mortgagee has made reasonable attempts to ascertain the mortgagor's residence and has a reasonable belief that the dwelling house is no longer the mortgagor's residence.

(b) Duties. This section does not:

(1) relieve a tenant of the obligation to pay rent pursuant to 9 V.S.A. § 4455;

(2) relieve a tenant in a pending ejectment action of the obligation to pay rent into court pursuant to an existing order under 12 V.S.A. § 4853a;

(3) relieve a borrower under a residential loan agreement of the obligation to make timely payments pursuant to the terms of the loan agreement; or

(4) limit a court's ability to act in an emergency pursuant to Administrative Order 49, issued by the Vermont Supreme Court, as amended, which may include an action that involves criminal activity, illegal drug activity, or acts of violence, or other circumstances that seriously threaten the health or safety of other residents.

(c) Pending foreclosure and ejectment actions.

(1) Upon the effective date of this act, all pending actions for ejectment under 12 V.S.A. chapter 169, actions for foreclosure under 12 V.S.A. chapter 172, and any outstanding orders in those actions that could lead to execution of a writ of possession against a tenant or resident are stayed until the end of the emergency period.

(2) A court of this State, before which is any matter stayed pursuant to subdivision (1) of this subsection, shall issue any necessary orders and provide notice to the parties of the stay.

(d) New foreclosure and ejectment actions. During the emergency period, after the effective date of this act, a landlord may commence an ejectment action pursuant to 9 V.S.A. chapter 137 and 12 V.S.A. chapter 169, and a residential mortgage lender may commence a foreclosure action pursuant to 12 V.S.A. chapter 172, subject to the following:

(1) The plaintiff may commence the action only by filing with the Civil Division of the Superior Court and not by service pursuant to V.R.C.P. 3.

(2) The court shall stay the action as of the date of filing until the end of the emergency period.

(3) The plaintiff shall not attempt to serve and a sheriff or constable shall not serve any civil process.

(4) The deadline for completing service of process pursuant to V.R.C.P. 3 is 60 days after the emergency period ends.

(e) Writs of possession not yet issued. During the emergency period, a court shall not issue a writ of possession:

(1) in an ejectment action:

(A) pursuant to 12 V.S.A. § 4853a(h) because a tenant failed to pay rent into court; or

(B) pursuant to 12 V.S.A. § 4854 if the court has entered a judgment in favor of the plaintiff but did not issue a writ of possession with the judgment; or

(2) in a strict foreclosure action pursuant to 12 V.S.A. § 4941(e) because the property is not redeemed; or

(3) in an action for foreclosure by judicial sale pursuant to 12 V.S.A. § 4946(d) upon expiration of all periods of redemption.

(f) Writs of possession already issued.

(1) A writ of possession that was issued by a court prior to the effective date of this act is stayed as of the start date of the emergency period and resumes running when the Governor terminates the state of emergency by declaration.

(2) If a writ of possession was issued but not executed prior to the effective date of this act, then after the Governor terminates the state of emergency by declaration:

(A) the plaintiff shall serve or serve again the writ to the defendant; and

(B) the plaintiff shall be restored to possession not sooner than 14 days after service.

(g) Rent escrow hearings.

(1) For any hearing on a motion to order a defendant to pay rent into court that occurs within the first 45 days after the emergency period ends, if the court finds that the tenant is obligated to pay rent and has failed to do so, then notwithstanding 12 V.S.A. § 4853a(d), the court shall order the defendant to pay into court:

(A) rent as it accrues from the date of the order while the proceeding is pending; and

(B) rent accrued from:

(i) the date the motion was served, if the motion was served after the effective date of this act; or

(ii) the end of the emergency period, if the motion was served before the effective date of this act.

(2) The court may reduce the amount of rent the defendant must pay into court under this subsection after considering:

(A) the tenant's inability to pay due to circumstances arising in the emergency period; and

(B) whether the tenant made good faith attempts to secure available emergency rental payment funds.

(h) Resumption of actions for breach of rental agreement. Notwithstanding any provision of this act to the contrary, an ejectment action for breach of a rental agreement pursuant to 9 V.S.A. § 4467(b) may proceed in court when the Governor terminates the state of emergency by declaration.

* * * Effective Date * * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.