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May 5, 2020

To: Representative Tom Stevens, Chair
House Committee on General, Housing, and Military Affairs
From: Jean Murray, Staff Attorney
Re: Barriers to Stable Rental Housing

Thank you for this opportunity to advocate for changes to prevent evictions, and prevent homelessness.

There are people homeless and in need of permanent housing, and I agree with everyone who has testified about long-term solutions to that problem. But there are things we can do right now to prevent evictions, and to prevent more people from becoming homeless.

We can provide back rent and rental assistance to prevent eviction. We can work to abolish unlawful housing discrimination. Subsidized housing providers can help tenants and applicants get housed and stay housed, and we can create a statewide rental registry and housing quality inspection system.

Housing policy and the practices derived from scarcity of funding create housing insecurity by throwing up barriers and catching low income tenants in a cycle of housing instability that is confusing, demoralizing, and ultimately inescapable for some tenants. Any plan for creating housing stability that is based on changing tenants will not work as well as one aimed at changing housing policy and practices.

1. Provide financial assistance to prevent eviction.

Vermont has a rolling homelessness crisis. Last fiscal year there were nearly 1800 eviction cases filed. This fiscal year to date there are 1342 filed¹. And, many more tenancies will be terminated and tenants will leave without the need to file a court case.

The Coronavirus Relief Fund, Title V of the Cares Act, has sent \$1,250,000,000 to Vermont, and some of that can be used to prevent evictions through the end of the year. The current programs we have to provide back rent, security deposits and ongoing rental assistance are underfunded and bogged down with federal requirements that make little sense in a crisis. We need a flexible, nimble system to address our current needs.

¹ Around 400 of this 1342 are pending cases are on the docket yet to be resolved. Filings in March were half of an average month, and in April were a quarter of an average month. So that is another 200 invisible pending cases.

Housing insecurity is caused by high rents and low incomes. I have spent the last 30 years as a Legal Services housing lawyer and those two facts are undeniable as the primary reason for eviction and resulting homelessness.

The Housing Needs Assessment tells us that half of all Vermont rental households are cost-burdened, meaning, they are paying more than 30% of their income for rent. When rent is more than 30% of income, that means in any given month a household may go without the necessities of life (food, medical care, transportation, child care, connectivity) in order to pay rent. These households live on the edge, and if one thing goes wrong (reduction in paid work hours, increase in child care costs, illness, family change), they can get behind in rent.

The cost of heat in substandard housing can lead to non-payment of rent. Some landlords rent un-insulated, not weathertight places with inefficient heating systems, and require that tenants pay heat, which in some months is as much as the rent. Vermont's housing market is so tight, landlords can find renters for substandard places, and still get top rents.

Because cost-burdened budgets are so tight, some tenants become homeless after an eviction it is impossible to save for a security deposit. Most private landlords want at least first month's rent and security deposit before a tenant moves in, and many tenants can't get the security deposit back from their current landlord until 14 days after they move out.

Even households with subsidies live on the same edge. In subsidized housing, tenants pay 30% of their income for rent, no matter how low their income.

- An individual on SSI at \$870. per month pays \$261, leaving them with \$609 a month, or \$141 a week, for everything else: electric, phone, cable, food, car payment, car insurance. The money is gone before the month is.
- A person with a subsidy earning Vermont minimum wage for full time work pays \$556.24 for rent and has \$302 a week for necessities, but doesn't get food stamps, isn't eligible for Medicaid; the \$302 doesn't go far.

Evictions are traumatic, destabilizing and have lasting effects on tenants and their communities. Eviction means that a tenant who has a home and wants to stay in their home is compelled to leave through legal process. We think of evictions as all being filed in court, but all evictions don't go to court: landlords send legally required notice to terminate tenancy, and many tenants leave before court process is ever started. Vermont has 72,000 renter households², and 2.5% of those, nearly 1800 households a year, are taken to court to be evicted.³ Because not all go to court, the number evicted is larger. Tenants who leave don't all have a place to go; they just don't want to fight. They double up. They put their things in storage. They live in their cars, and when the weather gets cold, they ask the State for shelter.

² 2020 Housing Needs Assessment

<https://accd.vermont.gov/sites/accdnew/files/documents/Housing/VT%20HNA%202020%20Report.pdf>

³ Vermont's rate of eviction is about the national average; multiple sources put the average rate in 2016 at 2.34%.

During the crisis, Vermont should fully fund a program for back rent. Last year, Vermont Legal Aid released a study⁴ of evictions in court: 75% of evictions filed in court ultimately result in judgment of possession for the landlord; the vast majority are for non-payment of rent.

In court, most tenants don't have lawyers. Without lawyers, tenants often accidentally forgoe their right to challenge the eviction and the amounts claimed as owed by landlords.

Unrepresented tenants in court don't always know how to access back rent programs; they are at a disadvantage in negotiations that could work out payment plans and save their homes. Funding a stronger back rent program and funding Vermont Legal Aid to represent tenants could prevent more evictions.

Vermont's current housing support programs are insufficient to maintain housing stability for everyone. Vermont's communities run HOP programs, (Housing Opportunity Programs) through Coordinated Entry sites and Housing Review Teams. These are funded in part by federal dollars, but Vermont provides most of the funding. And Vermont must follow federal requirements for back rent and rapid rehousing programs. Much of the "service" money is spent by staff figuring out who should get what limited money there is. For example, I have had several clients who were losing their apartments and asked for help from the local HOP program, only to be told that they had to be homeless in order to get help. Because each local site has a different budget, whether a person gets housing help depends very much on the county they live in.

And, the eligibility restrictions don't realistically address the need, and therefore create barriers to housing stability.

- Rapid Rehousing through HOP gives at most 9 months rental assistance. This is not long enough. Newly-housed people are not going to "get on their feet" enough to pay market rents without a subsidy in less than a year. They are also unlikely to get a HUD subsidized tenant based subsidy within a year, because there are too few subsidies.
- Back rent is underfunded. Tenants may get some, but not all, of what is needed to preserve their housing, as administrators guard tiny pots of money so they will last all year. Landlords receiving back rent need only agree to stop the current eviction, and are not required to promise not to evict for a reasonable period of time.
- The eligibility requirement for back rent -- the need to demonstrate that with the help, the tenant's housing will now be stable -- is counter-productive. A tenant paying more than 30% of income for rent is cost-burdened and unstable. A tenant who has experienced a loss of income, and who needs back rent to stay where she is, also may need rental assistance until her income can be re-established.

The Coronavirus Relief Fund, could be used now until until the end of the year to prevent eviction; it can be be used for back rent and rental assistance. It can be used for all "cost burdened" tenants to stay housed. It does not have to be limited to those few who can get through a beauracatic process and who meet too-narrow criteria. It can be used so the homeless being housed are not just replaced by more homeless Vermonters.

⁴ <https://www.vtlegalaid.org/sites/default/files/Eviction-Report-VLA-3.18.19-web.pdf>

2. End Unlawful Housing Discrimination, especially discrimination against receipt of public assistance.

Discrimination in housing takes many forms. Refusal to rent to people with rental subsidies is common in Vermont. We routinely find advertisements that say, “No Section 8” or “Not Section 8 approved.” Some landlords require that a tenant demonstrate that their monthly income is three times the monthly rental amount, and refuse to include the rental subsidy or voucher or other public assistance in their income calculation.⁵

Discrimination can also take the form of different conditions or lease terms, termination of tenancy, and steering to lesser quality units and refusal to provide reasonable rule changes for people with disabilities.

Some landlords also subject tenants to discriminatory harassment. Race, color, and national origin discrimination is very high in Vermont despite the low numbers of people of color and immigrants. Discrimination against families with children is also very high in Vermont. People with disabilities, particularly mental health disabilities, are routinely denied reasonable accommodation requests for changes in rules or policies, and without reasonable accommodation of disabilities, disabled people are evicted or forced to leave.

Even where disabilities aren't visible, disabled people often have forms of income that reflect that they are disabled: they receive money from Social Security Disability, or Worker's Compensation, or other disability insurance. The source of a person's income on a rental application can push that application to the bottom of the pile. The same thing can happen when the landlord is contacted by a worker helping a disabled person or a homeless person.

Vermont's Fair Housing laws, which prohibit discrimination based on rental assistance, should be enforced. And Vermont should investigate and study discrimination against voucher holders and recipients of other public assistance. There has been no national study of this, because discrimination against the receipt of public assistance is not prohibited by federal law, only by Vermont law.

When more bricks and mortar housing is planned and funded, it must be built in inclusive neighborhoods. Housing design should be inclusive and not restricted to any one population or demographic; all housing built since 1991 must be accessible, and so there is no justification for housing designed to be segregated based on physical needs.

Brick and mortar housing should be flexible use: use it for the poorest whoever that is, regardless of age or other demographic info.

Unlawful discrimination contributes to homelessness; it should be abolished.

⁵ Landlords can ask for credit reports, and refuse to rent to people with low credit scores, even though rental payment history is seldom reported to credit bureaus. Low credit score does not always signify non-payment of debt; credit scores can be low because the person has never applied for or used credit.

3. Rules and regulations for subsidized housing should be interpreted in favor of hard-to-house tenants.

Both project and tenant based subsidies come with procedures and rules, but providers and housing authorities could administer rules in a less punitive fashion. Unnecessary barriers may stem from need for more staffing or too few subsidies to give to too many people who need them.

While we have been talking about an eviction moratorium, and since HUD enacted an eviction moratorium on March 26, subsidized housing providers have filed nine eviction cases. A notable number of all eviction cases filed are filed by subsidized housing providers. Subsidized housing is the housing of last resort, but it has been a regular practice in Vermont to evict hard-to-house tenants rather than to help them or find help for them.

Let me give you a few examples of how a more sympathetic, helpful approach to these tenants could prevent homelessness; there would be a cost in supports but savings long-term.

Non-payment of rent can be complicated in subsidized housing. Missed paperwork could result in the loss of the subsidy in project-based housing, with the result that non-payment is calculated on market rent.

Examples of missed paperwork:

- Every year, subsidized tenants are required to re-certify, a process of forms and verifications that is akin to applying for a mortgage every year.
- A family member wants to move in, and the subsidized tenant must apply so they can be part of the subsidized household.
- A member of the household's income changes, and new paperwork and verifications must be filled out.

Many tenants need help with paperwork beyond reminder letters. Subsidized tenants shouldn't lose their homes over lack of paperwork.

Subsidized housing providers evict from project based subsidies and terminate tenant based vouchers for lease or program violations, and most of these are for reasons where services to help solve the problems could save the tenant's home.

- Housing authorities evict for inability to manage smoking addiction or noisy children, windows left open, or someone not on the lease is staying with the tenant,
- Neighbors complain about parking spaces taken, surveillance cameras installed, funny-looking guests, pets, and trash.

Subsidized housing whether tenant based or project based is a necessity; without the subsidies, people would be homeless. Where a tenant's behavior is disturbing others, the tenant needs help to solve the problems, not to be made homeless.

And hard-to-house tenants are regularly excluded from ever getting subsidized housing for another set of problems. The laws, rules and Administrative plans have a few hard and fast exclusions, but also grant providers discretion in granting subsidies and selecting tenants. In the following areas, I have to believe discretion is sometimes withheld simply because there aren't enough subsidies:

- No rental history
- Some criminal history, especially if old
- Bad credit reports/score
- Debt to previous landlord
- Old (beyond statute of limitations) debt to previous subsidized housing provider
- Previous eviction
- No or negative landlord reference

Finally, if the situation does result in the filing of an eviction, there could be a court-mandated mediation program for subsidized tenants that would require housing providers and Housing First agencies, such as Pathways Vermont, to come together to solve the problems rather than evict the households.

The Coronavirus Relief Fund could be used to get the extra services needed to house subsidized housing applicants and stabilize current subsidized housing tenants, and to reconfigure administration of housing subsidies to include services to sponsor and mentor needy tenants.

4. Vermont needs to ensure Habitable Housing Stock

You have no doubt you have heard this plea during testimony for H.739. A registry of rental housing and a statewide inspection system is even more necessary to get us past the housing crisis caused by the pandemic.

There has been much discussion of building more affordable housing. We need more units. But we also must maintain the units we have, and keep them habitable or we will never catch up.

As an example of the utility of a rental registry, my colleague Wendy Morgan recently spoke with Susan Cherry, Executive Director of the Community Restorative Justice Center in St. Johnsbury. Ms. Cherry was involved trying to house the homeless in Caledonia County as Covid-19 descended. She told Wendy that she definitely used the St J housing registry during that time and would have used a registry that encompassed more towns if it had been available. She also told Wendy that she'd be willing to testify if that were useful; she cannot comment on what has happened in other counties.

Lack of a registry in all parts of the state makes housing searches take much longer. A registry would help assure efficient maintenance of habitability standards, upgrading stock. A model for accomplishing this would include a modest fee for each unit. If there were greater than 60% participation, the program would have money to support professional inspection system and grants to landlords for improvements in housing.

Many Rental Units we have are substandard. For many renting households, renting a new apartment is an investment, which gets lost when there are habitability problems that landlords can't or won't repair, and tenants must leave to find safe housing.

It is difficult to give accurate numbers of defective housing units. VLA released a study of habitability problems in 2018, which found the most common problem to be moisture related issues and pests.⁶ The 2020 Housing Needs Assessment⁷ also couldn't provide accurate numbers, but based on a study of a thirteen hundred homes eligible for weatherization, 52% had moisture related problems. Accurate numbers aren't possible because Vermont does not have a robust housing inspection system. Project based subsidized housing providers and housing authority inspectors of apartments with tenant based subsidies oversee the quality of subsidized units, but those are only about a quarter of renting households. The quality of the rest is not known, except anecdotely.

Without a statewide housing inspection system, units with unlivable defects can be rented over and over, each time stripping tenants of security deposit and rent money, and creating chaos and instability.

The lesson of this crisis is that housing is health care, and we do not know enough about our housing stock to believe with any confidence that rental housing in Vermont is healthy. We need a standardized statewide inspection system and programs to support bringing current housing stock up to code.

The crisis has shown us that changes are needed in Vermont's housing policy if we are to prevent evictions and curb homelessness. We need to know where rental units are; we need statewide habitability inspections, we need to ensure non-discrimination against disabled people and people who receive public assistance. And we need fully funded rental assistance programs and more staff, so housing providers can help, and not penalize, hard to house tenants; we can do these last two things through the end of the year with Coronavirus Relief Funds.

Thank you.

⁶ <https://www.vtlegalaid.org/sites/default/files/Renters%20at%20Risk%20-%20The%20Cost%20of%20Substandard%20Housing.pdf>

⁷ 2020 Housing Needs Assessment, p.47 13,592 affordable homes based on project based subsidies and 5462 tenant based subsidies. Of the 19,000, only 7,546 have subsidies which limit tenant's portion of the rent to 30% of the tenants' household income