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SPRINGFIELD

To: House Committee on General, Housing and Military Affairs
From: Jean Murray, Team Leader, Court Cases Team, HELP (Housing for Everyone Legal Project) 802-552-3336 ext. 371, jmurray@vtlegalaid.org
Re: Status of Eviction in Vermont
Date: October 18, 2021

Dear Chair Stevens and Members of the Committee

My current task as team leader is to prevent eviction in Vermont. HELP is funded as a Housing Stability Services program under the federal Emergency Rental Assistance Program, with a grant from AHS. Since June, HELP staffs a Court Cases team of four advocates at VLA and two advocate FTEs at Legal Services Vermont. The Court Cases Team reaches out to as many tenant/defendants as we can find.¹

The goal of the court cases team was to reduce the number of evictions during this public health crisis. The pandemic left many tenants vulnerable to eviction. The consequence of eviction is more homelessness, and huge health risks. The goal of reducing the number of evictions was not unrealistic. Prior to the pandemic, in 70% of eviction cases, the only issue was non-payment of rent.² Our team's plan was to prevent eviction cases by using the rent assistance program to pay the rent and preserve the tenancies.

Even though \$200,000,000 Emergency Rental Assistance money was sent to Vermont last January, it has not served to reduce the number of eviction cases filed in court, or to end eviction cases with tenants retaining their rental housing.

From where I sit, there are three main reasons why the numbers of evictions are not being reduced: the inefficiencies of the VERAP program, defective conditions in rental housing, and no cause eviction.

¹Description of the work of HELP Court cases team: As the moratorium ended, the court scheduled status conferences in July and rent-into-court hearings in August for all pending eviction cases. HELP team members attended all the scheduled status conferences, (18 court days) and most rent-into-court days (18 court days). The team was able to preview most, but not all, of the pleadings for the scheduled cases in the court's electronic filing system.

In addition, the team, using information from Odyssey, our own records, records of RHSP recipients, and contacts to Landlord's attorneys and landlords followed up to find contact information (email, phone, text) to speak with tenants before the court dates. Outreach letters were also sent to the addresses listed in the Complaints for Eviction.

The team members help tenants in eviction cases apply for VERAP, draft pleadings and motions, and advise or provide limited representation to tenants. Every case was investigated to determine whether the case could be settled and dismissed.

² Eviction in Vermont, A Closer Look, Vermont Legal Aid, 3-18-19 available at:

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

Before the pandemic, Vermont needed more safe, affordable housing. Now, even though there is money available to meet that need, a perfect storm of circumstances is working to eat away at the available rental housing stock we have. The delays in VERAP have persuaded many landlords to not cooperate with the program. We hear daily: “I just want them out!” The pandemic has caused changes in Vermont’s rental housing market. Anecdotally, and from court cases data I have tracked, it seems that many landlords are getting out of the landlording business.

Landlords, who have gone without regular rent payments since the beginning of the pandemic, are letting occupied units fall into disrepair. Tensions between tenants and landlords escalate, even though the VERAP program is supposed to have funds available to assure that repairs can be made so housing is healthy. But access to those funds is blocked by a byzantine application and documentation roadblocks. For the past ten months, I have watched Vermont’s rental housing market become unstable.

Securing housing stability is not just an issue for individual renters, it is an issue for Vermont. We need our emergency rental housing program to work, we need to be able to use it make rental housing safe and healthy, and Vermont needs to slow the use of no cause eviction.

VERAP inefficiency prevents reduction of the number of eviction cases filed in court.

VERAP should have reduced evictions. But the numbers of eviction cases filed have not been reduced. Below, the data shows that the numbers of court evictions have returned to, and perhaps have risen beyond the pre-moratorium eviction levels. Landlords had been waiting since the close of RHSP (Cares Act funded) last December for rent relief, and by the time the moratorium was over in July, had lost patience.³

VERAP didn’t start until April, and by the end of June had processed only 38% of the 3500 applications it had received and paid out \$2.7MM. By comparison, in the first 90 days of last year’s RHSP program, 3831 tenant households had received rent payments totaling over \$8.5MM. It is true that VERAP must follow federal law⁴ and that law requires more eligibility factors to be met, but by the end of this June, the US Treasury Department had loosened the documentation requirements, and urged states to make applications easier.⁵ But VERAP has done very little to change the difficult structure of the application, and has not engaged in sufficient editing for accuracy, plain language, or clarity.

Since June, VERAP has managed to approve 52% of the submitted applications, which is still a very inefficient number. Tenants submit an average of 370 applications each week, but VERAP

³ In the past 18 months, twice as many tenants have called VLA for help than called in the 18 months prior to that because they have been “locked out,” which means the landlord has violated the illegal eviction prohibition in 9 V.S.A. 4463.

⁴Section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 ([Public Law 116-260](#)) found at <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf> ERA provisions start at page 2255 of the pdf.

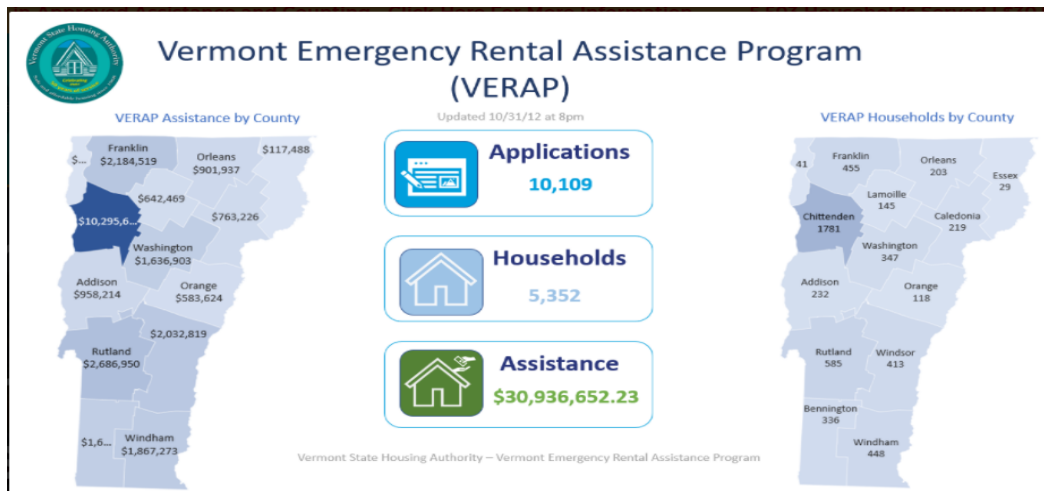
⁵ See “Treasury Releases Guidance to Speed the Provision of Emergency Rental Assistance Relief and Support Housing Stability for Renters at Risk of Eviction.”6-24-21 found at <https://home.treasury.gov/news/press-releases/jy0245>

approves only 211 applications per week. The remainder are not denied; rather, those applications languish unprocessed.

Data from VSHA’s response to Vermont Legal Aid’s Public Records Request,⁶ shows that as of September 1st, only about 4.2% VERAP applications are denied because of ineligibility. But 15% were denied for “missing information.” And another 35% were simply unprocessed, with no accounting for how long the applications had languished without a decision. VSHA does not keep records of the length of pendency of unprocessed applications, but speculated that those 2777 applications also could not be processed because of “lack of information.”⁷ But the on-line application is set up in a way that does not allow the applicant to proceed without filling in all the required information fields and attesting to the truth of the information provided so “lack of information” is an apparent problem of the processors, not the applicants.

Landlords frustrated by VERAP’s lack of payment have created a narrative: “tenants are not applying.” The state agencies overseeing VERAP have adopted that narrative “Tenants are not providing documentation.” Tenants are the easy target for blame and if tenants are to blame, then the program need not be responsible for expediting improvements. Tenants are not to blame.

VERAP’s own dashboard shows that over ten thousand tenant households have applied; that is 13% of all rental households in Vermont.⁸ But only 5352 of those tenant households have been helped.⁹



⁶ September 9, 2021, VSHA response to 8-25-21 Public Records Request made by VLA pursuant to Public Records Act (1 VSA § 315 *et seq.*).

⁷ Email from Diane May, VSHA, to Jean Murray, VLA September 15, 2021.

⁸ Housing Needs Assessment, page 43, shows 76,411 renter households in Vermont, found at <https://accd.vermont.gov/sites/accdnew/files/documents/Housing/VT%20HNA%202020%20Report.pdf>

⁹ Analysis of VERAP’s dashboard as of 10-15-2021 found at <https://erap.vsha.org/>

HELP's court cases team helps tenant/defendants apply for VERAP. These tenants often face short deadlines to pay rent-into-court. Failure to pay by a court-ordered deadline results in landlord being granted a Writ of Possession. So, we are keenly aware of how long it takes to get from submitting a completed application, to approval, and then to the often inexplicably delayed goal of payment.

In mid-August, VERAP's Administrative plan was updated to allow VERAP to prioritize tenant/defendant applications for "expedited" processing. There has been no consistency of time from application to time of payment. The Administrative Plan requires the tenant to upload the court papers filed by the landlord, and then sometimes, without heed to the amount of rent requested by the tenant, have approved the amounts the landlord claims on the court papers, regardless of the ineligible months and amounts; regardless of whether the landlord is also evicting for no cause. HELP court cases team advocates must scramble to correct these errors, wasting time and jeopardizing the settlement of cases and tenant security.

HELP court cases team also helps tenants with barriers created by the VERAP program: Internet Access, and direct payment to tenants who are unbanked. VERAP is a program whose purpose it is to serve low-income people, and those are the people who frequently do not have access to the internet or banks.

These barriers bear repeating: Internet Access: many low-income people who are supposed to be beneficiaries of this program have no internet access and/or no devices to access the internet, yet VERAP requires internet access and prefers communication by internet. Some tenants could have avoided court if they could have accessed VERAP. In many of our initial interviews with tenant/defendants, the story starts out that they tried to get VERAP but could not.

Unbanked: many low-income people can't afford bank accounts and/or have been denied bank accounts. VERAP wants to pay by direct deposit. Tenants are often under court orders to pay rent into court while the eviction case is pending. VERAP will not figure out how to make direct deposit to the courts (even though AHS can do that and has been doing that for years when rent into court payments are being made from Reach-Up benefits). If a tenant does not have a bank account, and the plaintiff/landlord is refusing to cooperate, VERAP has issued paper checks to tenants, who have a hard time finding a bank to negotiate a check from VSHA's bank and make a cashier's check that the court will accept. And VSHA admonishes tenants that it will not keep issuing paper checks, so they must find an alternative.

Evict rather than repair, even though VERAP funds are there.

Many buildings in Vermont are old. Many are not maintained.¹⁰ In doing this eviction prevention work, we have noted a startling number of rental units with defective conditions: roof and structural leaks are causing mold and mildew problems and invasion by pests. Plumbing is

¹⁰ Housing Needs Assessment, p. 11 found at <https://accd.vermont.gov/sites/accdnew/files/documents/Housing/VT%20HNA%202020%20Report.pdf>

deficient, sometimes there is no water, non-weatheright windows and doors creating high heating bills. Some units have no facilities capable of producing adequate heat, as old furnaces fail, and landlords replace them with inefficient direct-vent propane heaters.

When rental units have deficient conditions, especially in this rental market, the ultimate result is loss of rental units, often preceded by eviction of tenants. Tenants may not want to rock the boat and don't report bad conditions for fear of losing the only housing they can find. At the same time, high heating costs, or extra expense of buying and transporting potable water use up tenants' income so paying the whole rent is difficult. Or they withhold rent, hoping to find a more habitable place, but none are available. Unhealthy and unsafe units escalate tensions between landlords and tenants; some landlords need funds to be able to make repairs to occupied units. Landlords give up, evict tenants and either sell buildings or take them off the market. Right now, VERAP does not require landlords to attest that the unit meets the Rental Housing Health Code¹¹, only that it does not have "life-safety" issues. There is no commonly accepted version of "life-safety" in the VERAP program. I think it means that the landlord must attest that in the foreseeable future, the conditions unit will not cause the tenant immediate injury.

VERAP could pay for repairs as part of "other expenses related to housing," and that has been part of the Administrative Plan and application since April. But we learned two weeks ago that the part of the VERAP program that would pay expenses to landlords to make rental units safe and healthy had not yet "gone live."

Without a reasonable process to promote maintenance of occupied rental units, more rental units will be lost after the tenants are evicted.

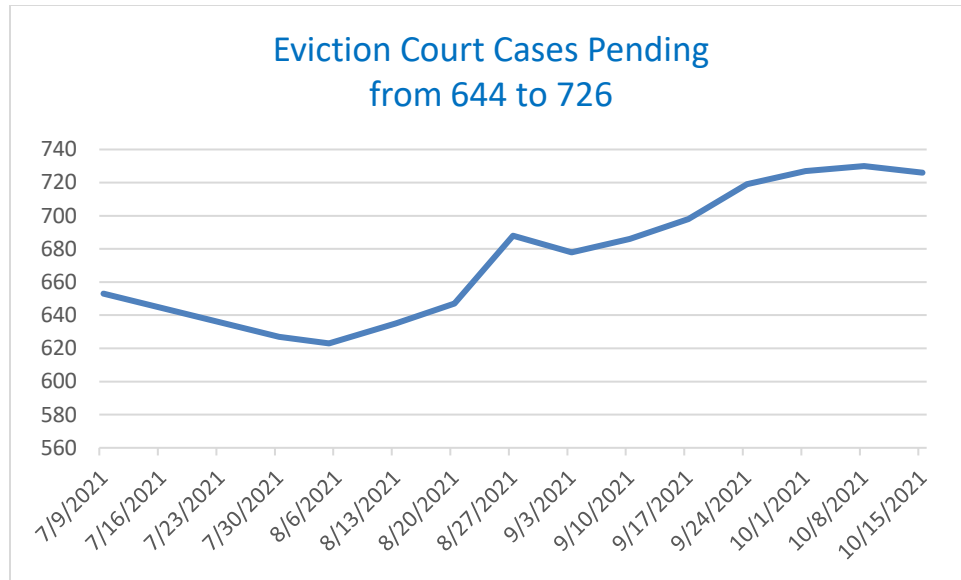
**Eviction court cases data;
In the wake of the pandemic,
"No cause" eviction is being used to take units off the market, or to raise rent.**

The eviction moratorium ended July 15, 2021. To understand how eviction is related to housing insecurity in Vermont, we can look at how many tenants face evictions filed in court. It is important to keep in mind that cases filed in court are a fraction of all evictions, because eviction process starts when a landlord notifies a tenant in writing that the landlord wants to end the tenancy. Many tenants heed the notice and move out, so the landlord never files a case in court. Today, no tenant looking for a new place can afford to have a record of a court eviction. We get calls from people living in their cars, who have moved out to avoid court eviction, asking what they can do to get housing or find a place.

Filed court cases represent situations where tenants have no other choice by to stay until the court orders them to go. Based on our anecdotal experience, and some numbers, it does not appear that eviction is being prevented on any sort of significant scale.

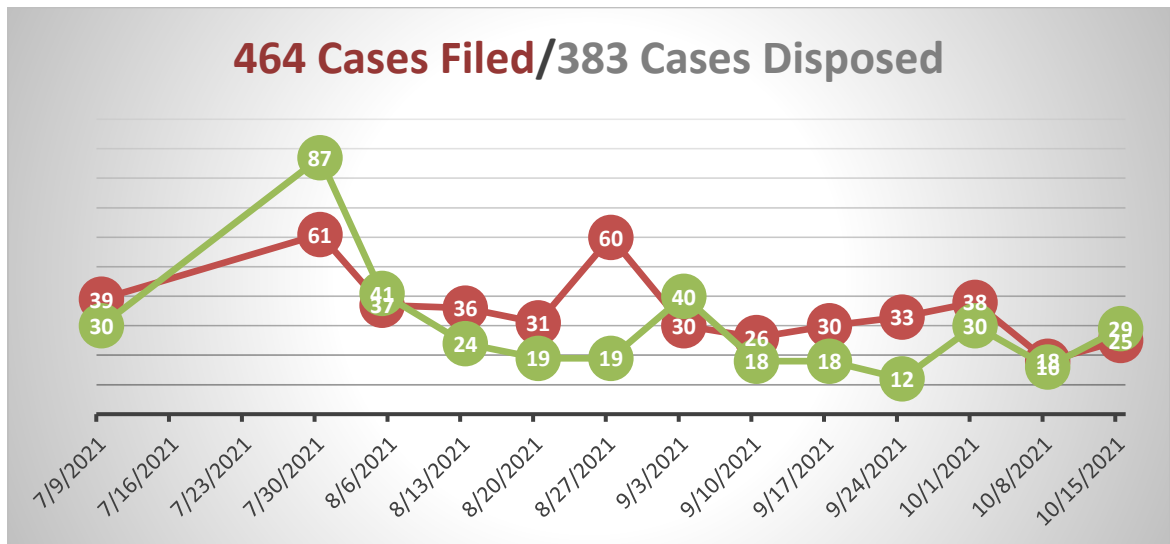
There were 653 cases pending on July 1, 2021. As of last Friday, the total number of eviction cases pending in court has climbed to 726.

¹¹ https://www.healthvermont.gov/sites/default/files/documents/pdf/REG_Rental_Housing_Code.pdf



In that same time, 464 new eviction cases have been filed, (an average of 33 new cases per week every week since the end of June) and 383 eviction cases have been disposed. “Disposed” means no longer on the active docket. Cases can be disposed in several ways: the cases could have been dismissed, judgment for possession granted, or the case settled with then tenant staying housed. We don’t have data to show how many tenants stayed housed. It is not many.

Quite a few filed cases were dismissed by the court. HELP team members reviewed pleadings, reached out to tenant defendants, and went to status conferences and Rent-into-court hearings as they were scheduled by the court. A significant number of cases were dismissed because landlords did not show up; tenants had already moved out by the time the courts resumed the eviction docket.



Using docket data provided by the Vermont Judiciary, since July 1st, HELP reached out to 77% of tenants in pending and newly filed cases. By the end of September, we were able to establish contact and speak to 320 tenants, or about a third of tenants in pending and newly filed cases. Of the 320 tenants we helped, 61 eviction cases were dismissed, but dismissal does not always mean the tenant got to keep the dwelling unit. Some had already moved out. Some agreed to move out by a date certain.

No cause eviction is removing rental units from the market

In 2019, VLA wrote a report about eviction prevention, based on data from two counties: Lamoille and Windsor.¹² That pre-pandemic showed that 70% of evictions were for non-payment. The other 30% were for other grounds for eviction: sale of property, breach of rental agreement or the Residential Rental Agreements Act, or no cause. The reason for eviction has changed dramatically between 2020 and 2021. In 2020, as in the 2016 case data, the vast majority of evictions filed were for non-payment. But for cases filed in 2021, no cause is listed as grounds 50% of the time.¹³ In no-cause cases, landlords can still ask for money judgments for back rent but rent payment will not make the court dismiss the eviction, because the landlords have the right to end the tenancy for no cause.

Our experience has been that landlords are ending tenancies to sell the buildings or raise the rent.¹⁴ There are almost no legal defenses to no cause evictions.¹⁵ It doesn't matter if the rental has been the tenant's home for many years; it doesn't matter if the tenant has a decent history of paying the rent. The Residential Rental Agreements Act, 9 V.S.A. 4451 et seq, allows no cause notice periods to be shortened to 30 or 60 days if there is a written rental agreement.¹⁶ A notice that the tenancy will be ended at the expiration of a lease requires only 30 days' notice. No cause is a more certain ground for eviction than sale of building because that ground requires a contract

¹² The report followed 207 cases filed in 2016 through the cases' completion. "Eviction in Vermont, A Closer Look," Vermont Legal Aid, 3-18-19 available at: <https://www.vtlegalaid.org/sites/default/files/Eviction-Report-VLA-3.18.19-web.pdf>

¹³ Since July 1, VLA has been receiving a list of all the active pending eviction cases statewide from the Judiciary. The court cases team reviewed the pleadings and recorded the grounds for eviction in every case for those two counties.

Lamoille has had 58 active cases on the docket. For cases filed in 2020, 72% were for non-payment or cause. For cases filed in 2021, 50% were filed for no-cause.

Windsor has had 111 active cases on the docket. In 2020, 81% were for non-payment or cause. In 2021, 50% were filed for no cause.

¹⁴ Excerpts from a termination notice: "when your lease expires. . .it will NOT be renewed. This summer we plan to tear down the building and develop the property. We know the rental market is tight. [you may stay month-to-month] [but] the rate will be much higher starting at \$3000 per month and increasing every month by \$100. We are only offering this option to give you more time to find another apartment."

¹⁵ If the tenant can prove the landlord's intent in evicting them was retaliatory 9 VSA 4465, then the court can dismiss the eviction. Even if the case is dismissed, the landlord need only wait a while, and file again. Fair Housing law might provide a defense if a tenant in a protected group proves the landlord's intent in evicting them is discriminatory.

¹⁶ 9 V.S.A 4467(c) and (e).

for sale. If the landlord has properly terminated the tenancy for no cause, the court has no choice but to grant the eviction.

Vermont law allows property owners to hold themselves out as landlords, as housing providers, but also allows them to cease being housing providers at any time. A large percentage of Vermont's rental market depends on individual landlords deciding to continue in the landlording business, and Vermont has no policy in place to maintain housing stability should landlords decide they want out or want more money. The pandemic has changed the value of housing in Vermont; it has made short-term vacation rentals a lucrative business model. Property owners are using no cause eviction to get out of the permanent rental market. No cause eviction in this market is shrinking the availability of rental housing. What this means is that tenants have no place to go. For some, that means lengthy times of homelessness. For some, it means workers cannot find a place to live in Vermont, and so they will leave Vermont, and Vermont will have a worker shortage.¹⁷

The increase in the numbers of evictions filed for no cause is reason for alarm. It means available rental housing is being reduced, right now, while we watch.

Thank you for the opportunity to share this information with you.

¹⁷ "Nowhere to Go: Vermont's Exploding Housing Crisis Hits Moderate Wage Earners." Anne Wallace Allen and colin Flanders, Seven Days, August 4, 2021. <https://www.sevendaysvt.com/vermont/nowhere-to-go-vermonts-exploding-housing-crisis-hits-moderate-wage-earners/Content?oid=33532880>