

# VERMONT LEGAL AID, INC.

56 COLLEGE STREET

MONTPELIER, VERMONT 05602  
(802) 223-6377 (VOICE AND TTY)  
FAX (802) 223-7281  
(800) 789-4195

OFFICES:

BURLINGTON  
RUTLAND  
ST. JOHNSBURY

OFFICES:

MONTPELIER  
SPRINGFIELD

To: Tom Stevens, Chair, House Committee on General, Housing and Military Affairs  
From: Jean Murray, Wendy Morgan, Vermont Legal Aid, Inc.  
Date: April 27, 2021  
Re: Vermont's Moratorium on Evictions is still needed.

A year ago, in response to the global COVID-19 pandemic, the Vermont General Assembly passed Act 101, a law placing a moratorium on virtually all residential eviction and foreclosure actions in Vermont. In an emergency, an exception to the moratorium could be made. Some landlords have complained that the exception was not broad enough. We are suggesting the following clarifying language, that will be understood by the court as allowing consideration of a broad range of emergency situations justifying proceeding.

(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) (i) limit a court's ability to act in an emergency pursuant to ~~Administrative Order 49, issued by the Vermont Supreme Court, as amended,~~ Vermont Rule of Civil Procedure 65, which may include an action that involves

(A) criminal activity,

(B) illegal drug activity, or

(C) acts of violence, or

(D) other circumstances that seriously threaten the health or safety of other residents, or

(E) other immediate and irreparable injury, loss or damage to the applicant or other residents.

(ii) Upon motion by an applicant to proceed under subdivision 4(i) supported by affidavit, the court shall determine whether facts have been alleged to warrant a hearing. If so, the court may make any necessary preliminary orders, shall schedule a hearing, and shall allow the applicant to serve the other party with the motion, affidavit, complaint, preliminary orders, if any, and notice of hearing.

At its core, the moratorium on evictions exists to protect the health and life of Vermonters. The most recent data available demonstrates just how effective the moratorium has been in protecting all Vermonters' health and lives. *See Housing is Health: Building on Vermont's Pandemic Success to Advance Health Equity.*<sup>1</sup> The spread of the Covid-19 contagion has been and remains a very real threat. To prevent infections, people need to stay home, avoid interacting with groups of people and avoid sharing space with others.

During this public health crisis, when an exception to the moratorium is requested, the question before the court has been: what will better protect health and safety? An eviction, which will create homelessness for the tenant but would ostensibly protect the health and safety of other residents, or a postponement of an eviction action, so that a tenant is not displaced from their home and does not risk infecting or becoming infected by others. That is why the exception to the stay required nothing short of evidence of "criminal activity, illegal drug activity, or acts of violence, or other circumstances that seriously threaten the health or safety of other residents."<sup>2</sup>

The data from the Rental Housing Stabilization program made clear that an overwhelming majority of Vermont landlords and tenants were able to work together to get rent payments, support landlords' expenses, and assure health and safety and maintain housing stability for thousands of tenants.

However, since the moratorium's inception, a vocal minority of landlords have reported various situations that they believe warrant further exceptions to the vitally important health and safety protections afforded by the moratorium. As compelling as some of these situations may seem, the question remains: what is the best way to protect health and safety? Landlord-tenant disputes can be resolved short of forced eviction. It is not good policy to force tenants from their homes into homelessness during a pandemic.

The moratorium prevents evictions<sup>3</sup> and prevents the increase of the numbers of homeless Vermonters. Vermont decided to fight the spread of Covid-19 by providing temporary housing to Vermonters experiencing homelessness. As of last week, there are currently more than 1847 Vermonters in motels, 476 of them children. There are a few hundred more people in congregate shelters being run at less than capacity to try to ensure social distancing. Even though there are myriad service programs trying to help people leave shelters and secure permanent housing, it is next to impossible because Vermont does not have enough rental units available to allow people experiencing homelessness to find permanent homes.

---

<sup>1</sup>"Housing is Health: Building on Vermont's Pandemic Success to Advance Health Equity" Found at: <https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20General/Housing/Housing%20and%20Health/W~Anne%20Sosin~Housing%20is%20Health%20Legislative%20Brief~2-5-2021.pdf>

<sup>2</sup> Act 101, 2020 found at

<https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT101/ACT101%20As%20Enacted.pdf>

<sup>3</sup> There are 608 active eviction cases pending in the courts right now. Before Covid-19 an average of 150 new cases were filed a month. Since the moratorium, fewer than 50 cases have been filed each month. Last year, some cases were resolved and dismissed with funds from the Rental Housing Stabilization program.

The moratorium legislation left it to courts to hear facts and decide under what conditions health and safety could be served. At the time it was passed, it referred to Administrative Order 49,<sup>4</sup> but that order no longer references emergency hearings. Act 101 can be amended to clarify that emergencies could proceed pursuant V.R.C.P. 65, a longstanding court rule that balances the rights of the parties, and makes expedited orders based on admissible evidence. Courts can order parties to undertake or refrain from certain actions to protect health and safety or to prevent immediate and irreparable injury, loss, or damage. The cases where eviction is needed to protect health and safety are exceedingly rare. We believe that the moratorium in its current form continue with this clarification. The moratorium is helping Vermont fight the probability of infection, and death, for individual households, and for all Vermonters.

We understand landlords want a specific list of grounds that would allow eviction during the State of Emergency. The list includes sale of building, tenant damage to the rental premises, landlord or landlord's immediate family needs to re-occupy the rental premises, tenant can pay rent and is refusing, or tenant is not participating or does not qualify for the Vermont Emergency Rental Assistance Program (VERAP) and adding excessive noise or smoking in violation of a no smoking policy to other circumstances seriously affecting the health and safety of other residents.

Because the moratorium exists for health and safety reasons for tenants and all Vermonters, evictions should not proceed unless the ongoing tenancy poses a greater risk to health and safety than the public health emergency does. Using V.R.C.P. 65, the court can act quickly to balance public health and the interests of the parties and make orders to do something or to refrain from doing something; eviction is not the necessary solution to all problems.

- 1. Tenant is allegedly damaging the rental unit.** If a court finds a tenant is intentionally damaging the rental unit or property, that finding could support a decision to lift the stay because intentional property damage is a crime. See 13 V.S.A. § 1307. In addition, landlord-tenant law has always provided a financial remedy; the Residential Rental Agreements Act makes tenants financially responsible for damages where the tenant has created or contributed to the noncompliance with the any building or health regulations, or deliberately or negligently destroyed, defaced damaged or removed any part of the premises or its fixtures. See 9 V.S.A. 4456. *The moratorium does not preclude actions for financial damages, only those actions that could result in a Writ of Possession being granted to the landlord.* A landlord could bring an action to cease property damages and to pay for the damage caused. The court does not have to grant eviction; instead, it can simply make orders to stop activities that cause property damage. Landlords may want to work with their local community justice center, or other community resources, or take advantage of the mediation program to facilitate communication and problem solve.
- 2. The landlord asserts the need to move into the unit currently occupied by a tenant.** When the pandemic interrupted plans, some property owners with a tenant

---

<sup>4</sup> Between March 16, 2020 and June 1, 2020, AO49 allowed emergency hearings only. Since that time, the court has allowed non-emergency hearings in most cases, but, pursuant to the Act 101 moratorium, has stayed non-emergency process in eviction and foreclosure cases.

in their property may have had a plan to resume living in their property. That plan would have required the renter to move out. The pandemic has exacerbated rental housing scarcity. Now the choice is: someone needs to find alternative living arrangements during the state of emergency. We strongly believe that it would serve public health more for the landlord to remain safely housed where they are until the tenant is able to find safe housing elsewhere. If the landlord depends on rent that is not forthcoming from the tenant, money for rent was available under RHSP and will be available under VERAP for Vermonters with incomes below median income.

3. **The landlord wishes to sell the property in which the tenant resides.** The moratorium places no legal restriction on selling rented property, and it can be sold without ending the tenancy. In such a situation, the new owner would become the new landlord. Private landlords, however, are asking to change Act 101 simply so they can sell their property vacant so a new owner can move in. While we understand fully the right to transfer property, within the context of a deadly pandemic that right must be subject to the life and safety of people who stand to lose their home, their health, and as we know all too clearly, their lives. This is therefore a policy question that necessarily asks what are the costs to the State of Vermont and to individual and public health when tenants become displaced because private property owners want to take advantage of higher market prices caused by the pandemic?
  
4. **A landlord who is owed rent by a tenant and believes the tenant can pay it but refuses to do so.** In this situation, the landlord has a legal remedy short of eviction, and likely has another option. Even if the landlord believes that the tenant could pay, but is not, the landlord may not know everything about the tenant's circumstances. The landlord's legal remedy is filing suit to collect a debt. That can be done in in small claims court. No lawyers are required in Small Claims Court, and the filing fee is only \$90 to get a judgment up to \$5000. Small Claims Court does not have the authority to grant an eviction, but can make a judgment for money, and conduct a hearing to ascertain the defendant's ability to pay and can issue an order for wage assignment or trustee process of a bank account. RHSP was available to pay unpaid rent last year, and VRAP will be available to make rent grants this year.

Amendments to Act 101 to clarify that the court can act on a broad range of emergency circumstances pursuant to V.R.C.P. 65 preserves what has been in effect policy during the pandemic, while making it clear to the public that the standards of V.R.C.P. 65 must be met. We believe the moratorium is the best way to continue to protect the health and safety of the people of Vermont until the public health emergency is at an end.