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H.772

Representative LaLonde of South Burlington moves that the report of the Committee on General and Housing be amended as follows:

First: By striking out Sec. 2, 12 V.S.A. § 663, in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 12 V.S.A. § 663 is added to read:

§ 663. ALTERNATE SERVICE OF PROCESS; EJECTMENT

When a motion for alternative service of process is filed pursuant to Rule 4(d)(1) of the Vermont Rules of Civil Procedure in an action under 10 V.S.A. chapter 153, 11 V.S.A. chapter 14, or 12 V.S.A. chapter 169, the court shall rule on the motion promptly.

Second: By striking out Sec. 3, 12 V.S.A. chapter 169, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

Sec. 3. 12 V.S.A. chapter 169 is amended to read:

CHAPTER 169. EJECTMENT

* * *

Subchapter 3. Superior Court Ejectment

* * *

§ 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

~~[Subsection (a) as amended by 2007, Act No. 125 (Adj. Sess.), § 1.]~~

1 pursuant to subsection 4853a(h) of this title is served or upon the landlord
2 being legally restored to possession of the leased premises by a writ of
3 possession issued for failure to pay rent into court pursuant to subsection
4 4853a(h) of this title, whichever is later.

5 (b) Notwithstanding subsection (a) of this section, if the court stays the
6 execution of a writ of possession issued pursuant to this chapter, then a
7 landlord may dispose of any personal property remaining in a dwelling unit or
8 leased premises without notice or liability to the tenant or owner of the
9 personal property ~~one day~~ immediately after the landlord is legally restored to
10 possession of the dwelling unit or leased premises.

11 * * *

12 Subchapter 4. Superior Court Ejectment for Nonpayment or Breach

13 § 4861. ISSUANCE OF PROCESS BY SUPERIOR JUDGE FOR

14 NONPAYMENT OR BREACH

15 When the lessee of lands or tenements, either by parole or written lease, or a
16 person holding under the lease, holds possession of the demised premises
17 without right, after the termination of the lease under 9 V.S.A. § 4467(a) or (b),
18 the person entitled to the possession of the premises may have from the
19 presiding judge of the Superior Court a writ to restore the person to the
20 possession thereof.

1 § 4862. MODE AND SERVICE OF PROCESS; TRIAL BY JURY

2 (a) The process may issue as a summons, requiring the defendant to appear
3 and answer to the complaint of the plaintiff, which shall state that the
4 defendant is in the possession of the lands or tenements in question, with a
5 description thereof, that the tenant holds unlawfully and against the right of the
6 plaintiff. A copy of the rental agreement, if any, and any notice to terminate
7 the defendant’s tenancy, including the affidavit required by 9 V.S.A.
8 § 4467(b)(2)(B), shall be attached to the complaint. If the complaint is based
9 on a termination under 9 V.S.A. § 4467(a), the complaint shall include a copy
10 of the rent ledger.

11 (b) Either party shall have the right to a trial by jury.

12 § 4863. ANSWER; PERIOD TO CURE

13 (a) An answer to a complaint filed under this subchapter shall be
14 accompanied by an affidavit setting forth particular facts in opposition to the
15 complaint.

16 (b)(1) If the complaint is based on a termination under 9 V.S.A. § 4467(a),
17 the defendant may cure the action by paying all rents owed, court costs, and
18 service fees by the answer date. If payment is not received by the answer date,
19 the defendant shall lose the right to cure the complaint as a matter of law. A
20 plaintiff may accept payment in whole or in part and dismiss the complaint. A

1 defendant shall not have the right to cure in a subsequent action brought by the
2 plaintiff for termination under 9 V.S.A. § 4467(a).

3 (2) Notwithstanding subdivision (1) of this subsection, the parties may
4 at any time prior to the issuance of a writ of possession come to an agreement
5 to cure the action and dismiss the complaint.

6 (c) Upon receipt of an answer to a complaint based on a termination under
7 9 V.S.A. § 4467(a) or (b)(1), the court shall set a final hearing date not later
8 than 60 days after the date of service of the complaint absent good cause.

9 § 4864. DEFAULT

10 If the defendant fails to file an answer in the time provided pursuant to Rule
11 12 of the Vermont Rules of Civil Procedure, the plaintiff may file a motion for
12 a default judgment in accordance with Rule 55 of the Vermont Rules of Civil
13 Procedure. The court shall rule on the motion promptly.

14 § 4865. THREATENING BEHAVIOR; EXPEDITED HEARING

15 (a)(1) In an action for ejectment based on a termination under 9 V.S.A.
16 § 4467(b)(2), the plaintiff may file a motion for a judgment that the plaintiff is
17 entitled to immediate possession of the premises on the grounds that the
18 defendant is threatening the health or safety of other residents, the landlord or
19 the landlord's agent, or neighbors.

20 (2) The motion may be filed and served with the complaint or at any
21 time after the complaint has been filed. The motion shall be accompanied by

1 an affidavit setting forth particular facts in support of the motion and a copy of
2 the lease agreement.

3 (b) A hearing on the motion shall be held promptly any time after 10 days'
4 notice to the parties but not later than 21 days after the motion is filed absent
5 good cause.

6 (c) At any time before the hearing, the defendant may oppose the motion
7 pursuant to Rule 7(b)(6) of the Vermont Rules of Civil Procedure by filing an
8 affidavit, a signed written statement, or a memorandum in opposition to the
9 motion. The affidavit, signed written statement, or memorandum shall set
10 forth particular facts to show that a genuine dispute of fact exists in relation to
11 the motion.

12 (d)(1) If the defendant fails to appear for the hearing, or to file an affidavit,
13 signed written statement, or memorandum in opposition to the plaintiff's
14 motion, or has failed to file an answer in the time provided pursuant to Rule 12
15 of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to
16 judgment by default for immediate possession of the premises.

17 (2) If the court finds that the defendant is a threat to the health or safety
18 of other residents, the landlord or the landlord's agent, or neighbors, the court
19 shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for
20 immediate possession of the premises.

1 (e) If the court issues judgment in favor of the plaintiff pursuant to
2 subsection (d) of this section, the court shall, on the date judgment is entered,
3 issue a writ of possession directing the sheriff of the county in which the
4 property or a portion thereof is located to serve the writ upon the defendant
5 and, not sooner than five days after the writ is served, to put the plaintiff into
6 possession.

7 § 4866. COSTS; JUDGMENT FOR PLAINTIFF; POSSESSION

8 If the court finds the plaintiff is entitled to possession, the plaintiff shall
9 have a judgment for possession and rents due, if applicable, including damages
10 and costs, and when a written rental agreement so provides, the court may
11 award reasonable attorney’s fees. A writ of possession shall issue on the date
12 of judgment and shall direct any sheriff to serve the writ upon the defendant
13 and, not earlier than 14 days after the writ is served, put the plaintiff in
14 possession.

15 § 4867. PROPERTY OF TENANT REMAINING ON PREMISES AFTER

16 EVICTION

17 A landlord may dispose of any personal property remaining in a dwelling
18 unit or leased premises without notice or liability to the tenant or owner of the
19 personal property upon the landlord being legally restored to possession of the
20 dwelling unit or leased premises pursuant to this subchapter.

1 § 4868. TRESPASS ORDERS

2 After being legally restored to possession of the dwelling unit or leased
3 premises pursuant to this chapter, the plaintiff may issue the defendant an order
4 against trespass for the entire premises subject to the ejectment action in
5 accordance with 13 V.S.A. § 3705.

6 Third: In Sec. 5, 13 V.S.A. § 3705, by striking out subdivision (g)(2) in its
7 entirety and by renumbering the remaining subdivision to be numerically
8 correct.

9 Fourth: In Sec. 6, 12 V.S.A. chapter 169, subchapter 5, by striking out
10 section 4873 in its entirety and inserting in lieu thereof a new section 4873 to
11 read as follows:

12 § 4873. REMOVAL OF CONFIDENTIALITY OF EJECTMENT RECORDS

13 If the court of jurisdiction in an ejectment case issues a writ of possession in
14 favor of the plaintiff, the court shall remove confidentiality for the ejectment
15 record 30 days after issuance of the writ of possession, unless the court orders
16 continued confidentiality.