VERMONT LEGAL AID

**TO:** Senate Committee on Judiciary
**FROM:** Jean Murray, Senior Housing Attorney, Vermont Legal Aid, Inc.
**SUBJECT:** H. 772 – Comments to 4-23 Draft
**DATE:** April 24, 2026

Though H. 772's stated purpose was to produce more efficiency in eviction processes, and provide a balance between landlord and tenant rights, it did not do that. The draft produced by your committee on 4-23 addressed some needed changes to H. 772. Below, I give reasons why some of the provisions remaining in the draft are still undesired, and suggest language to be struck or amended, including a couple of sections that were not in H. 772 as passed by the House. Thank you for this opportunity to comment on this bill.

**Rent increases**. This draft does not limit the amount of rent increases. Though the draft provides a limit to increases once every twelve months, it includes an exception that "a landlord [may increase] after purchase of a dwelling." "Purchase" is not defined to exclude an owner from transfer ownership to an LLC.

> **Suggested language**: 12 VSA 4455 (c): A landlord shall not increase rent during any 12-month period ~~This subsection shall not prohibit a landlord from increasing rent after the purchase of a dwelling unit subject to the requirements of this section.~~ in an amount greater than one percent above the U.S. Consumer Price Index for all Urban Consumers, Housing Component, published by the U.S. Bureau of Labor Statistics in the periodical "Monthly Labor Review and Handbook of Labor Statistics" as established annually by the Department of Housing and Community Development, or five percent, whichever is less.

**Application fee.** Under current law, 9 VSA 4456a has paragraph (a)"shall not charge an application fee" and (b) in order to conduct a . . . check, a landlord shall accept [forms of identification]. The draft adds a subparagraph to a): (a)(1)defining application fee as "any fee…to submit an application." This leaves open to interpretation that a fee may be charged for a background check.

> **Suggested language**: 12 VSA 4456a (a): A landlord or landlord's agent shall not charge ~~an application~~ fee or cost for any reason to any individual who applies ~~in order to apply~~ to enter a rental agreement for a residential rental unit. This subsection shall not be construed to prohibit a person from charging a fee to a person in order to apply to rent commercial or non-residential property.

**Security Deposit.** Current law provides that "[t]he function of a security deposit is to secure the performance of a tenant's obligations to pay rent and to maintain a dwelling unit." And it is "refundable to the tenant." The purpose of security deposits is not to test the finances of the tenant. The draft sets as a standard three months' rent "before initial occupancy."

The draft's added language to 9 VSA 4461(a)(2) should be struck.

Current law 9 VSA 4461(c), addresses return of the security deposit. The draft adds a subparagraph (c)(2) requiring the landlord to return one-half of the deposit at the request of some tenants but also includes "subject to any deduction authorized by subsection (b) . . ." This exception to the requirement of early return renders the process meaningless.

9 VSA 4461(c)(2) should be struck from the draft.

**Termination of Tenancy, Notice.**

Non-payment. 9 VSA 4467(a )The draft alters the tenant's longstanding right to defeat a non-payment notice by paying rent due. Unnecessary language in the draft should be struck from 9 VSA 4467(a):

This language should be struck: "provided a landlord may terminate a tenancy under subdivision (b)(1) of this section for repeated late payment of rent."

Current law, 9 VSA 4467(i), allows landlords to send multiple notices, which "may be based on different or unrelated grounds . . ." so there is no need to qualify a right to cure a non-payment notice by referring to the landlord's right to send a late payment notice. The landlord already has the right to send both.

The draft reduces the notice time in non-payment terminations from 14 days to 10. The policy in 9 VSA 4467(a) is to encourage payment and stability, by including the tenant right to cure. Given that policy, it is counterintuitive to give less time to cure.

14 days should be restored to 9 VSA 4467(a).

Breach of rental agreement. 9 VSA 4467(b)(1) Current law provides, "Obligations imposed on landlords and tenants under this chapter shall be implied in all rental agreements." 9 VSA 4453. This means provisions in the RRAA must be followed, or the tenant breaches the rental agreement and could be evicted under 9 VSA 4467(b)(1). The draft reiterates three existing obligations, in conflict with current law.

Late payment. Payment of rent on time is required by 9 VSA 4455(a), and so the draft's 9 VSA 4467(b)(1)(A)(ii) should be struck. If, as a policy matter, the intent is to define late payment as "more than 10 days late" or "more than three times in a 12-month period," that language should be added to 9 VSA 4455.

9 VSA 4467(b)(1)(A)(ii) should be struck.

Landlord Access. Current law sets out limits on both tenants and landlord regarding landlord's ability to access the premises in possession of the tenant. Current law does not provide a remedy for either landlord or tenant violations, though ostensibly, a tenant violation of the obligation to provide access is a breach of the rental agreement.

Draft language in 9 VSA 4467(b)(1)(A)(iii) should be struck.

Tenant actual notice of termination. Current law allows a tenant to terminate a tenancy. 9 VSA 4456(d).

Draft language in 9 VSA 4467(c)(1) should be struck.

Shortened number of days' notice. H. 772 reduces notice time from 30 to 21 days. The draft should restore 30 days' notice. When a landlord terminates for breach of rental agreement, the landlord must prove that the tenants' acts were prohibited by the rental agreement or the law. A thirty-day notice period allows time for the tenant to be in touch with the landlord, ask for the landlord's records of facts, explain the tenant's version of the facts alleged, and perhaps ask for a reasonable accommodation for a disability to assure the unwanted behavior will not occur again. In tenancies subsidized by HUD funding, the landlord is required to allow a tenant to request a hearing within ten days. Shortening notice times also shortens the times to share information and reach solutions where it is possible to ensure tenants can stay in their homes.

30 days' notice of termination should be restored to 9 VSA 4467(b)(1).

**Termination based on safety.** 9 VSA 4467(b)(2)

5-day notice. The draft would continue to allow H. 772's tenancy to be terminated after 5 days' notice to the tenant, on the premise that the tenant's behavior creates a safety emergency. The statute does not require the landlord to send a notice immediately on learning of the ongoing and repeated threat posed by the tenant's behavior; the landlord may know of the concerning behavior for weeks or months, but the draft gives the accused tenant a very short time to respond. This is less than the 10-days in HUD-funded tenancies to request a meeting to address the

behavior. Tenants need more than 5 days to learn of the facts the landlord relies on to end their tenancy and, if the tenant disputes the landlord's version of the facts, prepare a dispute.

14 days' notice should be restored to 9 VSA 4467(b)(2).

Neighbors. The draft retains H. 772's inclusion of termination for behavior that threatens the safety of neighbors as supporting the loss of a tenant's home. There are laws protecting communities from unlawful and unsafe behavior. These protections do not need to be part of landlord-tenant law.

"Neighbors" should be struck from 9 VSA 4467(b)(2).

Requirement of Affidavit with Notice. The draft leaves landlord affidavit requirement of H. 772. But H.722 does not require the landlord to state in the notice or affidavit description of specific acts or dates of those acts. A statement of the landlord's "reasoning" could merely be a landlord's recitation of the lease, or laws the landlord feels the tenant violated. H. 772's affidavit requirement provides no assurance that the tenant is informed of what they are alleged to have done. The tenant could be denied the ability to raise relevant disputes to the landlord's version of the facts.

**Suggested language**: 9 VSA 4467(b)(3) The actual notice required under this subsection (b) shall be accompanied by an affidavit setting forth particular facts and the basis thereof in support of the termination with sufficient details to inform the tenant of the reasoning behind the termination. a description of specific acts and the dates and times and places that those acts occurred, and the affiant must state for each described act whether the affiant themselves saw, heard, or otherwise perceived those acts, (called personal knowledge) or whether the affiant got the information about those acts from another source. If the information comes from another source, the affidavit must state when the affiant received the information and describe the source of the information.

**9 VSA 4467(c) Termination for "governmental notice."** The draft includes H. 772's addition of termination for "governmental notice." This type of notice is not defined. To the extent a governmental agency has the authority to require that a building be vacated, that law already exists. Adding this language would allow a landlord with an order from an agency to repair the unit actually *fail* to repair, and then use that notice to base an eviction—an absurd result.

This change to 9 VSA 4467(c) should be struck.

**9 VSA 4467(d) Repurpose: sell, occupy by family, demolish, renovate.** This bill language will have no immediate effect if H. 772 retains "no cause" eviction in H. 772's 9 VSA 4467(e). No landlord will choose to state a reason if the law allows them not to state a reason.

**9 V.S.A. 4467(e) Termination at expiration.** Subparagraphs (1) and (2) allow termination of written and unwritten rental agreement for no cause. We would like "no-cause" eviction to be eliminated.

**9 VSA 4467(h)** H. 772 reduces notice time in shared occupancy to 7 days; it should be restored to 15 days' notice or notice equal to the number of days in the rental payment period.

**9 VSA 4467(l) Affirmative defense to ejectment action.** This provision should be struck and replaced with additions to 9 VSA 4458 to ensure consistency in tenant's right to remedies where the landlord has neglected repairs. To ensure fairness, grant tenants an expedited process to get a court order to obtain repairs.

> 9 VSA 4467(l) should be struck.
>
> **Suggested language:** 9 VSA 4458 (a) If the landlord fails to comply with the landlord's obligations for habitability and, after receiving actual notice of the noncompliance from the tenant, a governmental entity or a qualified independent inspector, the landlord fails to make repairs within a reasonable time and the noncompliance materially affects health and safety; or a governmental entity has issued a notice of noncompliance or an order to repair and the landlord has failed to bring the property into compliance within the period prescribed by that entity; the tenant may exercise the remedies provided in this section:
>
> (1) withhold the payment of rent for the period of the noncompliance;
>
> (2) ~~obtain injunctive relief~~; request relief from the court in a motion for expedited hearing pursuant to 12 VSA 4853d.
>
> (3) recover damages, costs, and reasonable attorney's fees; and
>
> (4) terminate the rental agreement on reasonable notice.
>
> (5) have an affirmative defense to the landlord's claim of possession in an action for ejectment for non-payment of rent.
>
> (b) Tenant remedies under this section are not available if the noncompliance was caused by the negligent or deliberate act or omission of the tenant or a person on the premises with the tenant's consent.

**Eviction record confidentiality**. H. 772 as passed by the House eliminated eviction records confidentiality.

> **Suggested language**: 12 VSA 4851a. records of ejectment actions are designated as confidential upon filing and are an exception to access pursuant to Rule 6(b) of the Vermont Rules for Public Access to Court Records.

**12 VSA 4852(a)** Current law requires attachment of a rental agreement and notice to terminate tenancy, because those are documents necessary to prove a landlord is entitled to relief. H. 772

sought to require other attachments to the complaint, including in two specific instances: 1) the affidavit required for termination under 9 VSA 4467(b)(2), and 2) a rent ledger for evictions pursuant to 9 VSA 4467(a).

This begs the question of why only these disclosures? Federal Rule of Civil Procedure 26 requires initial disclosure by both parties of 1) the names of people who have information to support claims and defenses, 2) the documents to support claims and defense, 3) a calculation of damages and materials to support that calculation, and 4) any insurance available. Advocates for more efficient process should include process to share *all* information from the beginning of the case.

**12 VSA 4853c Threatening Behavior Expedited Hearing.** This draft relocates H. 772's expedited hearing process but retains most of H. 772's processes. That process is highly likely to result in an erroneous deprivation of tenants' due process rights. The intent was to give quick help to housing providers regularly beset with the problems caused by criminality and violence. Even now, it is not clear why the solution to these problems should be located in landlord-tenant law. H. 772 grants broad rights to all landlords and mis-uses Motion process, rather than regular trial process, to arrive at a final judgment. Listed here are six problems with the Expedited Motion Process, and suggested language follows this list.

1) Immediate possession not limited to non-profit housing providers. Almost all the testimony regarding need for fast process to evict tenants who threaten safety of other tenants and landlords has been from non-profit housing providers, who also testify to the case work services they offer, and their mission to provide housing for the hard-to-house. The legislature heard the compelling reasons why these housing providers need help. There is no justification for H. 772's broad availability to for-profit landlords. Making it available to all landlords increases the chances it is misused.

2) No requirement of judicial review of the need for an expedited hearing to end tenancy. H. 772 requires a court to schedule a hearing on 10 days' notice, 12 VSA 4853c(b), if the landlord files a Motion asserting that a tenancy has been terminated for safety reasons pursuant to 9 VSA 4467(b)(2). In all other processes requiring a fast hearing because of an emergency, the court reviews the request to see if the case presented rises to the level of a case requiring an emergency hearing.

3) No requirement of evidentiary hearing**.** H. 772's "Safety" Expedited hearing is a Motion process. Unlike a Motion for Rent into Court, 12 VSA 4853a, or Motion for Immediate possession against an unlawful occupant, 12 VSA 4853b, the relief sought in this "safety" motion is to end a tenant's tenancy. It should be the landlord's burden

to prove the reasons for ending the tenancy in an evidentiary hearing. 12 VSA 4853c(c) should not follow Motion rule VRCP 7(b)(6)[1], because that rule requires a special request for the opportunity to present evidence and allows a court to decide that an evidentiary hearing is not necessary. Even if a tenant fails to oppose or appear in the case, before a court gives a landlord judgment of possession, the landlord should have to produce in an evidentiary hearing and provide proof of facts justifying relief.

4) Burden-shift to tenants to demonstrate why they should not be evicted. H. 772's now at 12 VSA 4853c(c) requires a tenant to oppose the Motion in writing, with a memorandum and affidavit which "shall set forth particular facts to show a genuine dispute of facts exists in relation to the Motion." This requirement shifts the burden from the landlord to prove that facts supporting quick termination, to the tenant to prove that no facts exist.

5) Automatic default. In current law there is a default procedure where if a defendant does not Answer, a plaintiff may file a Motion for default. H. 772 process, now at 12 VSA 4853c(d)(1), would skip this step.

6) A 5-day Writ is too short.

Suggested language:

**§ 4853c. Threatening behavior expedited hearing**

(a) As used in this section, **"Income-Based Assisted Tenancy"** means a residential tenancy in which the tenant's share of the rent is determined as a percentage of the household's actual adjusted income pursuant to a federal or state housing assistance program, including:

(1) public housing;

(2) project-based rental assistance; and

[1] **VRCP7(b) (6) *Evidentiary Hearings*.** Except for motions governed by Rule 56, the court shall provide an opportunity to present evidence if requested, unless the court finds that an evidentiary hearing is not necessary. The request for an opportunity to present evidence shall include a statement of the evidence which the party wishes to offer. When a moving party wishes to request an opportunity to present evidence the request shall be submitted with the motion to which it applies or within 7 days of service of the memorandum in opposition. A request by an opposing party for an opportunity to present evidence shall be submitted with the memorandum in opposition. When this rule requires a motion to be in writing, the request for an opportunity to present evidence shall be in writing.

(3) tenant-based rental assistance, such as the **Section 8 Housing Choice Voucher program**.

(4) **Exclusion.** This term does not include tenancies where the rent is set at a fixed rate based on a percentage of area median income (AMI), including units subsidized **solely** through the Low-Income Housing Tax Credit (LIHTC) program or other "rent-restricted" programs that do not adjust the tenant's rent obligation based on changes to the tenant's actual household income.

(b) In an action for ejectment, the landlord may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that

(1) the Income -Based Assisted tenancy has been terminated pursuant to 9 VSA 4467(b)(2),

(2) The defendant's continued occupation of Income Based Assisted tenancies is threatens the safety of other residents, the landlord or the landlord's agent, and

3) an immediate hearing is required to protect the safety of other residents, the landlord or the landlord's agent.

(4) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by an affidavit setting forth particular facts including a description of specific acts and the dates and times and places that those acts occurred in support of the motion and a copy of the lease agreement.

(c) If the court finds that an immediate hearing is required to protect the safety of other residents, the landlord or the landlord's agent, the court shall schedule a hearing on the motion shall be held any time after 10 days' notice to the parties, or later for good cause shown.

(d) the defendant may file a memorandum in opposition before the hearing or may request to file an opposition within five days after the hearing.

(e)If the court finds that the defendant's continued occupation of the income based assisted tenancy is threatens the health or safety of other residents, the landlord or the landlord's agent, the court shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for immediate possession of the premises.

(f) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, not sooner than 14 days after the writ is served, to put the plaintiff into possession.

(f) If the defendant did not appear at the hearing, at any time prior to the execution of the writ of possession, the defendant may file an affidavit, signed written statement, or a motion with the court setting forth facts demonstrating that defendant's continued occupancy of the income based assisted tenancy does not threaten the safety of other residents, the landlord or the landlord's agents. The court shall treat an affidavit, signed written statement, or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as appropriate.

**Expedited hearing for tenants seeking repairs**. H. 772 granted a third expedited hearing process to landlords, while tenants seeking remedy to defects materially affecting health and safety and illegal eviction must use the far more burdensome injunctive relief process sunder VRCP 65. We would add an Expedited Motion process to compel repairs.

Suggested language:

**12 V.S.A. 4853d Breach of warranty of habitability expedited hearing.**

(a) In any action or counterclaim against a landlord for violation of the Residential Rental Agreements Act, a tenant may file a motion to require landlord to immediately repair defective conditions pursuant to 9 VSA 4458, or

(b) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by affidavit setting forth particular facts in support of the motion.

(c) The motion will be scheduled within ten days

(d) Any memorandum in opposition filed by the landlord filed five days in advance of the scheduled hearing and will require the court to hear the evidence set forth in the opposition.

(e) If the court finds the landlord has failed to make repairs and the defects materially affect health and safety, the court shall order immediate repairs and to pay $1000.00 to be paid into court for each day repairs are not completed.

(f) if the court makes order pursuant to the previous paragraph, the court shall schedule a final hearing to determine damages and attorney's fees.

**Trespass**. H. 772 seemingly seeks to abridge tenant's right to liberty and property without process by allowing a landlord to obtain a notice against trespass against tenant's guests. In current law, there is no trespass if the person in lawful possession consents for a person to enter and remain on the premises. *See* 13 VSA 3705. The tenant is the person in lawful possession of the premises. The landlord's lack of consent is irrelevant if the tenant consents.

H. 772 would allow a landlord to get an order against trespass if the tenant consents. 12 VSA 3705(g)(1)(A). H. 772 has no limitation; a landlord could write tenant consent into every written rental agreement.

Suggested language:

Sec. 5. 13 V.S.A. § 3705 is amended to read:

§ 3705. UNLAWFUL TRESPASS

(a)(1) A person shall be imprisoned for not more than three months or fined not more than $500.00, or both, if, without legal authority or the consent of the person in lawful possession, the person enters or remains on any land or in any place as to which notice against trespass is given by:

* * *

(g)(1) Notwithstanding subsection (a) of this section or any provision of law to the contrary, a landlord of a dwelling unit may cause to be served ~~a~~n notice ~~order~~ against trespass that prohibits a tenant's invitees or licensees from trespassing in the dwelling unit or any of the dwelling unit's common areas if the tenant responsible for the invitee or licensee consents in writing to the proposed notice that provides the name of the person to be to notified against trespass. ~~The~~

(2) Nothing shall be construed to prohibit a tenant from giving notice against trespass to any person.

~~order;~~

~~(B) the invitee or licensee subject to the order has violated the terms of the dwelling unit's lease agreement; or~~

~~(C) the invitee or licensee has violated a State or federal law while on the premises of the dwelling unit~~

(2) As used in this subsection:

(A) "Dwelling unit" means a building or the part of a building that is used as a home, residence, or sleeping place by one or more persons who maintain a household.

(B) "Tenant" means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

(C)"Consent" means uncoerced permission. Specifically, both landlord and tenant agree that the person should not be in the tenant's premises or the common areas.