

>These changes come into effect on July 1, 2008<

Prepared by Vermont Tenants, Inc., CVOEO (www.cvoeo.org)

9 V.S.A. §4451(1) DEFINITIONS

A new definition of “Actual Notice”

Old definition:

“Actual notice” means written notice hand-delivered or mailed to the last known address.

New definition effective July 1, 2008:

“Actual notice” means receipt of written notice hand-delivered or mailed to the last known address. A rebuttable presumption that the notice was received three days after mailing is created if the sending party proves that the notice was sent by first class or certified United States mail.

9 V.S.A. §4461(c) SECURITY DEPOSITS

A landlord is still required to either mail or hand deliver a security deposit return, along with a written statement itemizing any deductions, to a tenant’s last known address within 14 days of after the tenant moves out. However the new law now defines exactly when the 14 day period begins.

Under the new law the 14 day period begins on the date the landlord discovers that the tenant has vacated or abandoned the dwelling unit or the date the tenant vacated the unit provided the tenant gave notice to the landlord of that date.

This it is even more important under the new law that a tenant give written notice to their landlord of the date they will be out of the rental unit. The options available to tenants if the landlord does not return a deposit within 14 days, or if a tenant wants to dispute deductions taken from the deposit, have not been changed.

9 V.S.A. § 4462(d) UNCLAIMED PROPERTY

EXISTING LAW ON UNCLAIMED PROPERTY (This Stays In):

If any property, except trash, garbage or refuse, is unclaimed by a tenant who has abandoned a dwelling unit, the landlord shall give written notice to the tenant mailed to the tenant’s last known address that the landlord intends to dispose of the property after 60 days if the tenant has not claimed the property and paid a reasonable storage and other fees incurred by the landlord. The landlord shall place the property in a safe, dry secured location, but may dispose of any trash, garbage or refuse left by the tenant. The tenant may claim the property by providing the landlord with the following within 60 days after the date of notice:

1. A reasonable written description of the property; and
2. Payment of the fair and reasonable cost of storage and any related reasonable expenses incurred by the landlord.

Under the new law a tenant’s possessions can be disposed of by a landlord with no liability after the tenant has vacated the rental unit provided that one of the following things has occurred:

1. The tenant provided actual notice to the landlord that the tenant has vacated the dwelling unit or leased premises.
2. The tenant has vacated the dwelling unit or leased premises at the end of the rental agreement.

If neither of these two things have occurred the law that existed before the new law still applies in the situation.

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9 V.S.A. §4465(c) RETALIATORY CONDUCT PROHIBITED

EXISTING LAW ON RETALIATION (This part of the law remains in place):

- (a) A landlord of a residential dwelling unit may not retaliate by establishing or changing terms of a rental agreement or by bringing or threatening to bring an action against a tenant who:
- (1) Has complained to a governmental agency charged with responsibility for enforcement of a building, housing or health regulation of a violation applicable to the premises materially affecting health and safety;
 - (2) Has complained to the landlord of a violation of this chapter; or
 - (3) Has organized or become a member of a tenant's union or similar organization.
- (b) If the landlord acts in violation of this section, the tenant is entitled to recover damages and reasonable attorney's fees and has a defense to any retaliatory action for possession.

NEW ANTI-RETALIATION LANGUAGE IS ADDED:

If a landlord serves notice of termination of tenancy on any grounds other than for nonpayment of rent within 90 days after notice by any municipal or state governmental entity that the premises are not in compliance with applicable health or safety regulations, there is a rebuttable presumption that any termination by the landlord is in retaliation for the tenant having reported the noncompliance.

Effect of this change: *It automatically places on a landlord the burden of proof that an eviction is not retaliatory if he or she attempts to evict a tenant for anything other than nonpayment of rent within 90 days after an inspector finds noncompliance with rental housing health or safety code.*

9 V.S.A. §4467 TERMINATION OF TENANCY

Multiple termination notices:

Under the old law if a landlord gave a notice of termination of tenancy for cause, or no cause, and then later gave another notice for a different cause the subsequent notice could end the eviction process that was started by the earlier notice. Under the new law any number of legally valid termination notices may be outstanding without ending the eviction action begun by previous ones.

Acceptance of full or partial rental payment by a landlord does not stop an eviction:

Under the new law a landlord's acceptance of full or partial rental payment made by a tenant or on a tenant's behalf will not end an eviction action.

A 60 day deadline for action on termination notices:

A notice to terminate a tenancy will not be sufficient in a court action for eviction unless the court proceeding is started no later than 60 days from the termination date given in the notice of termination.

Nonpayment of rent:

*Under the old law (in title 9 of the statutes) a tenant was able to stop an eviction for nonpayment of rent three times in any 12 month period by paying, within 14 days of receiving written notice of termination, **back rent due**. Changes in the new law allow the landlord to require the tenant to pay all the rent due through the end of the rental period in which the payment is made. For example: If the tenant receives notice of termination of tenancy for nonpayment of rent on March 20th and makes the payment on or after April 1st, the payment must be for all rent due including all of April's rent not just what was due before April 1. The old law's limit of doing this no more than three times in any twelve month period has been dropped in the new law.*

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9 V.S.A. §4467 TERMINATION OF TENANCY; NOTICE

Termination for breach of rental agreement:

Under the old law a minimum of 30 days termination notice was required for eviction based on a breach of a rental agreement. Under the new law if the termination is based on criminal activity, illegal drug activity, or acts of violence which threaten the health or safety of other residents, the landlord may terminate the tenancy with 14 days notice.

Termination for no cause under the terms of a written rental agreement:

This section of the new law establishes that a termination notice of at least 30 days (with occupancy of two years or less) or 60 days notice (with occupancy of more than 2 years) must be given to a tenant before the expiration date of a written lease if a landlord intends for the tenancy to be terminate for no cause.

12 V.S.A. §4773 EJECTMENT FOR NONPAYMENT OF RENT

Stopping an ejectment process by payments in full:

The Old Law (emphasis added):

Before final judgment, if the defendant in such action pays into court **the rent in arrear** with interest and the costs of suit, such action shall be discontinued.

Under the old law a tenant could stop an eviction action during the court ejectment process by paying all the rent past due, interest, and the costs of the suit and the tenant could do this any number of times in a twelve month period.

The New Law:

Before a writ of possession is executed, if the defendant pays into court all rent due through the end of the current rental period, including interest and the costs of suit, the action shall be discontinued. A defendant may not defeat an ejectment action by payment of all rent in arrears, interest, and court costs more than one time in 12 months. The 12-month period shall begin on the day the payment is made.

The new law limits the ability of a tenant to stop an ejectment to no more than one time in any twelve month period and it requires that all rent due through the end of the current rental period is to be paid.

The Old Law- Default Judgment - no written response within 20 days to Summons and Complaint:

If a tenant failed to file a written response into court to a Summons and Complaint for eviction within 20 days a landlord could ask the judge for a default judgment for possession (and still can) - under the old law a default judgment could come any time after the expiration of the 20 day period whether a tenant attended a hearing on payment of rent into court or not..

New law regarding Default Judgment: It is still important that a tenant respond in writing to the Summons and Complaint within 20 days. However, if a tenant has not already been issued a default judgment and if he or she appears in court for a scheduled hearing regarding payment of rent into court, the tenant can have up to 10 additional days from the date of the court hearing to file a written response. Any payment of rent into escrow that may be in effect still continues during this period.

12 V.S.A. § 4853a (d) PAYMENT of RENT INTO COURT;

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Old Law:

If the court finds the tenant is obligated to pay rent and has failed to do so, the court shall order full or partial payment into court of rent as it accrues while the proceeding is pending and prorated rent for the month in which the hearing is held

The old law stated that when a tenant was issued a order to make payments of rent into escrow the tenant had to pay rent (going forward) as it came due along with the prorated rent for the remainder of the rental period in which the order was issued.

New Law:

If the court finds the tenant is obligated to pay rent and has failed to do so, **the court shall order full or partial payment into court** of rent as it accrues while the proceeding is pending **and rent accrued from the date of filing with the court the complaint for ejectment or the date the summons and complaint for ejectment were served on the tenant ... whichever occurs first.**

The new law requires a tenant who is ordered to pay escrow rental payments to make such payments as the rent comes due in the future as well as all rent already due that has accrued since the date that either the landlord filed the complaint for ejectment with the court or the date the summons and complaint are served on the tenant, whichever comes first. (A landlord has an option to either serve the tenant with a summons and complaint first or file a complaint for ejectment with the court first.)

As with the old law the judge can decide at the hearing on the motion to pay rent into escrow to either rule that the tenant was not obligated to pay rent because of serious code violations in a rental unit, for instance, or to order either "full or partial payment into court of rent..." If he or she believes that the tenant "is obligated to pay rent and has failed to do so..."

If the judge does determine that the tenant is obligated to pay rent into escrow, the total amount of money for the first payment into court that the tenant will have to come up with in order to stay in the rental unit as the process continues forward could be considerably more under the new law.

12 V.S.A. §4854 JUDGMENT FOR PLAINTIFF; WRIT OF POSSESSION

Compressed time period from time of judgment in a landlord's favor to execution of writ of possession:

The old law required that ten days must pass after the judgment in the landlord's favor before a writ of possession could be served on the tenant. This often required two different service actions by a sheriff – service of the judges order followed 10 days later by service of the writ of possession. After the writ was served the tenant had five business days before the writ could be executed.

The new law establishes that the writ is issued at the same time as the judgment and after service of the judgment and writ (together) the tenant has ten business days to vacate the premises. The effect of this is to shorten the time period at the end of the eviction process and puts the landlord into possession of the rental unit sooner than under the old law.

If the eviction is for nonpayment of rent the tenant can stop the eviction at any time up until the landlord has taken actual possession of the unit by paying all rent due through the current rental period plus court costs.