

THE VERMONT APARTMENT OWNERS NEWSLETTER

MARCH/APRIL

Educating Vermont Landlords since 1974

2009

EARLY TERMINATION CLAUSES

Many landlords are considering adding a clause to their Lease, which with adequate notice, would permit the tenant to terminate the Lease before its normal expiration. This provision is designed to reflect the fact that some tenants may be losing their jobs, and may be looking for responsible ways to get out of the Lease. Rather than breaking the Lease and incurring potential liability for the unpaid rent, many tenants would respond favorably if the Lease provided a mechanism by which they and the landlord could terminate the lease on a businesslike basis if the tenant lost their job.

Such a provision would contain the following basic elements:

1. Tenant demonstrates that the tenant has lost their job and simply does not have the money to pay the rent.

2. The lease provides that the tenant can pay the landlord a flat fee, typically several months rent or the balance of the rent due under the lease, whichever is less.

3. The tenant gives the landlord at least one full month's notice of their intent to use this termination option.

4. The security deposit is not applied until apartment is inspected and the landlord determines the amount of the security deposit to be returned.

Of course, if the tenant leaves the apartment without providing the landlord with the notice and election to use this mechanism, the tenant vacating the apartment would be a default under the lease, entitling the landlord to pursue the tenant for lost rent.



BUSINESS MANAGER CORNER

Do We have your Email? Not receiving emails from VAOA? Please make sure that we have your current email address to receive Legislative Updates, Newsletters via email, and special announcements.

Credit Checks - If you have not signed up with ScreeningOne to run credit checks you will not be able to have the Business Office run credit checks for you. In order to obtain credit checks, you must be signed up with ScreeningOne. Also, if you signed up with 700Credit/ScreeningOne and you have not moved your account to the new platform, there will be a delay for credit checks because your account will need to be moved. If you are unsure, please call the Business Office and we can check for you.

INSIDE THIS ISSUE:

PERSPECTIVE	2
TRANSGENDER BATHROOMS	3
TENANT CHANGOVERS	4
RENTING V. OWNING	5
RENT ROLLBACK	5
SPRAY FOAM IN BASEMENT	5
VENUE	6
PROPOSED LEGISLATION	6

**Vermont
Apartment
Owners Newsletter**

Published by:

Vermont Apartment Owners
Association, LLC

P.O. Box 701

5203 Shelburne Road

Shelburne, VT 05482-0701

(802)985-2764

1-888-LOW-RENT

(802)985-2534 fax

Email: info@vaoa.com

Visit our Website

www.vaoa.com

Please send any comments,
advertisements or change of
address to the above address.

Stuart M. Bennett

Director and Legislative Coordinator

Email: stuart@vaoa.com

Angela N. Zaikowski

Business Manager and Editor

Email: angela@vaoa.com

The Vermont Apartment Owners
Newsletter is copyright protected. It is
against the law to duplicate any portion
of this newsletter for any purpose with-
out the express consent of Vermont
Apartment Owners Association, LLC.

© 2009

PERSPECTIVE

By **Stuart M. Bennett**

Legislative Review

The following bills are currently in the legislature and may effect the interest of landlords. VAOA is tracking them.

H92 is an act relating to rent-to-own agreements.

This bill proposes to require certain contract provisions for the purchase of a mobile home or real property on a rent-to-own basis. The intent of the bill is to treat the transaction as "retail installment transaction" under Title 9 §2603 (b). By classifying this transaction as a retail installment sale, the buyer would have certain consumer protections.

Also, the bill provides that the town clerk shall not endorse the mobile home bill of sale unless all property taxes assessed on the mobile home have been paid.

H271 is an act relating to uninhabitable buildings.

The purpose of the bill is to provide for the imprisonment or fining of an individual for unlawful trespass if they remain in the building following notice by municipal building inspector, health officer, or fire marshal who has determined that the building is uninhabitable. It also empowers municipalities to discontinue municipal services to uninhabitable buildings and permits the municipalities to place a lien on the property for expenses related to the maintenance of the building.

H335 is an act relating to habitability and nonpayment of rent in residential rental agreements.

The bill would require that leases will terminate automatically when a tenant fails to pay rent for 6 months or more. It also prevents the tenant from claiming a defense of breach of warranty of habitability, if the tenant fails to pay rent for 9 or more months and has not raised the issue of habitability during the 9 month period.

H415 is an act relating to withholding rent to pay for overdue water and utility charges.

This bill proposes to permit a tenant to withhold rent to pay overdue water or utility charges that are the responsibility of the landlord. The tenant's payment is designed to prevent a utility shut-off.

All of these bills are being tracked by the VAOA lobbyists in Montpelier. The only bill we have testified on is H.213 (see page 6) with respect to the accord and satisfaction. If any of these bills get serious attention, we will travel to Montpelier to provide the landlord's perspective. Of course, if it is required that membership contact legislatures directly, we would let you know immediately.

TRANSGENDER BATHROOM ISSUES

Some landlords have been confronted with potential discrimination based on the lack of bathrooms designated for persons who are “transgender”. The following is an excerpt of material forwarded to Vermont Apartment Owners on the issue.

IV. The Critical Issue of Bathroom Access

A. The Necessity of Declaring Discriminatory the Denial of Bathroom Access Based on Bona Fide Gender Identity.

Given the often blatant discrimination faced by the transgender community on a daily basis, uniform national protective legislation is both an unlikely and overly ambitious goal. “Transgender people face severe discrimination in virtually every aspect of social life—in employment, housing, public accommodations, credit, marriage, parenting and law enforcement,” and much of this discriminatory treatment is fueled by ignorance of what it means to be transgender and how accommodating the needs of this community may compromise others in the sexual majority. Reform will probably be achieved gradually and should be targeted to areas where the transgender individual’s rights are most compromised before universal acceptance and equality is achieved. The problem of bathroom access based on gender identity is both a natural and effective place to begin the battle for equality, compassion, and understanding of the transgender community.

As the discrimination faced by the transgendered is often intrinsically tied to their gender, which bathroom to use is a fundamental and unnecessarily complicated choice that highlights the discord between the transgender individual’s personal identity and society’s label of what is acceptable. By tackling this isolated issue and permitting bathroom access based on gender identity, society will not only accommodate the needs of the transgendered, and thus permit them the same privileges of personal comfort and dignity afforded the majority, but will also permit a gradual acclimation and acceptance by the mainstream to the transgender community.

There is a variety of safety, comfort, and equality implications for permitting bathroom and facility

access based on gender identity. For transgender youth, for instance, placement in a gender-specific facility can mean being forced to share sleeping quarters and bathrooms with members of their biological gender, which can have consequences ranging from humiliation to sexual assault. Undeniably, assault on transgender individuals while using bathrooms designated for those of the opposite biological gender is more common than may be presumed. However, if protection is statutorily mandated, the transgendered not only have a layer of protection against unjust arrest and harassment, but also a possible hate crime claim including an avenue for sentence elevation based on aggravating circumstances.

It is therefore critical that the transgender community be permitted to use bathrooms designated for the gender with which they identify. Since gender conforming individuals, no matter their sexual orientation, can simply use the facilities designated for those of their biological gender with whom they identify, the transgender individual will only achieve true equality once he or she is permitted the same liberty and personal dignity.



BENEFIT FROM TENANT CHANGEOVERS

A Checklist for Energy Savings

When tenants move, rental-property owners often take advantage of the availability of empty apartments to make repairs. This is also a great time for improvements that increase the energy efficiency of units. Efficient apartments can attract and keep tenants who want comfortable homes with lower energy bills. They also can reduce complaints and enable you to receive a greater share of tenant housing costs.

Efficiency Vermont has released the below checklist of actions that property owners can take at tenant-changeover times, to reduce energy use. At the end of the checklist is information about rebates and free products available to rental property owners from Efficiency Vermont.

- Change to energy-efficient light bulbs – Available to rental-property owners from Efficiency Vermont at no charge. Compact fluorescent light bulbs (CFLs) use as much as 75% less energy. CFLs also last up to 10-times as long, so you'll reduce replacement and maintenance costs.
- Install low-flow shower heads and faucet aerators – Available from Efficiency Vermont at no charge. These products reduce costs for water and for water heating.
- Replace old appliances – \$150 refrigerator rebate available. A refrigerator manufactured before 1993 can use twice the electricity of a new ENERGY STAR® qualified fridge. Replace broken or aging appliances (dishwasher, refrigerator, window air conditioner, clothes washer, water heater) with energy-saving ENERGY STAR qualified models.
- Upgrade bath fans and operating controls – \$110 rebate available. ENERGY STAR qualified ventilation fans that are programmed to run at least eight hours per day are quiet and use very little electricity. Good ventilation reduces moisture and its associated problems, like window condensation, wood rot, and stained paint, as well as mold and mildew that lowers indoor-air quality.
- Install a programmable thermostat. A programmable thermostat is easy to operate by tenants, so they can

stay comfortable while lowering energy bills. That can mean fewer tenant complaints. The advantage of a programmable model is that tenants don't need to remember to turn the temperature down while they're asleep or away from the apartment for the day. For every 10 degrees that the heat is lowered, annual heating costs are reduced by as much as 15%.

- Prevent drafts. When apartments are drafty, tenants are more likely to use portable electric space heaters. This can drive up energy costs and present a fire hazard. To reduce drafts, address these areas:
 - *Improve windows*—Repair any cracked glazing, run a bead of caulk around frames, and use side-mount sash locks to hold windows firmly in place. Block drafts through sash-weight pulley openings by using pulley seals.
 - *Weatherproof exterior doors*—Caulk around door frames and use weather stripping.
 - *Fill gaps*—Use expandable spray foam (from a can) to fill gaps around pipes and wiring.
 - *Air-seal & insulate the attic*—Top-floor apartments exchange air with the attic unless gaps in the attic floor are air-sealed and insulation is sufficient and properly installed. A professional insulation contractor can do this work for you. A well-sealed and insulated attic can also prevent ice dams, which form when heated apartment air escapes to the attic, warms the roof, and melts snow, which flows to the eaves and freezes.
 - *Fix fireplace flues*—See that flues close completely. With open flues, chimneys pull air into the apartment from the outdoors through gaps in the building exterior. This creates drafts and raises heating costs.

Rental-property owners can obtain rebates as well as free CFLs, low-flow shower heads, and faucet aerators with a simple, mail-in rebate form available at www.encyvermont.com. Go to the Business Rebate Center and open the form for Multifamily Apartments / Apartment Buildings. Some approval requirements exist. Customized rebates may also be available.

RENTING VS. OWNING

In some U.S. markets the cost of owning vs. renting is swinging back in favor of home ownership. This has been triggered in large part by several quarters of sharp decline in home prices.

In the past, as home prices surged the demand for rentals rose to fill the gap between owning and renting. Even when the housing market went south, former homeowners would become tenants, which continued to push the demand for apartments.

However, now that home prices are rapidly declining, the cost between renting and owning has narrowed considerably.

The attractiveness of home ownership vs. rental is also impacted by the declining mortgage rates.

However, the main impediment to purchasing a home is the significantly higher lending standards used in the post-mortgage melt down.

It is too early to say how this will play out, but it is fair to say that the cost of renting is typically less expensive than the principal, interest, taxes, insurance and other costs associated with maintaining a home.

RENT ROLLBACKS AND REFUNDS THREATEN NEW YORK CITY

The rental real estate business in New York City has been rocked by a recent appellate decision of the State Supreme Court. The Court ruled that over 3,000 apartments on the east side of Manhattan had raised rents beyond prescribed levels while receiving special property tax breaks from the city. In this case, lawyers for the tenants brought suit to require the landlord to repay tenants for improper rent increases over the past 4 years. The consequences could be significant. The tax breaks known as the J-51 Program have been given to thousands of landlords who renovate their buildings. If the ruling stands, any landlord who deregulated rents after receiving the tax exemptions might have to repay tenants for rent overcharges.

It is important to remember that landlords can "deregulate" an apartment out of rent control when the rent for a vacant apartment reaches \$2,000 or more per month, or the rent is above \$2,000 and the tenant's household income is above \$175,000 for two consecutive years. Once deregulated, the landlord can raise the rent to a market rate.

If the court decision stands, apartments that had been improperly deregulated may be subject to the re-establishment of rent regulation and the landlord would have to repay the tenant for improper rent increases.

CAN YOU USE SPRAY FOAM TO INSULATE OCCUPIED BASEMENTS?

Both the 2003 International Building Code (IBC) and the 2003 NFPA 101 Life Safety Code have provisions which apply to the use of foam on the inside of buildings. The Life Safety Code restricts spray foam plastics to those with an acceptable interior finish rating, and the IBC requires a thermal barrier between any occupied area and spray foam. The use of a small amount in a basement not subject to routine occupancy, or to fill a crack in a foundation may be permitted by an individual fire marshal using his or her discretion.

The best advice is to contact the fire marshal responsible for your area prior to installation to avoid problems.

The regional offices for the Department of Public Safety, Fire Safety Division can be found at <http://www.dps.state.vt.us/fire/>

EVICCTIONS MUST BE BROUGHT IN THE COUNTY IN WHICH THE TENANT LIVES

It is not uncommon for the landlord to live in a different county than the tenant. Notwithstanding the convenience to bring the eviction action in the county where the landlord lives, the Fair Debt Collection Practices Act requires that the court action be brought in the county where the tenant resides. This is controlled by the specific language of the Fair Debt Collection Practices Act (15 U.S.C. 1692 1)

a. Any debt collector who brings any legal action on a debt against any consumer shall:

1. In the case of an action to enforce an interest in real estate securing a consumer's obligation, brings such action only in a judicial district or similar legal entity in which such real estate is located, or in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity (a) in which the consumer signed the contract sued upon; or (b) in which such consumer resides at the commencement of the action.

b. Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

A "debt collector" is someone other than the creditor to whom the money is owed. For example, a debt collection can be your attorney or management company. Accordingly, they would be obligated to bring the civil action in the county where the property is located.

The same is true if you are representing yourself in the action. Vermont statute 12 V.S.A. §402(a) requires that any action relating to real estate be brought in the county where real estate is located. However, a Vermont Supreme Court decision found that this only applied in actions to "establish or settle title to real estate." Bergeron v. Boyle, 176 Vt. 78 (2003).

This issue of where to bring the action (venue) is currently being litigated in Chittenden Superior Court. VAOA will continue to monitor the case and provide an update on this venue issue.

VAOA LOBBIES AGAINST TENANT PROPOSED "ACCORD AND SATISFACTION" BILL

H-213 would allow a tenant to accept a partial payment of a security deposit, and still pursue the landlord for the remaining balance of the deposit. In other words, acceptance of the partial payment does not amount to an "accord and satisfaction" of any disputes related to the deposit.

H-213 makes no such provision for the landlord who accepts a partial payment of rent. Therefore the landlord is left to guess what the affect of cashing the check will be; is it a payment on account, or is it an "accord and satisfaction" and balance is not due?

Whether a court will find a partial payment of the deposit or the rent to be an accord and satisfaction will depend on facts specific to the conduct of the parties. H-213 only address the effect of the check in this analysis. H-213 provides that acceptance of the check is not in and of itself evidence of an "accord and satisfaction".

It is only fair that both landlords and tenants have

the benefit of this presumption. There can be no sound or fair policy to do otherwise.

This bill was passed out of the House General Committee, and will go the Senate. VAOA will continue to testify against this bill.



PAID ADVERTISEMENTS

CENTURY 21 JACK ASSOCIATES

Mike Armstrong 802-363-1840

Fax 802-872-7051

Email: mikearmstrong@c21jack.com



MIKE ARMSTRONG - "THE LANDLORDS REALTOR"

- Selling or buying - deal with someone who has been a **landlord** and **realtor** for almost **40 years!**
- A St Mikes & UVM grad with an MBA thesis on **apartment investing**
- Someone experienced with all phases of apartment purchases, sales, management, Section 8 housing and **problem solving**
- Someone who has **real** experience with **1031 Tax Deferred Exchanges** and who has used them for his own benefit and that of his clients
- An **owner** and **self-manager** of as many as **70+** apartment units.
- Call Mike today for a discussion of what **YOU** would like to make happen!

"Just a note to thank you for doing such a good job for us on our properties in Vermont. You took care of all the details, gave us excellent advice and made it happen"

Peter Nostrand PE

President

Penfield & Smith

Santa Barbara, California

PAID ADVERTISEMENTS



2Boz Painting
Indoor and Outdoor Painting
Landscaping, Mowing
and Roofing

Mumin Kadric
59 Meigs Road
Vergennes, VT 05491

(H) 802-877-2375
(C) 802-238-4970

PRSRRT STD
U.S. Postage
PAID
Burlington, VT
Permit No. 253

VERMONT APARTMENT OWNERS
ASSOCIATION, LLC
P.O. Box 701
Shelburne, Vermont 05482-0701