

1 H.772

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

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

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

7 § 663. ALTERNATE SERVICE OF PROCESS; EJECTMENT

8 When a motion for alternative service of process is filed pursuant to Rule
9 4(d)(1) of the Vermont Rules of Civil Procedure in an action under 10 V.S.A.
10 chapter 153, 11 V.S.A. chapter 14, or chapter 169 of this title, the court shall
11 rule on the motion promptly.

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

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

15 CHAPTER 169. EJECTMENT

16 * * *

17 Subchapter 3. Superior Court Ejectment

18 * * *

19 § 4853a. PAYMENT OF RENT INTO COURT; EXPEDITED HEARING

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

~~[Subsection (a) as amended by 2007, Act No. 176 (Adj. Sess.), § 51.]~~

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1 (g) The tenant may at any time by motion apply to the court to reduce the
2 amount ordered to be paid into court under this section. The motion for
3 reduction shall be accompanied by affidavit setting forth particular facts in its
4 support. The court may reduce the amount ordered to be paid into court under
5 this section upon a finding that the landlord is failing to comply with the
6 landlord's obligations for habitability or other requirements imposed by 9
7 V.S.A. chapter 137.

8 * * *

9 (i) Notwithstanding subsection (d) of this section, the parties may come to
10 an agreement and at any time by motion apply to the court to reduce the
11 amount ordered to be paid into court under this section. The motion for
12 reduction shall be accompanied by affidavit setting forth particular facts in its
13 support.

14 * * *

15 § 4854a. PROPERTY OF TENANT REMAINING ON PREMISES AFTER
16 EVICTION

17 (a) A landlord may dispose of any personal property remaining in a
18 dwelling unit or leased premises without notice or liability to the tenant or
19 owner of the personal property:

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

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Subchapter 4. Superior Court Ejectment for Nonpayment or Breach

§ 4861. ISSUANCE OF PROCESS BY SUPERIOR JUDGE FOR

NONPAYMENT OR BREACH

When the lessee of lands or tenements, either by parole or written lease, or a person holding under the lease, holds possession of the demised premises

1 without right, after the termination of the lease under 9 V.S.A. § 4467(a) or (b),
2 the person entitled to the possession of the premises may have from the
3 presiding judge of the Superior Court a writ to restore the person to the
4 possession thereof.

5 § 4862. MODE AND SERVICE OF PROCESS; TRIAL BY JURY

6 (a) The process may issue as a summons, requiring the defendant to appear
7 and answer to the complaint of the plaintiff, which shall state that the
8 defendant is in the possession of the lands or tenements in question, with a
9 description thereof, that the tenant holds unlawfully and against the right of the
10 plaintiff. A copy of the rental agreement, if any, and any notice to terminate
11 the defendant's tenancy, including the affidavit required by 9 V.S.A.
12 § 4467(b)(2)(B), shall be attached to the complaint. If the complaint is based
13 on a termination under 9 V.S.A. § 4467(a), the complaint shall include a copy
14 of the rent ledger, if available.

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

16 § 4863. ANSWER; HEARING

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

1 (b)(1) Upon receipt of an answer to a complaint based on a termination
2 under 9 V.S.A. § 4467(a) or (b), the court shall set a final hearing date not later
3 than 90 days after the filing of the complaint absent good cause.

4 (2) The timeline in this subsection shall not apply when the plaintiff is in
5 possession of the lands or tenements in question or has received from the court
6 a writ of possession for the lands or tenements.

7 § 4864. DEFAULT

8 If the defendant fails to file an answer in the time provided pursuant to Rule
9 12 of the Vermont Rules of Civil Procedure, the plaintiff may file a motion for
10 a default judgment in accordance with Rule 55 of the Vermont Rules of Civil
11 Procedure. The court shall rule on the motion promptly.

12 § 4865. THREATENING BEHAVIOR; EXPEDITED HEARING

13 (a)(1) In an action for ejectment based on a termination under 9 V.S.A.
14 § 4467(b)(2), the plaintiff may file a motion for a judgment that the plaintiff is
15 entitled to immediate possession of the premises on the grounds that the
16 defendant's continued occupation of the lands or tenements is threatening the
17 health or safety of other residents, the landlord or the landlord's agent, or
18 neighbors.

19 (2) The motion may be filed and served with the complaint or at any
20 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's continued occupation of the
18 lands or tenements is a threat to the health or safety of other residents, the
19 landlord or the landlord's agent, or neighbors, the court shall grant the
20 plaintiff's motion and issue judgment in favor of the plaintiff for immediate
21 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 EVICTON

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: By striking out Sec. 6, 12 V.S.A. chapter 169, subchapter 5, and its
10 reader assistance heading in their entirety and inserting in lieu thereof a new
11 Sec. 6 to read as follows:

12 Sec. 6. [Deleted.]