GETTING OUT OF THE MIDDLE

"How to be an effective Health Officer and not get pulled in to the Landlord – Tenant Dispute"

Presented by
The Vermont Apartment Owners Association
and
Vermont Tenants, C.V.O.E.O.

QUESTION # 1

DO I HAVE TO GO INSPECT?

The Vermont Statutes Online

Title 18 : Health

Chapter 011 : Local Health Officials

§ 602a. Duties of local health officers

(a) A local health officer, within his or her jurisdiction, shall:

(1) upon receipt of information regarding a condition that may be a public health hazard, conduct an investigation;

(2) enforce the provisions of this title, the rules promulgated and permits issued thereunder;

(3) prevent, remove, or destroy any public health hazard, or mitigate any significant public health risk in accordance with the provisions of this title;

(4) in consultation with the department, take the steps necessary to enforce all orders issued pursuant to chapter 3 of this title.

“I ONLY DO DOG BITES”

“I’LL GIVE YOUR LANDLORD A CALL”

“THESE THINGS USUALLY END UP IN COURT ANYWAY. JUST GET A LAWYER”

“THERE’S NOTHING I CAN DO ABOUT IT”

“EVERYONE HAS MICE, GET A CAT”

“I DON’T HAVE TIME FOR THIS S**T”

- ✓ YES, IT STINKS
- ✓ YES, IT IS A THANKLESS JOB
- ✓ YES, WE KNOW THAT SOMETIMES YOU ARE ONLY DOING IT BECAUSE NO ONE ELSE WILL
- ✓ YES, YOU HAVE TO GO DO IT ANYWAY

QUESTION # 2

WHAT IF I AM A FRIEND OF THE LANDLORD?

- As an authorized agent of the state, you have a Conflict of Interest.
- Your options are:
  - Go to your Selectboard
  - If it's a fire safety, environmental, lead or asbestos complaint, go to the State.
  - Seek guidance from the Department of Health.

QUESTION # 3

DOES THE LANDLORD HAVE TO BE PRESENT FOR THE INSPECTION?

- Tenant is in legal possession of the premises.
- You DO NOT need the landlord's permission to inspect.
- YOU are there as the tenant's guest. The landlord has to give legal notice to enter.
- Sometimes having both parties there is not in YOUR best interest.

THE LAW ON THE LANDLORD ENTERING

The Vermont Statutes Online
Title 09 : Commerce And Trade
Chapter 137 : Residential Rental Agreements

§ 4460. Access
(a) A landlord may enter the dwelling unit with the tenant's consent, which shall not be unreasonably withheld.
(b) A landlord may also enter the dwelling unit for the following purposes between the hours of 9:00 A.M. and 9:00 P.M. on no less than 48 hours' notice:
(1) when necessary to inspect the premises;
(2) to make necessary or agreed repairs, alterations, or improvements;
(3) to supply agreed services; or
(4) to exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.
(c) A landlord may only enter the dwelling unit without consent or notice when the landlord has a reasonable belief that there is imminent danger to any person or to property.

QUESTION # 3

What if the tenant isn't paying rent?

- So?
- Not your Circus
  Not your Monkeys
- It's all about the codes

- <u>DO NOT</u> give either side advice about their rights.

A TENANT'S LEGAL RIGHT TO WITHHOLD RENT

§ 4458. Habitability; tenant remedies

(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, the tenant may:

(1) withhold the payment of rent for the period of the noncompliance;

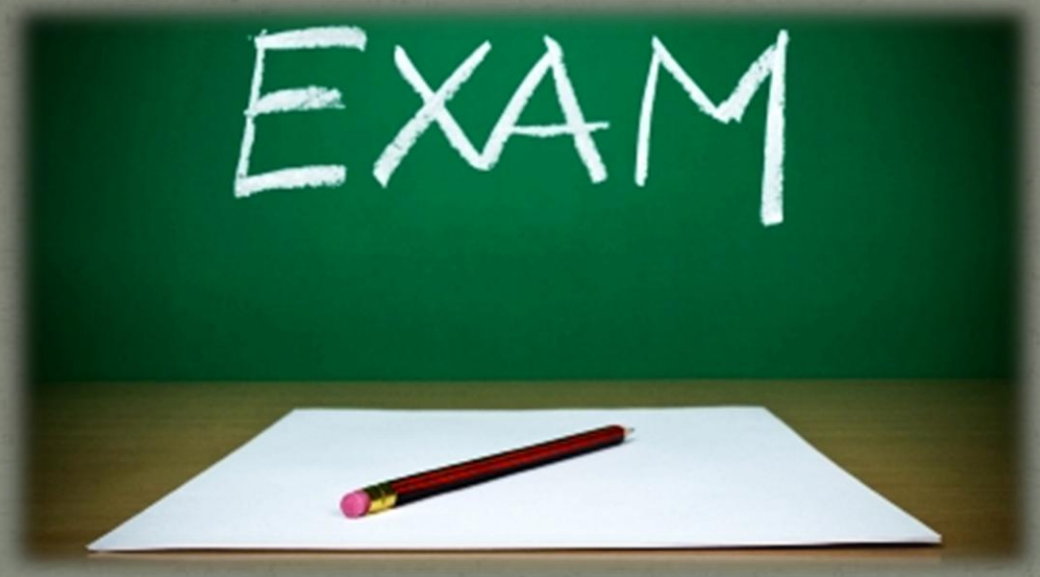
(2) obtain injunctive relief;

(3) recover damages, costs, and reasonable attorney's fees; and

(4) terminate the rental agreement on reasonable notice.

(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.

QUESTION # 4



WHOA! DO I REALLY NEED TO READ AND REMEMBER ALL OF THAT?!

- No!
- Not your Circus
  Not your Monkeys
- It's all about the codes

OK! YOU ARE FINALLY IN THE DOOR AND THERE ARE VIOLATIONS! NOW WHAT?

YOUR BEST FRIENDS

QUESTION # 5

IS THERE A VIOLATION OR NOT?

- Caused by lack of Maintenance?
- Caused by external conditions? Storms, Flooding, etc.
- Caused by Tenants or their guests?

WHO IS RESPONSIBLE FOR FIXING IT?

- **It is ALWAYS the landlord's responsibility to SEE TO IT that the work is done.**

- 9 V.S.A. Chapter 137
- § 4457. Landlord obligations; habitability
- (a) WARRANTY OF HABITABILITY. In any residential rental agreement, the landlord shall be deemed to covenant and warrant to deliver over and maintain, throughout the period of the tenancy, premises that are safe, clean, and fit for human habitation and which comply with the requirements of applicable building, housing, and health regulations.

DOES THAT MEAN THE LANDLORD IS STUCK WITH THE BILL?!

- The landlord can hold the tenant financially responsible

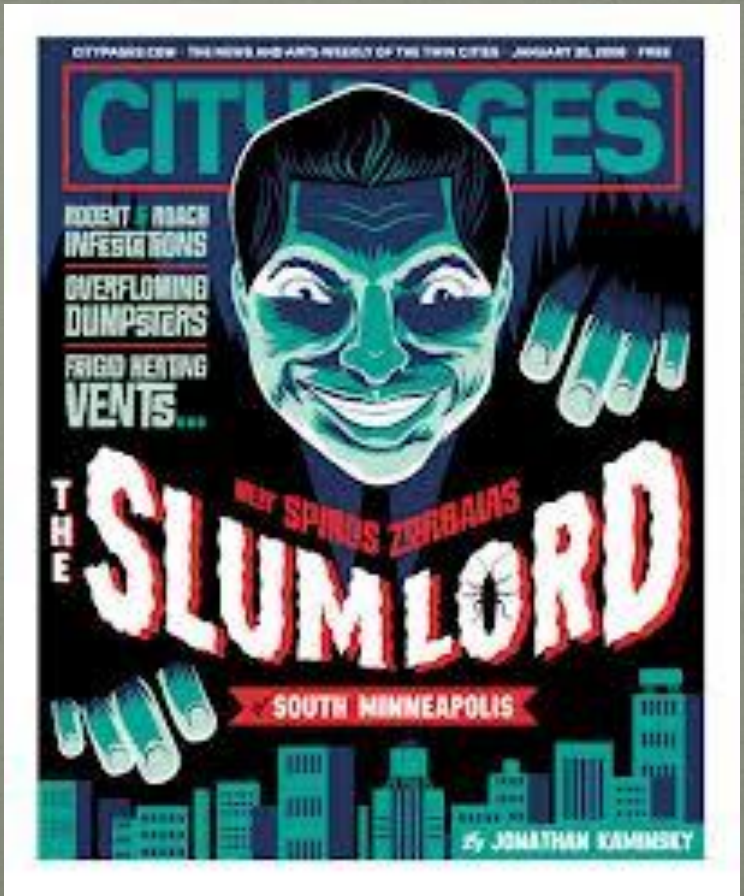
- 9 V.S.A. Chapter 137
- § 4456. TENANT OBLIGATIONS; use and maintenance of dwelling unit
- (a) The tenant shall not create or contribute to the noncompliance of the dwelling unit with applicable provisions of building, housing, and health regulations.
- Both landlords AND tenants can be held responsible to the Warranty!
- But the landlord STILL has to fix it!

YOU CAN ISSUE ORDERS TO TENANTS TOO!

- ✓ BUT TH LANDLORD (OR ANYONE ELSE) CAN'T TOUCH THE TENANT'S PROPERTY.
- ✓ WHEN THE PROBLEM IS HOARDING, THE LANDLORD CAN ONLY BEGIN AN EVICITON PROCESS.
- ✓ YOU CAN ISSUE A HEALTH ORDER

SO, I'M INSPECTING AND THEY ARE ALL JUST POINTING THEIR FINGERS AT EACH OTHER AND SCREAMING!

THE TENANT SAYS THE LANDLORD IS A



THE LANDLORD SAYS THE TENANT IS A

NOT YOUR CIRCUS

NOT YOUR MONKEYS

REFER.
THEM.
TO.
US!

SHOULD I TELL THE TENANT TO STOP PAYING RENT?

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NO!

THE LANDLORD SAYS HE/SHE WILL EVICT THE TENANT AND NOT RE-RENT IT.
DO I TELL HIM THAT'S OK? DOES IT GET ME OFF THE HOOK?

- The eviction can take months
- The violation is still there.
- The tenant can countersue for Illegal Retaliation.

The Vermont Statutes Online
Title 09 : Commerce And Trade
Chapter 137 : Residential Rental Agreements

§ 4465. Retaliatory conduct prohibited

(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 in any retaliatory action for possession.
(c) **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.**

WHOA! DO I NEED TO READ AND REMEMBER ALL OF THAT TOO?!

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YAY! YOU SURVIVED THE INSPECTION!

QUESTION # 6

DO I HAVE TO DO A WRITTEN REPORT?

- YUP!
- Sorry.
- Both parties have the right to a copy of it.
- Documentation is vital if it goes to court.
- The tenant will need it if the landlord attempts a retaliatory eviction.
- The landlord will need it if the tenant cried wolf only AFTER not paying the rent.

VERIFYING COMPLIANCE

“THE LANDLORD CALLED AND SAID IT WAS FIXED.”

QUESTION # 7

I ISSUED ORDERS AND NO ONE IS COMPLYING!?!

- Your Selectboard is also your local Board of Health, go back to them
- If the situation will have an immediate effect on the health or safety of the residents, consider an emergency order.
- Seek a court order. (yes, we know it costs money)

Here's a tough one….

THE LANDLORD IS ON THE SELECTBOARD

- NOW it's your circus and your monkeys!
- Go to the Department of Health for Guidance.

- WE APPRECIATE WHAT YOU DO!
- WE KNOW YOU ARE MOSTLY VOLUNTEERS.
- LET US HELP YOU!

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