

RENT AND RENT ISSUES For Landlords and Tenants

PRESENTED BY
VERMONT APARTMENT
OWNERS SERVICES, LLC.
AND VERMONT
TENANTS/C.V.O.E.O.

LANDLORDS CAUTION!!

- ▶ This presentation is provided for informational purposes only and includes management tips.
- ▶ It is not a how-to guide for evicting your tenants.
- ▶ Landlords have legal exposure when tenants make claims against them.
- ▶ Please seek legal advice before taking any action against your tenants to ensure that your rights are protected.*

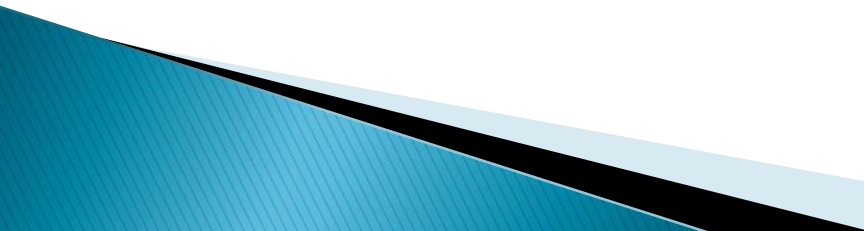
*A legal resource guide is included at the end of the presentation

TENANTS CAUTION!!

- ▶ This presentation is provided for informational purposes only and includes tips for dealing with difficult situations.
- ▶ It is not a how-to guide for not paying your rent.
- ▶ Tenants have legal exposure when landlords make claims against them.
- ▶ Please seek legal advice before taking any action to withhold rent to ensure that your rights are protected.*

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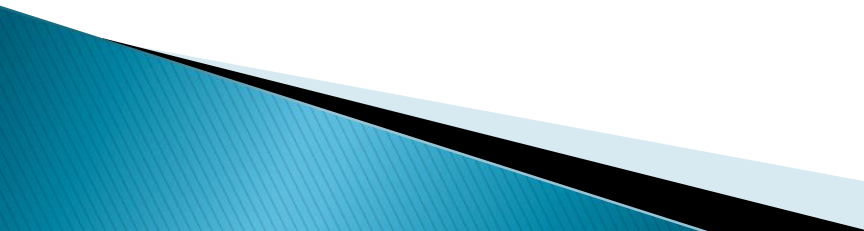
How Does the Eviction Process for Nonpayment of Rent Work?

- ▶ The eviction process involves two steps:
 - 1) Landlord sends Tenant a termination notice for nonpayment of rent.
 - 2) If the tenant fails to pay or vacate within the time frame outlined in the notice, the notice can only be enforced by a court eviction process.
 - ▶ A nonpayment notice can be cured (i.e. stopped) by the payment of rent.
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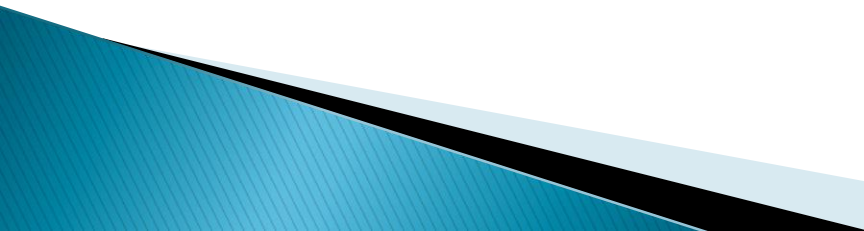
Nonpayment Termination Notice

- ▶ A termination notice has statutory requirements.
- ▶ The notice must:
 - Be in writing and hand-delivered or mailed to the tenant (email, text messages, or Facebook messages do not comply with the statute)
 - Be received by the tenant
 - Give the tenant at least 14 days to pay the rent (not including the day the notice was given)
 - Include the specific amount of back rent that is owed (no late fees, no unpaid utilities, no unpaid security deposit)
 - Tell the tenant if they pay the rent the notice is cured
- ▶ A termination notice that does not comply with Vermont statute can be the reason a court case is dismissed.

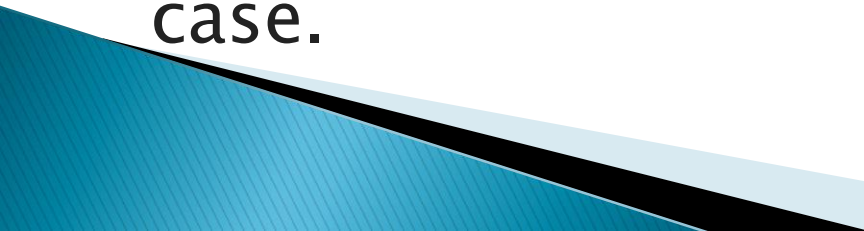
The Court Eviction Process – Nonpayment of Rent

- ▶ Landlord sends tenant a nonpayment of rent termination notice, the tenant has failed to pay or move – what is next?
 - ▶ The notice can only be enforced through a court action at the Vermont Superior Court, Civil Division.
 - ▶ An eviction (also called an ejectment) action is filed with the court in the county where the tenant resides.
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The Court Eviction Process – Helpful Definitions

- ▶ **Plaintiff** – The party who initiates the lawsuit.
 - ▶ **Defendant** – The party who is being sued.
 - ▶ **Summons** – The legal document that informs a Defendant that they are being sued and what actions they need to take (i.e. file an Answer).
 - ▶ **Complaint** – The legal document that describes who the parties are, where the property is located, what the issues are between the parties, and what relief the plaintiff is seeking.
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The Court Eviction Process – Helpful Definitions

- ▶ **Affidavit** - A legal document where someone attests under oath that certain things are true.
 - ▶ **Motion** – A document filed with the court requesting that the court take some action.
 - ▶ **Writ of Possession** – The document issued by the court that gives the Sheriff the authority to remove the tenant from the property and put the landlord back into possession of the rental unit.
 - ▶ **Merits Hearing (Damages Hearing)** – The hearing where both parties put on their evidence in the case.
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Court Process, continued

- ▶ A court eviction is started by filing legal documents called a Summons and Complaint with the court and by paying a \$265 filing fee.
 - Filing Fee is accurate as of 8/2015. The Court increases filing fees occasionally.
- ▶ At the time a case is filed, the landlord can request a Rent Escrow Hearing by filing a motion and affidavit.
 - If this hearing is requested, the court clerk will issue a notice of hearing.
- ▶ The Summons, Complaint, Rent Escrow Motion, Affidavit, Notice of Hearing, Written Lease Agreement (if there is one), and Termination notice must be served on the Tenant by the County Sheriff.
 - The cost for having these documents served is \$50 per person plus mileage.

Court Process, continued

- ▶ Once the tenant is served with the court documents by the sheriff, the tenant has 20 days to respond (or Answer) the Complaint. If a rent escrow hearing is set by the court, the tenant must be served at least 10 days prior to the hearing.
- ▶ Usually the rent escrow hearing is held pretty close to date by which the tenant has to respond.
- ▶ The court process is designed for the landlord to end up with two items: 1) possession of their unit and 2) a Judgment Order for any money that the court determines is owed to them.*

*If a tenant has legitimate Habitability or Retaliation claims against the landlord, this outcome might be different

Court Process – Rent Escrow Hearing

- ▶ If the tenant owes rent, the landlord can request that the court schedule a Rent Escrow Hearing
- ▶ At this hearing, the court will determine the following:
 - How much the rent amount is
 - Whether or not there is back rent owed (they won't necessarily decide how much back rent is owed)
- ▶ Once those are established, the court can issue a Rent Escrow Order.
 - This Order requires that the tenants pay their rent to the court as long as the eviction process continues.
 - If the tenant fails to pay rent as ordered by the court, a Writ of Possession may be issued.

Court Process – Rent Escrow Hearing

- How much rent can the Court order the tenant to pay under the Rent Escrow Order?
 - The Court can order the Tenant to pay any rent that has accrued since the case was filed with the court.
 - The Court has the discretion to order a lesser payment by the tenant, or to allow the amount to be paid in installments.
 - The Court also has the ability to order only future payments of rent (i.e. for the next month).
 - The Court can reduce the amount of monthly rent the tenant has to pay if they make credible habitability claims.
 - If the tenant fails to appear, the landlord can request that the first payment be "X" number of days after service of the order.

Court Process – Rent Escrow Hearing

- ▶ What happens if the tenant does not show up for this hearing?
 - The court will issue the rent escrow order
 - You must have the sheriff serve the order on the tenant for it to be enforceable
- ▶ What happens if your tenant pays pursuant to the order (i.e. when does the landlord receive the money)?
 - Unless the parties agree otherwise, the court holds onto the money paid into court until there is a final hearing in the case.

Court Process – Rent Escrow Hearing

- What happens if the tenant does not pay?
 - The landlord needs to file a motion and affidavit with the court requesting that the court issue the Writ of Possession for the tenant's failure to pay.
 - The court issues the Writ of Possession
 - The landlord has the sheriff serve the Writ of Possession on the Tenant
 - The sheriff puts the landlord back in possession no sooner than five (5) business days after service of the Writ.

Court Process – Judgment Order

- ▶ The Defendant owes money, how do I obtain a Judgment Order?
 - If a Defendant fails to Answer the Complaint, the Plaintiff can file for a Default Judgment. This request is done through a Motion and affidavit of amounts owed.
 - If the Defendant Answered the Complaint, the Court will need to set a final damages hearing to issue a judgment order and release any money paid into the court's escrow account.
 - A final damages hearing is where you testify about what amounts are owed to you and submit any invoices for items you are claiming the other party owes you.

Court Process – Writ of Possession

- ▶ The Sheriff has served the Writ of Possession, now what?
 - When the Sheriff serves the Writ of Possession on the Defendant, the Sheriff will give the Defendant a lock-out date.
 - The lock-out date will be no sooner than 5 business days (for a failure to pay rent into court) or no sooner than 10 business days (final judgment).
 - If the Defendant does not vacate, the Sheriff will return to the property and keep the peace while the landlord changes the locks on the unit.

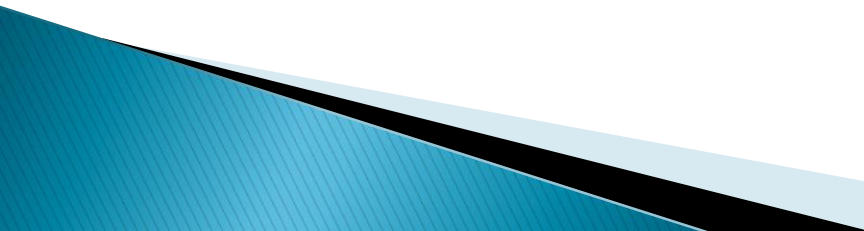
Court Process – Writ of Possession

- ▶ The Lock-out has happened, but the tenant left personal property behind.
 - Pursuant to Vermont Statute (12 V.S.A. Section 4854a), a Landlord may dispose of any items left behind when the following two criteria are met:
 - 15 days has past from the service of the Writ of Possession AND
 - The landlord has been restored possession of the unit.

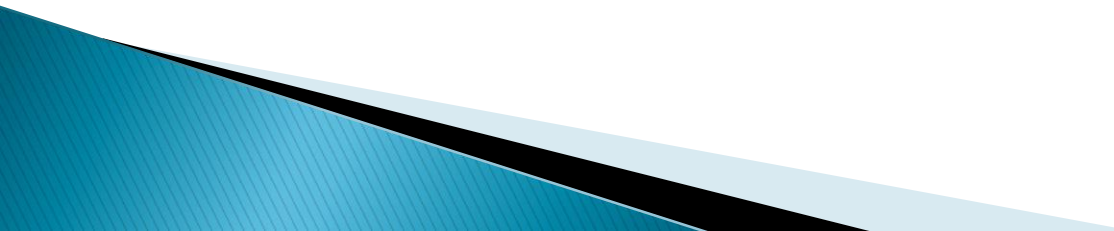
RENT AND RENT ISSUES Information for Landlords

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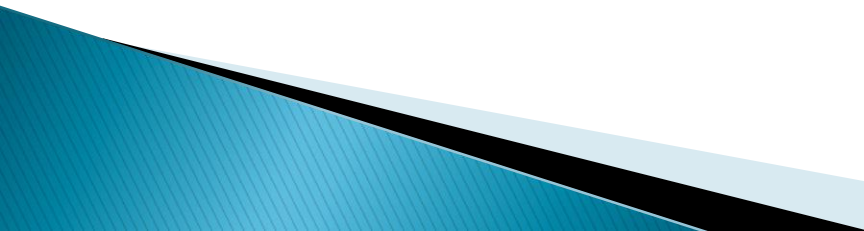
Ensuring Prompt Payment of Rent

- ▶ For landlords, being able to count on the prompt payment of rent by tenants is one of the most important priorities and also one of the most difficult.
 - ▶ Adequately screen potential applications, require at least 2 landlord references and actually call those references
 - ▶ Use a written lease agreement – go over the lease terms with your prospective tenant. Simply having a conversation up front allows you to prevent issues down the road.
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Prompt Payment of Rent

- ▶ Take your time when you are renting a unit. It is cheaper for a unit to stay vacant, than it is to deal with a tenant who stops paying the rent.
 - ▶ Take tenant complaints about the condition seriously. Communication is a two-way street, if you are not responsive to issues that tenants raise with you, you may experience the same attitude regarding rent payments.
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What do you do if Rent is not paid?

- ▶ The eviction process involves two steps:
 - 1) The tenant must receive a termination notice.
 - 2) If the tenant fails to pay or vacate within the timeframe outlined in the notice, the notice can only be enforced by a court eviction process.
 - ▶ Do not delay sending your tenant a nonpayment of rent notice. This type of notice can be cured by the payment of rent.
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CAUTION!!

- ▶ Please seek legal advice prior to sending any termination notice if any of the following scenarios apply:
 - Your tenants have made or are making complaints about the condition of the rental unit.
 - Your tenant is making complaints about violations of their rights.
 - Your unit has recently been inspected by code enforcement, fire safety, town health officer or other inspector.
 - Your tenant has made a reasonable accommodation request.
 - Your tenant is involved in organizing, or has joined a tenant association.

Resources – Helpful Tips

- Found an attorney, but can't afford to pay the legal fees?
 - Ask the attorney if they:
 - Will do a payment plan
 - Take credit cards
 - Will agree to cap the amount of legal fees charged (if on an hourly basis)
 - Will handle the matter for a flat rate

Resources – Termination Notices

- ▶ Vermont Apartment Owners Association, LLC
 - Has form termination notices for members
 - Annual membership fee is \$185.00 as of 3/31/15
 - www.vtlandlord.com
 - 802-985-2764
- ▶ Lawyer Referral Service
 - Attorneys provide 30 minutes of consultation for \$25
 - 1-800-639-7036

Resources – Court Evictions

▶ Lawyer Referral Service

- Attorneys provide 30 minutes of consultation for \$25
- 1-800-639-7036

▶ Legal Clinics – Open to anyone

- Caledonia County Legal Clinic – 802-748-6600
- Community Restorative Justice Center (Caledonia) – 802-748-2977
- Lamoille County Legal Clinic – 802-253-7165
- Rutland Pilot Project – 802-223-2020
- Washington County Legal Clinic – 802-479-4205
- South Royalton Legal Clinic – 802-831-1500

Resources – Court Evictions

▶ Legal Clinics – Low Income

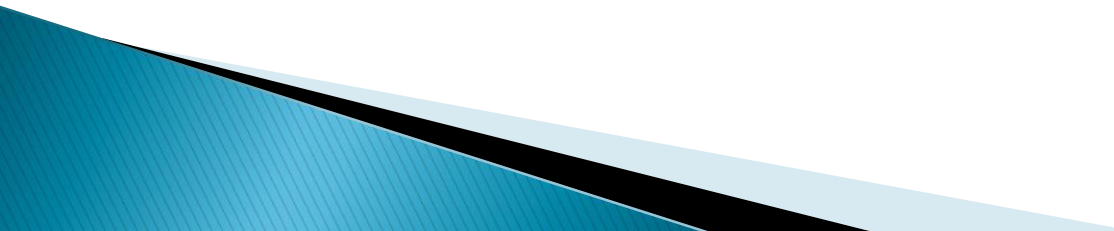
- Bennington County Legal Assistance Project
 - 802-447-8500
- Vermont Volunteer Lawyers Project (statewide)
 - 800-639-8857 x118
- Windsor/Orange Legal Assistance Project
 - 802-223-2020
- Windham County Legal Assistance Project
 - 802-223-2020



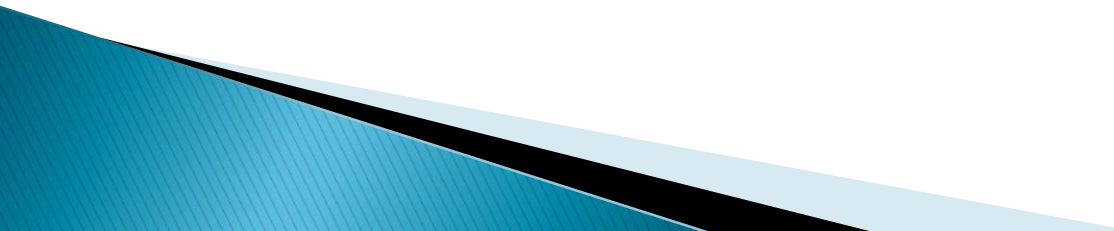
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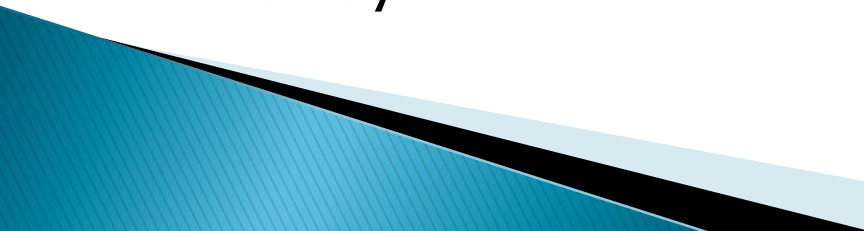
Avoiding it will not make it go away!

- ▶ If you have been given a termination notice or been served a Summons by a Sheriff, it is a serious business.
 - ▶ If you don't do your part in the process, you will lose in court by "default".
 - ▶ Not picking up certified mail or hiding from the Sheriff only drags out the process, the law allows options for the landlord to continue without your cooperation.
 - ▶ Take it seriously, get help from legal counsel.
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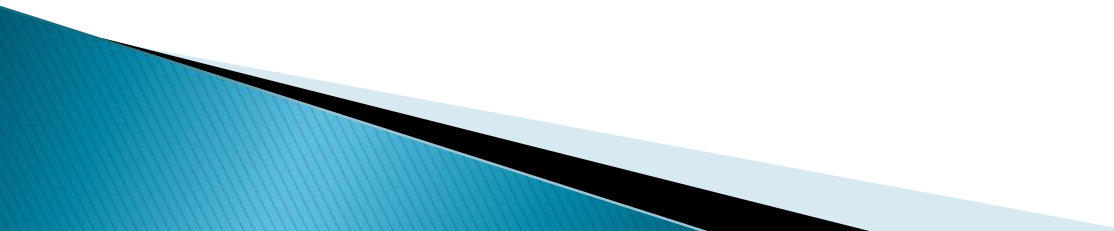
To Fight or not to Fight

- ▶ Vermont Tenants is a tenants rights organization, OF COURSE we believe in your right to a day in court!
 - ▶ We also believe that you need to make an INFORMED decision on whether or not to go to court.
 - ▶ Here are things to consider:
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Is it always the best idea to proceed to court?

- ▶ If you receive a notice to vacate for non-payment of rent, you have the right to “cure” your tenancy by paying the amount of rent past due within 14 days of the notice. The notice **MUST** inform you of this right.
 - ▶ If you do not pay within the time frame, the landlord can proceed to court.
 - ▶ In an eviction for any reason, if you lose in court, you can be held liable for legal fees and the eviction is on your record.
 - ▶ If you have been “withholding rent” due to problems in your unit, you must still have the money!
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The laws on withholding rent are very specific!

- ▶ The problem that led to you withholding must present an imminent risk to your health or safety.
 - ▶ The problem must be a physical fault in the unit, not an issue with neighbors or a bad relationship with the landlord.
 - ▶ You must have given your landlord written notice of the problem and allowed them a reasonable period of time to fix it.
 - ▶ You **MUST** put the money aside!
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RENT ESCROW HEARINGS

- At the time a case is filed, the landlord can request a Rent Escrow Hearing by filing a motion and affidavit.
 - At this hearing, the landlord will ask that judge order you to pay back rent from the time the case is filed, and as new rent comes due, into a court account.
 - If this hearing is requested , the court clerk will issue a notice of hearing.
 - DO NOT skip this hearing!
 - The judge will almost always grant the request.
 - If you do not pay into court as ordered, the landlord can get a Writ of Possession.
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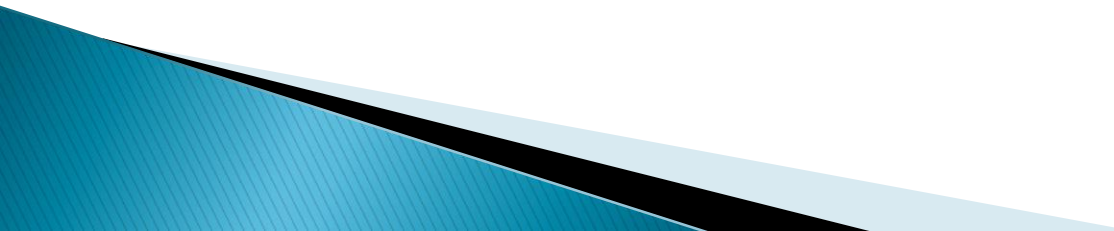
AVOIDING THE SHERIFF WON'T HELP

- The landlord can go back to court and get either:
 - A Waiver of Service, allowing them to mail it to you.
 - Or, a “Tack Order”, allowing the Sheriff to tack it on your door.

ONCE YOU HAVE BEEN SERVED

- You must file an “Answer” with the Court.
 - This is your side of the story.
 - Vermont Legal Aid will help you with this if you are eligible.
- You must attend all hearings.
 - You can lose by “Default” if you do not.

YOU MAY HAVE THE OPTION TO FILE A COUNTERSUIT

- If you have been withholding rent due to conditions in your rental, you can file a counter suit – you have to have documentation and have taken the correct steps prior to withholding.
 - The law also allows for countersuit in instances of Fair Housing Law violations and Illegal Retaliation.
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**IF YOU ARE ANYWHERE IN THE LEGAL EVICTION PROCESS, YOU
NEED LEGAL ADVICE AND HELP.
DO NOT WAIT TO CALL.**

Vermont Legal Aid – 1-800-889-2047

The Lawyer Referral Service – 1-800-639-7036

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