

INTERPRETIVE MEMO

Rule Interpretation

Procedural Instruction

This memo remains effective statewide until it is specifically superseded – either by a subsequent memo or by a contradictory rule with a later date.

Please file in your manual facing the page indicated below.

Facing page 2622 Effective date of this memo 9/18/2017 Page 1 of 2

This memo: is new Replaces one dated _____

UPDATE:

In June 2017, the Vermont Supreme Court issued a decision in a case involving General Assistance. This case involved a termination of tenancy for no cause. In response to this decision, ESD has changed its policy as outlined below. If you are interested in reading about the case, this is a link to the Court's opinion <https://www.vermontjudiciary.org/sites/default/files/documents/op16-019.pdf>.

Constructive Eviction will now include written notice of a termination of tenancy for no cause from the landlord of an applicant. A termination letter is often called a Notice to Quit. No cause means that the tenancy is terminated and it is not the fault of the tenant. The notice may use the words no fault but it might use other terms indicating that the tenant was not at fault, e.g. sale of the property, renovations, no longer want to rent the property. Sometimes a termination letter will include additional grounds other than no cause, however, as long as the letter states that the tenancy is being terminated and one of the reasons is not the fault of the tenant, the fact that there are other grounds in the letter does not change the determination that ESD will grant temporary housing under constructive eviction.

This policy only applies in situations where there is a formal landlord-tenant relationship and the applicant has remained in the rental unit until the last day allowed by the notice. A formal landlord-tenant relationship means that the tenant has the right to exclude anyone else from the rental unit, including the landlord if the landlord has not given proper notice. This includes the rental of a room as long as the tenant has the authority to lock anyone, including the landlord, out.

Example A: Sally has been staying with her friend Rebecca for several months and has been paying Rebecca \$100 per month to sleep on her couch in the living room. Sally arrives at an ESD district office with a letter from Rebecca which states that Sally can no longer stay at her apartment and she includes a statement that this is a “termination of tenancy for no cause.” However, because Sally did not have the right to lock Rebecca out of her living room this situation does not qualify as constructive eviction.

INTERPRETIVE MEMO

Rule Interpretation

Procedural Instruction

This memo remains effective statewide until it is specifically superseded – either by a subsequent memo or by a contradictory rule with a later date.

Please file in your manual facing the page indicated below.

Facing page 2622 Effective date of this memo 9/18/2017 Page 2 of 2

This memo: is new Replaces one dated _____

Example B: Emily rented an apartment from Brian. She had a verbal agreement to lease the apartment and paid rent each month. On April 30, 2017, Brian provided Emily with a written letter that her tenancy was being terminated because he was selling the building. The letter stated that she needed to be out of the apartment no later than June 30, 2017. If Emily applies for General Assistance on July 1, 2017, she is eligible under constructive eviction for temporary housing as it is not her fault that the property is being sold and she remained in her apartment until the last day allowed under the notice.

Example C: Sam rented an apartment from Chris on a yearly basis. Sam received a letter from Chris stating that his tenancy was being terminated effective May 5, 2017. The letter stated that the termination was due to nonpayment of rent, condition of the property, and for no cause. Because the letter stated, among other reasons, that it was a termination for no cause, this will be approved as constructive eviction as long as Sam occupied the apartment until May 5, 2017.

Example D: Karl rented a room by the week from Sylvia. Karl had a key to his room and kept it locked when he was not there. Karl arrived at an ESD district office and said that his landlord told him that he needed to move out because she wanted to renovate his room. This does not qualify as a termination of tenancy for no cause because the notice given was not in writing. If Sylvia had given Karl written notice that he would need to move out at the end of the month because she wanted to renovate his room this would meet the requirement of a termination of tenancy for no cause, and as long as Karl had stayed until the last day of the tenancy he would be eligible for temporary housing under constructive eviction.