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Begin forwarded message:

From: Leslyn M Hall <leslyn@redstoneresearchvt.com>
Subject: Personal take on Just Cause Evictions
Date: September 22, 2020 at 4:57:05 PM EDT
To: jshannon@burlingtonvt.gov
Cc: kpaul@burlingtonvt.gov, Leslyn Hall & Jacques Bailly <jacques.bailly@uvm.edu>

[WARNING]: External Message

Hello Joan,

I am writing to you as a Burlington landlord who has concerns about the city's possible change to our charter for "just cause" evictions. Jacques and I have been landlords in Burlington for over 21 years, managing 4 apartments for most of that time, and currently only 2. Over the years, we have only once ever chosen not to renew a tenant's lease (more on this below), but have several times been presented with situations that would have been "just cause" for non-renewal where we faced problems. This is to provide context for what I would like to share about our personal experiences and why we would be concerned about Burlington's adoption of a "just cause" eviction charter change. Please feel free to share this email with other members of your committee and the City Council.

We are supportive of efforts by the City to provide safer and more affordable housing to our most vulnerable populations within the city. However, without a clearly defined means of assisting tenants and landlords with documentation and enforcement of "material breaches" of rental agreements that do not violate anyone's civil rights, we are concerned.

Consider - how could a landlord or a tenant document that the occupancy & residency limitations set out in a lease are being met or not met? For the leases we sign with tenants, we specifically limit the number of people who can live in a unit (and request that they be named on the agreement), do not allow subletting, and limit the amount of time that "guests" can reside in the unit without formal notification of the landlords. We have learned that these clauses of rental agreement while legal, and recommended, are impossible to enforce. We have received complaints from roommates, other tenants in buildings, neighbors, etc who claim that this clauses are being violated, but when tenants are confronted/informed that this is an issue, we are told that we are wrong in our information, that only those on the lease are actually living there, etc. We have even had problems with this in a case where we walked by the unit daily and could clearly see ourselves who was there at night and in the morning, but when we informed the tenants, we were assured it's "temporary" or that they were not sleeping there (they obviously were: pyjamas and coffee at 8 AM are pretty reliable indicators). We have also

learned after the fact that tenants have been “subletting” rooms when people contact us as if we are their landlord for assistance, need, etc. To document these sorts of breaches would require a level of surveillance on an apartment that might be inappropriate or considered harassment. How would these situations be appropriately documented/enforced so that both landlords’ and tenants’ rights are protected? How could they be in a realistic way?

Consider - how could a landlord document that illegal activity is occurring on the premises? Another reason for a material breach of rental agreement some model ordinances provide for is illegal activities on the premises. We have had reason to believe at one point that this was happening in an apartment that we owned. We had roommates, neighbors, and other tenants tell us that they believed one of the residents was dealing drugs. They all wanted us to do something about it, but they themselves, the eyewitnesses, were unwilling to report the activity for any number of reasons. As this was not something we had knowledge of personally or had witnessed ourselves, there was nothing we could do. We encouraged the others to report - but for their own reasons they chose not to do so. Unless neighbors/roommates report this behavior, a landlord has no recourse until the police are actually involved. We had a case where one roommate cleaned out another’s bank account and the other two tenants came to us and told us they were leaving because they feared for their property and safety: in that case, they all vacated the apartment suddenly, and we were left with a broken lease, but we could have done nothing if they were to not report it or not leave. We had one heartbreaking case where a mother called and asserted to us that a roommate had sexually assaulted her daughter and wanted us to do something about this - get the offender out of the apartment. Legally, we had no recourse, because we had this by second hand hearsay. We encouraged/begged the mother/daughter to report, find a safe space for the daughter, but again we had no personal recourse as much as we would have liked to. Basically, in most cases, there is very plausible deniability and a dearth of any evidence, so the proposed measures won’t solve the problem.

Consider - how does a landlord know if tenants are subletting? Recently, we had a tenant move out to live with someone else, and his “subletters” (who we did not know about until he wrote to tell us he was leaving: he had always paid the rent fully in his own name) wanted to stay. Our tenant, the one on the lease, had been there for more than 8 years, and we learned that the subletters had been renting the other bedroom for a year without our knowing, and there had been others before that. We knew that the unit needed extensive work in terms of cleaning, painting, window renovations, essential practices, etc and so we said we would not renew the lease for the non-tenants. It’s not clear to me under the just cause eviction changes that this would have been legal, because it turned out those people had been living there for a long time and paying rent via the legal tenant. We needed time with no one in the apartment to safely make some of these repairs/renovations (lead paint is perhaps present: you can’t scrape without good safety measures and that requires vacant rooms). This other person was not a known tenant to us under our lease, but I don’t know if this would matter under the new ordinance: we don’t believe it matters much under the existing ordinance, because a landlord has only very expensive options (see below for a truly disastrous case). In the end, things sorted themselves out, because all of these people were honest, straightforward good people, but when we saw this charter change consideration it made us wonder.

Over the years, we have only once had to seek legal assistance to get someone out of an apartment, who had never even been a tenant. I admit that this experience affects my thinking the most. We had a tenant who had been residing in a unit for less than a year, with her mother, boyfriend, and daughter. The tenant often had difficulty paying rent, but usually did eventually. About 10 months into the agreement, one or more of those on the lease lost employment, and they started not being able to pay

rent. They were getting behind, though perhaps it was temporary, as they asserted. Also, we had reason to believe that more than the stated number of people were living in the unit (this is the unit Jacques rides by every day twice at least). We informed them that we would not renew their lease - it seemed to us that this living situation had become beyond their means, and it was clear that they had many different people sleeping there, which they denied. They moved out, but gave their keys to another individual who then started to live there without our permission, a lease, etc. and without ever paying us anything and admitting that he never intended to. This person informed us that Legal Aid said that he had "rights" to stay as he had been living there (though not known to us and in violation of our rental agreement with the tenant). We gave him shelter information, but he said that he had to wait until the shelter that did not require drug and alcohol testing was open! The Burlington Police Department told us that this was a "civil" matter and not something that they could help us with - they also told us changing the locks, barring entry etc could also be a violation of this individuals rights and we could be the ones in trouble with the police. The individual then invited another person, a convicted child molester, to move in with him, because he feared we were going to try to do something: that man was truly scary, and he was well known to the police and sheriff, and not in a good way. In the end, we needed to pursue an "ejectment" process with the courts, similar to an eviction in order to remove this individual and others from the apartment. We lost 6 months rent, spent about \$2,000 in legal fees, and about another \$2,000 or more in repairs and cleaning to the unit after those squatters left. To be frank, we feel that the protection of tenants is good, but in this case, we would very much have liked some help and protection ourselves.

I guess my point is, without a clear, transparent, predictable, known manner for documenting and enforcing material breaches of rental agreements, I am not sure that the just cause eviction charter helps anyone or directly addresses the reasons why we might want to adopt further restrictions to renting/tenant protections — namely, discrimination, "churn", availability, cost, or safer housing.

- Systemic discrimination happens, but it happens much more at the point of renting than at renewing (not one of the studies cited in the documents on the committees website looks at discriminate at the point of renewal directly: all of the cited evidence is about starting a rental agreement or are correlational studies of people formally evicted). The ordinance change will not change this. To the extent it happens at renewing, we need a mechanism for that. In our experience, there is virtually no oversight at the time of initial renting: we have never been asked by anyone at all what our policy is or how we ensure that we are not discriminated on anything other than ability to pay - which is the only thing we ask about.
- We also need a good mechanism that addresses material breach--that allows tenants to document they are not in material breach, or landlords to assert that they are—and a mechanism that is not the courts (expensive hurdle for tenants: also for landlords, but landlords are often more able in this regard) or the police (who will not intervene anyway: the sheriff told us to go to the police, but that they would not help: it seemed to us that he was as frustrated as we and wanted more people to realize how the system doesn't work).
- Burlington does have a certain amount of churn to our rental market, but we believe that is more the result of short term rentals to college students - this point does not seem to be addressed in the materials presented to date (and I would be very interested in what can be shown that is on this point). This ordinance would not change the amount of churn due to these predictable and annual trends. The number of cases or units that turn over because of "no cause" evictions is so small that it can not be a driving factor for rental inflation in the city.
- Furthermore, preventing cases of non-renewal of leases does not change the vacancy rate or the housing supply which is probably among the more critical and difficult problems that needs

to be redressed - it just means marginally fewer people are looking, and does not address the need.

- This ordinance does not address safety issues directly at all - and this seems to be a very legitimate concern that could be addressed by the City government in terms of code enforcement.

Finally, my readings in available research and the documents provided on your committee's website leave me with a lot of questions about the data, context being provided, how relevant are they to Burlington's situation, whether the underlying studies truly demonstrate the points made in some of the documents, and therefore what that means for any policy the City may seek to make based on this information. I came away from reading some of the source material with different conclusions than those presented as summaries of other studies. It is not as clear cut as possibly presented, and sometimes I question the comparisons made. The cities we are compared to are very different than Burlington, and the situations are different than what we see, and even the most in-depth study by Princeton had significant limitations in their findings.

I agree the housing situation in Burlington has serious and systemic problems that need to be addressed. I am not sure about the best way to go about fixing these problems. I do think as a city we could do more on promoting safe housing. We could do more to increase the affordable housing stock to people who need. We could do more to for accessing/creating housing assistance or making participation in Section 8 more appealing/easier to landlords. We can definitely do more for preventing discrimination at the point of rental. I do not think that the proposed change helps us address any of the city's known/documented problem .

Thank you and your fellow committee members for your service to our community, and affording me the opportunity to share Jacques' and my experiences. We regret not being able to attend Wednesday's meeting, but we will try to stay engaged and see what happens next.

Best,

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