

VERMONT'S WARRANTY OF HABITABILITY

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

▶ WHAT LAWS ARE WE TALKING ABOUT?

V.S.A.9: Commerce and Trade
Chapter 137: Residential Rental Agreements

§ 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.

Simply put.....

- Unit must be clean and in good repair when you rent it out.
- You must maintain that good condition throughout the tenancy.
- Your unit must comply with all applicable codes.

Codes that Apply:

- Rental Housing Health Code
- Vermont Fire Safety Code
- Wastewater/Water Supply Regulations
- Local Ordinances



IT ALSO MEANS

- **You can't rent a camp, camper, van, bus, tent, teepee, yurt, shed or anything else that doesn't comply with code as a year round rental!**

§ 4457. Landlord obligations; habitability

(b) Waiver. No rental agreement shall contain any provision by which the tenant waives the protections of the implied warranty of habitability. Any such waiver shall be deemed contrary to public policy and shall be unenforceable and void.

MEANS



- The law trumps your lease.
- Yes, even if the tenant signed it.
- Your lease cannot require that tenants make repairs OR state that the property is rented “AS IS”

§ 4457. Landlord obligations; habitability

(c) Heat and water. As part of the implied warranty of habitability, the landlord shall ensure that the dwelling unit has heating facilities which are capable of safely providing a reasonable amount of heat. Every landlord who provides heat as part of the rental agreement shall at all times supply a reasonable amount of heat to the dwelling unit. The landlord shall provide an adequate amount of water to each dwelling unit properly connected with hot and cold water lines. The hot water lines shall be connected with supplied water-heating facilities which are capable of heating sufficient water to permit an adequate amount to be drawn. This subsection shall not apply to a dwelling unit intended and rented for summer occupancy or as a hunting camp.

- The landlord repairs the furnace and hot water heater.
- If the hot water heater is a rental, the landlord pays the rental fee.
- The landlord is responsible for providing an adequate amount of safe, drinkable water.

MEANS



Heat Requirements from the Rental Housing Health Code

- Heat must be available when the outside temp reaches 55°.
- The heating system must be able to keep all living areas of the unit at no less than 65°, without overheating any one room or area.

VEMONT'S RENTAL HOUSING HEALTH CODE

VERMONT HEALTH REGULATIONS
CHAPTER 5, ENVIRONMENTAL HEALTH
SUBCHAPTER 16, RENTAL HOUSING HEALTH CODE

I. GENERAL PROVISIONS

A. Purpose. The purpose of this code is to protect the health, safety and well-being of the occupants of rental housing. **This code establishes minimum health and habitability standards that all residential rental housing in Vermont must conform to.**

B. Authority. This code is adopted under the authority of 18 VSA § 102, 3 VSA § 3003(a) and 3 VSA § 801(b)(11).

C. Scope.

1. This Rental Housing Health Code shall apply to all rented dwellings, dwelling units, rooming houses, rooming units and mobile home lots used as a regular residence.

2. This code does not apply to transient occupancy in a hotel, motel or other lodging licensed by the Department of Health during the time the occupancy is subject to a tax levied under 32 V.S.A. Chapter 225.

WHAT DOES IT ALL MEAN?

Some Helpful Definitions

- ▶ “Habitable Room” – Means every room or enclosed floor space, used or intended to be used for living, sleeping, cooking or eating purposes excluding bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas.
 - ▶ “Watertight” – Means so constructed that the structure is substantially impermeable to the passage of water.
 - ▶ “Common Space” – Means all interior passageways, hallways, foyers, stairways, basements and other rooms in a dwelling or rooming house used or intended for use by the occupants of more than one dwelling unit or rooming unit.
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REQUIREMENTS FOR COMPLIANCE ARE ACTUALLY QUITE SIMPLE:

SANITATION FACILITIES

Kitchen Facilities:

Space to store, prepare
and serve food?

Kitchen Sink?

Non-Absorbent Counters
and floor?



Bathroom Facilities

Toilet?



Sink?



Tub or Shower?



Non-absorbent floor?



Ventilation fan or window?



Water Supply/Wastewater Disposal

SUFFICIENT HOT AND COLD WATER SUPPLY?

HOT WATER TEMP BETWEEN 100° AND 120°?

WATER CLEAN AND SAFE FOR DRINKING?

SEPTIC OR SEWAGE SYSTEM FUNCTIONING PROPERLY?

PLUMBING IN GOOD WORKING ORDER?



Garbage, Rubbish and Sanitary Conditions

DURABLE, CLEANABLE, WATERTIGHT TRASH RECEPTACLES WITH PROPERLY-FITTING COVERS PROVIDED BY LANDLORD?



COMMON AREAS CLEANING PROVIDED BY LANDLORD?



IF TENANT PAYS FOR TRASH REMOVAL DOES LANDLORD ENSURE THAT TRASH IS ACTUALLY REMOVED WEEKLY?



INSECTS AND RODENTS

LANDLORD
RESPONSIBLE

TENANT
RESPONSIBLE

COMMON SPACES FREE FROM RODENT
AND INSECT INFESTATION?



BUILDING STRUCTURALLY SOUND SO
RODENTS DON'T GET IN?



INFESTATION IN ONLY ONE UNIT?



INFESTATION IN MORE THAN ONE
UNIT? *



INFESTATION IN SINGLE FAMILY HOME?



* IF EXTERMINATOR CAN DETERMINE UNIT OF
ORIGIN, TENANT CAN BE HELD FINANCIALLY
RESPONSIBLE.

HEATING

HEATING FACILITIES IN GOOD WORKING ORDER AND INSPECTED WITHIN PAST 2 YEARS? (unit must have current tag)



HEATING FACILITIES PROPERLY VENTED TO THE OUTSIDE?



HEATING FACILITIES CAPABLE OF KEEPING ALL ROOMS ABOVE 65° WITHOUT OVER HEATING ROOM HEATING UNIT IS IN?



IF LANDLORD PAYS FOR HEAT, AVAILABLE ANY TIME OF YEAR THE OUTSIDE TEMP IS BELOW 55°?



NATURAL AND MECHANICAL VENTILATION

EVERY HABITABLE ROOM HAS AT LEAST ONE WINDOW OR DOOR, IN GOOD WORKING ORDER, THAT CAN BE OPENED FOR FRESH AIR?



WINDOW SCREENS PROVIDED AND IN GOOD REPAIR?



ALL HALLWAYS AND STAIRWAYS IN COMMON AREAS ADEQUATELY VENTILATED?



BATHROOM FAN, AIRVENT OR WINDOW VENTING DIRECTLY TO OUTSIDE?



CLOTHES DRYER VENTED TO OUTSIDE?



LIGHTING AND ELECTRICITY

EVERY HABITABLE ROOM, EXCEPT KITCHEN, HAS AT LEAST TWO WORKING OUTLETS OR ONE OUTLET AND ONE LIGHT FIXTURE?



KITCHEN HAS AT LEAST TWO WORKING OUTLETS AND ONE LIGHT FIXTURE?



GFCI OUTLETS NEAR WATER SOURCES?



BUILDING ENTRANCES AND COMMON AREAS ADEQUATELY LIGHTED?



ALL ELECTRICAL SYSTEMS IN GOOD REPAIR?



ELECTRICAL WORK DONE BY LICENSED CONTRACTOR?



STRUCTURAL ELEMENTS

IN GOOD WORKING ORDER AND CONDITION.
WEATHERTIGHT, WATERTIGHT AND RODENT PROOF?

FOUNDATION



FLOORS



WALLS



DOORS



ROOF



STAIRCASES



CHIMNEYS



CEILINGS



WINDOWS



PROPERTY MAINTAINED TO BE FREE FROM THE REGULAR OR PERIODIC APPEARANCE OF STANDING WATER OR EXCESS MOISTURE WHICH MAY RESULT IN VISIBLE MOLD GROWTH?



FIRE SAFETY

SMOKE AND CARBON MONOXIDE DETECTORS

HARD WIRED INTO ELECTRICAL SYSTEM BY LICENSED TECHNICIAN AND FUNCTIONING PROPERLY?



CURRENT FIRE EXTINGUISHER?



EGRESSES STRUCTURALLY SOUND AND FREE FROM OBSTRUCTION?



AT LEAST ONE WINDOW IN ALL BEDROOMS OF SUFFICIENT SIZE FOR EGRESS?



NO INTERNALLY KEYED DEAD BOLTS ON EXTERIOR DOORS?



SMOKE AND CARBON MONOXIDE DETECTOR BASICS

- AT LEAST ONE CARBON MONOXIDE DETECTOR ON EACH FLOOR
 - SMOKE AND CARBON DETECTORS NEAR HEATING UNITS
 - SMOKE DETECTORS IN EACH BEDROOM
 - PHOTOELECTRIC TYPE DETECTORS ARE REQUIRED BY CODE
 - TENANTS, NOT LANDLORDS ARE REQUIRED TO PROVIDE BATTERIES FOR THE DETECTORS, BUT IT IS IN THE BEST INTEREST OF THE PROPERTY OWNER TO ENSURE THEY ARE WORKING PROPERLY
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LEAD PAINT REQUIREMENTS FOR HOMES BUILT PRIOR TO 1978

- ON STATE LEAD REGISTRY?
- LEAD PAINT NOTICE TO TENANTS?
- LANDLORD OR DESIGNEE CERTIFIED FOR EMP'S?
- CURRENT CERTIFICATE OF COMPLIANCE?
- CERTIFICATE COPY TO TENANTS?
- EMP ANNUALLY AND AT TENANT CHANGEOVER?
- NO PEELING OR CHIPPING PAINT?
- NOTICE TO REPORT PEELING/CHIPPING PAINT POSTED?
- WINDOW WELL INSERTS?
- ANY PAINT REMOVAL DONE BY CERTIFIED CONTRACTOR?

VERMONT ATTORNEY GENERAL'S OFFICE CAN PROSECUTE FOR NON-COMPLIANCE

GENERAL RESPONSIBILITIES

Owners

1. No owner shall let to another for occupancy any dwelling, dwelling unit, rooming house, rooming unit or mobile home lot which does not comply with the requirements of this code. It shall be the responsibility of the owner to maintain all premises in compliance with this code.

The Vermont Supreme Court has found that Landlords violate the Consumer Protection statute (9 V.S.A., Chapter 63) if they rent a property that the landlord knows is out of compliance.

Bisson v. Ward, 160 Vt. 343 (1993)

- Spring – Landlords’ property was inspected by a government inspector, Landlord was directed to correct the violations
- Before making the repairs, Landlord rented the unit and promised to the tenant that identified issues would be corrected
- Fall – Government inspector again notified landlord of fire and safety hazards.
- Tenant stopped paying rent, landlord started an eviction for nonpayment of rent, Tenant countersued for breach of Warranty of Habitability and Consumer Fraud (now the Consumer Protection Statute)
- Outcome – Landlords committed a deceptive act (violation of the Consumer Protection Statute) by renting an apartment that was in violation of law (i.e. outstanding inspection order from a government inspector)

CASE EXAMPLES- Habitability Violations

- *Birkenhead v. Coombs (1983)** – Damaged walls and carpet, non-functioning shower and toilet, landlord intentionally disconnected tenant's heat, hot water, and electricity, removed tenant's kitchen stove
- *Hilder v. St. Peter (1984)** – broken window, landlord did not provide key to door, toilet was clogged and would not flush properly, bathroom light and outlet inoperable, water leak from upstairs unit, plaster ceiling fell in, broken sewer pipe in basement
- *Bisson v. Ward (1993)* – structural and mechanical deficiencies, inadequate heating and plumbing systems, no heat, no hot water, tenant had to use a neighbor's bathroom facilities (property had been inspected and deficiencies noted by government inspector)
- *L'Esperance v. Benware (2003)* – drinking water contaminated with *e.coli* bacteria, structural deficiencies, electrical hazards, other life safety violations (inspection report had denied occupancy until deficiencies were corrected)

**Cases that resulted in the current statutory requirements for the Warranty of Habitability*

CASE EXAMPLE – No Habitability Violations

- ▶ *Weiler v. Hooshiari* (2011) – Warranty of habitability does **not** extend to amenities that are not essential to sanitation and tenant safety.
- ▶ Issue: Heavy snow and ice fell from the roof of the rental property onto tenant's car, destroying the vehicle.
- ▶ Caveat: Potential liability for landlords does exist as a negligence claim by tenants. However, under this decision, landlords do not have exposure under a Warranty of Habitability claim.

TENANT REMEDIES

9 V.S.A. § 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.

LET'S BREAK THAT DOWN

- ▶ For a Habitability Claim:
- ▶ THE LANDLORD MUST RECEIVE NOTIFICATION IN WRITING OF THE DEFECT
- ▶ THE DEFECT MUST MATERIALLY AFFECT HEALTH AND SAFETY
- ▶ LANDLORD FAILS TO REPAIR THE DEFECT WITHIN A REASONABLE AMOUNT OF TIME

What is a Reasonable amount of time?

It will depend on what the defect is. This is a very fact specific issue. It is not 30 days. For some defects it may be immediately (i.e. smoke detectors), for some defects it may be longer than 30 days.

TENANT REMEDIES – Habitability Violation



POSSIBLE WITHHOLDING OF RENT



INVOLVING TOWN HEALTH OFFICER OR CODE INSPECTOR



FILING FOR EMERGENCY RELIEF OF ABUSE ORDER*



INJUNCTIVE ACTION

*In situations where a landlord turns off an essential utility, the tenants can file in Superior Court for an Emergency Relief of Abuse Order specific to the denied utility.

GENERAL RESPONSIBILITIES

Owners

2. No owner shall cause any water, sewer, equipment or utility which is required by this regulation to be removed, shut off or discontinued for any occupied dwelling, dwelling unit, rooming house, rooming unit or mobile home lot except for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies.

Best Practice Tips:

- If the utilities are in your (landlord's) name, you cannot have them shut off. Even if the tenant is not paying you the rent or running up large bills with the utility company. Shutting the utilities off on a tenant is considered an illegal eviction.
- If the utilities are in the tenant's name and the utility company shuts off the service for nonpayment by the tenant, you are not obligated to restore service to the unit.

TENANT REMEDIES – Illegal Eviction

- ▶ Any tenant who sustains damage or injury as a result of an illegal eviction may bring an action for injunctive relief, damages, costs, and reasonable attorney's fees.

GENERAL RESPONSIBILITIES

Owners

3. No rental agreement containing any provision purporting to transfer responsibilities between owner and occupant other than as imposed herein, shall be effective for the purposes of this code.

Best Practice Tips:

- This means that you cannot rent a property "as is" or require that your tenant be responsible for repairs.

TENANT REMEDIES

TENANTS ARE NOT REQUIRED TO COMPLY WITH PROHIBITED CLAUSES EVEN THOUGH THEY SIGNED THE LEASE.

9 V.S.A. § 4454. Attempt to circumvent

No rental agreement shall contain any provision which attempts to circumvent or circumvents obligations and remedies established by this chapter and any such provision shall be unenforceable and void.

WHEN THE TENANT CAUSES CODE VIOLATIONS

- ❑ TOWN HEALTH OFFICERS AND CODE ENFORCEMENT PROGRAMS ARE AVAILABLE TO HELP LANDLORDS TOO!
 - ❑ TENANT'S CAN BE CITED BY THE INSPECTOR FOR CAUSING VIOLATIONS.
 - ❑ CONSIDER 30 DAY BREACH OF RENTAL AGREEMENT TERMINATION NOTICE.
 - ❑ IN EXTREME CASES, A HEALTH OFFICER CAN DEEM A UNIT "UNFIT FOR HUMAN HABITATION".
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For More Help or Information

VT Apartment Owners Association –

1-802-985-2764

1-888-569-7368

Or on the Web at vtlandlord.com