

# Legal Assistance Resource Center of Connecticut, Inc.

44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106  
(860) 278-5688 x203 ♦ (860) 836-6355 cell ♦ Rpodolsky@LARCC.org ♦ (860) 278-2957 fax

## H.B. 5373 -- Residency, guests and the Landlord-Tenant Act

Housing Committee public hearing -- March 4, 2010

Testimony of Raphael L. Podolsky

Recommended Committee action: **NO ACTION ON THE BILL**

We believe that this bill was intended to distinguish between guests and tenants in a narrow category of cases in which the occupant of an apartment allows someone to live with him temporarily. The bill as drafted, however, goes far beyond this issue and seems to rewrite landlord-tenant law by converting thousands of Connecticut tenants into guests and apparently allowing them to be locked out or arrested. It seems to say that occupants of apartments are not residents of the apartment unless either (a) they are "listed as a tenant on the rental agreement" (which in practice excludes all oral leases) or (b) are "a dependent" of a listed tenant. This may at first glance sound like common sense, but it isn't -- it would be a radical deprivation of rights for a wide range of tenants. Even if, however, the bill were narrowed to address its original purpose, we believe that a bill on the subject is unnecessary in light of existing law and changes in police training and that it is probably not practical to write a workable law that is more specific than the law that we already have. We urge the Committee to take no action on this bill.

### In regard to the bill as drafted:

- \* **Oral leases:** The bill appears to turn all tenants on oral leases into guests. There are many thousands of such tenants in Connecticut, especially in low-income areas. The decision to rent under an oral lease is usually controlled by the landlord.
- \* **Other living arrangements:** The bill seems to classify roommates, subtenants, unmarried couples living together, non-dependent adults of all sorts, co-tenants and numerous others as guests subject to lockout and arrest. Many co-occupants of dwelling units, who now have undisputed rights to be treated as tenants, are not "dependents" of the primary tenant.
- \* **Other factors:** The bill determines guest status largely on the absence of the resident's name on a lease. It bears no relationship at all to the legal concept of a guest, who is a person invited into a dwelling unit on a short-term, temporary basis. It ignores the many factors that have always gone into such a determination, such as length of occupancy, evidence of actual and/or primary residence, possession of a key, receipt of mail, contribution to household costs or payment of rent, and many other common-sense factors, none of which is decisive by itself. Indeed, listing on the lease is not even the most important factor.
- \* **Actual residence:** It ignores the basic rule that the primary test (although not the only test) for resident status is whether the person actually resides in the dwelling unit -- is this his home? This cannot be based on a theoretical standard of what a

piece of paper says but on an actual examination of the living arrangement. Anything else is subject to easy manipulation. The legal services programs have seen such manipulation attempted over and over again in regard to rooming houses.

- \* **Landlord-tenant law vs. tenant-guest law:** The bill, probably unintentionally, regulates landlord-tenant relations to a much greater extent than it regulates tenant-guest relations.
- \* **Lockouts and arrests:** The bill apparently eliminates judicial process and authorizes lockouts and arrests of anyone that the bill broadly treats as a guest. Connecticut laws against lockouts go back centuries and are a fundamental part of Connecticut landlord-tenant law.
- \* **Due process:** There are constitutional underpinnings to the right to judicial process before dispossession from a dwelling unit. For example, all adult occupants are required to be named in evictions because of litigation on Due Process grounds against the Judicial Branch and the marshals in the 1980s.

#### **In regard to tenant-guest relationships:**

- \* **Fact-based determinations:** The question of when a person is a "guest" rather than an "occupant," a "resident," or a "co-tenant" has always been fact-based and needs to stay that way. Every situation is different. Trying to establish overly-simple fixed rules is impractical and will result in numerous unintended consequences.
- \* **Statutes and case law:** Statutes concerning transient occupancy and case law concerning guests have laid out some of the factors to be considered in determining the legal status of an occupant. By statute, presumptions about transient occupancy in hotels, motels, and similar lodgings (which control coverage by the Landlord-Tenant Act in such premises) are keyed to occupancy of more or less than 30 days, with primary residence as a key factor, but such presumptions are ordinarily rebuttable and depend on a specific analysis of the facts of each case.
- \* **Important improvements in police training:** Illegal lockouts are a crime, and police are therefore important initial contact points for assessing whether a lockout is legal. For years, police received little or no training in landlord-tenant law, and police practices were highly non-uniform. In our experience, police tended to err on the side of permitting illegal lockouts, and there are many cases in which the police actually enabled them by arresting the illegally locked-out tenant who tried to get back into his apartment. Gradual changes in police practices have occurred over the past decade; and **major changes in police training have occurred in the past year that will reduce variations among police departments in how the law is enforced.** The Chief State's Attorneys Office has developed a police training manual that, since last October, is being used in the Police Training Academy. In addition, in the past year, training in landlord-tenant law has finally become a mandatory part of training for new recruits and a part of in-service continuing education for other police officers. The state's Housing Prosecution Unit monitors court decisions and adjusts training as necessary. To the extent that different police departments apply the law in different ways, the new uniform training system will result in more consistent statewide application.

We urge the Committee to take no further action on this bill.