



CONNECTICUT LEGAL SERVICES

A PRIVATE NONPROFIT CORPORATION
211 STATE STREET BRIDGEPORT, CT 06604
TELEPHONE (203) 336-3851
FAX (203) 333-4976
E-MAIL BRIDGEPORT@CONNLEGLALSERVICES.ORG

NADINE NEVINS
RICHARD L. TENENBAUM
REGIONAL DIRECTORS

PATRICIA LUGO
MARK R. MOORE
MAUREEN O'CONNOR
LORRAINE C. ROBLER
MARIA A. VARONE
CATHERINE WILLIAMS
ATTORNEYS AT LAW

PATRICIA N. BLAIR
ELLEN ROSENTHAL
BEN A. SOLNIT
ANN TRAMONTANA
VOLUNTEER ATTORNEY

MARY E. GREY-FOX
NILDA PLANAS
WANDA E. SERRANO
LEGAL ASSISTANTS

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

THOMAS D. GOLDBERG
BOARD CHAIR

STEVEN D. EPLER-EPSTEIN
EXECUTIVE DIRECTOR

LAW OFFICES

211 STATE STREET
BRIDGEPORT, CT 06604

16 MAIN STREET
NEW BRITAIN, CT 06051

153 WILLIAMS STREET
NEW LONDON, CT 06320

20 SUMMER STREET
STAMFORD, CT 06901

85 CENTRAL AVENUE
WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES

5 COLONY STREET
MERIDEN, CT 06451

62 WASHINGTON STREET
MIDDLETOWN, CT 06457

98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

564 PROSPECT STREET
TORRINGTON, CT 06790

29 NAEK ROAD, SUITE 5A
VERNON, CT 06066



Testimony of Richard L. Tenenbaum Connecticut Legal Services

Housing Committee

Public Hearing Re: H. B. 5373 Act Concerning Establishing Residency for Tenants March 4, 2010

Introduction

I am Richard Tenenbaum, attorney with Connecticut Legal Services in Bridgeport and supervisor of the housing task force for my agency. We represent tenants throughout most of the state, those being evicted by property owners for cause or without cause; tenants whose landlord has taken the law into his or her own hands by displacing the tenant through self-help eviction, by changing locks or removing personal property; tenants who have been over-charged for rent or other charges, in violation of the lease or laws and victims of illegal discrimination.

I ask the Housing Committee not to take action on this bill. I oppose and fear its passage, because as drafted, the bill radically rewrites landlord and tenant laws that have managed to reach a reasonable equilibrium incrementally by legislation and court and agency decisions, evolving over many decades to protect the just interests and expectations of property owners, tenants and the communities in which they reside. I believe that there will be many unanticipated and very harmful consequences to tenants of all economic classes, if the bill were to pass as drafted. Many other statutes would need amendment to conform to H.B. 5373, were it enacted. Its constitutionality is very questionable. It needs further study and thought.

I have been involved with housing laws as part of my legal practice for over thirty years, and I have probably come across nearly every oppressive landlord or tenant practice we could collectively imagine. The bill's language attempts to address a particular problem with broad strokes that I foresee could create hundreds more by suddenly eliminating all the established protections of tenancy for what I believe to be tens of thousands of law-abiding, lease-compliant tenants, simply because their names do not appear on a written lease.

H.B. 5373 Would Have Terrible Consequences

I cannot believe that this Committee would intend that on October 1st, rent-paying occupants of dwelling units owned by someone other than the occupant should lose the following rights to a healthy home:

- The right to live in safe premises, free from any conditions threatening health and safety and where all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances and elevators work properly.
- The right to live in premises that are maintained in a fit and habitable condition and in which repairs are made when necessary to keep them so.
- The right to live in premises where the common areas are clean and safe.
- The right to live in premises that have heat, running water and reasonable amounts of hot water at all times.

Each of these rights is guaranteed only to tenants by Conn. Gen. Stat. §47a-7.

I cannot believe that this Committee would intend that on October 1st, occupants of dwelling units should lose the following rights to a secure and private home:

- The right to be able to sleep at night or to bathe without the risk that the owner or an agent might enter the dwelling unit at any time, without notice, and might begin inspecting or doing construction on the property at any hour of the day or night.
- The right to be secure in the home, without the risk that the owner or an agent might, even if rent had been paid for the month, suddenly, at any hour of the day or night order the family to leave immediately, or might change the locks to the dwelling unit while the family is away from the unit, and that raising any objection to this conduct or refusing to leave might result in an arrest for disorderly conduct or trespassing.
- The right to be secure in the home without the risk that the owner or an agent might begin removing the family's property from the unit and tossing it out the window or the door where it might break or be taken by any passer-by or removing and locking up the family's property, including prescription medications and family treasures.

Each of these rights is guaranteed to tenants by the General Statutes, Sections 47a-16, 47a-23 and by Sections 47a-43 and 53-214, respectively.

I cannot believe that this Committee would intend that on October 1st, occupants of dwelling units lose the following rights to stability in a commercial relationship:

- The right to pay a fair, mutually-negotiated rent with a sufficient time to make the payment and to be free from a unilateral unreasonable rent increases at any time and for whatever reason.
- The right to make good-faith complaints about conditions affecting health and safety or unreasonable rent increases, without fear of retaliation.
- The right to receive a refund with interest on security deposits paid before moving into a dwelling unit.

Each of these rights is guaranteed only to tenants by the General Statutes, Sections 47a-4, 47a-20 and 47a-21, respectively.

The bill, as drafted, removes the listed legal protections on October 1, 2010 for anyone legally occupying residential rental property as their home but whose name is not listed on a written rental agreement. There are numerous classes of people occupying rental property who would lose all their rights:

- Tenants holding under an oral lease

In my experience, at any time in my work, as many as half or in some cases more of my housing clients occupied their homes under oral leases. Under current law, a lease for residential property does not have to be in writing. The statutes set out the minimum mutual rights and obligations that must be present under a lease. Under thousands of oral leases in effect today, rent is paid by the tenant, and services are rendered by the landlord each month or each week, but on October 1st, the leases would no longer be legal.

- Former tenants who for any reason had but no longer have a written lease

The lease may have expired, but the parties never got around to renewing it. Both sides are comfortable with the arrangement and they are both protected under current law. A slightly different set of facts would arise when at the end of the lease term, the landlord makes an offer for a new lease at a substantially higher rent that the tenant feels is unreasonable. The tenant rejects the offer, so there is no longer a rental agreement in place. Current law makes that tenant a tenant at sufferance, one who is still entitled to the protections of tenants generally.

- The property is sold close to the time a lease is expiring. The new owner does not agree to renew or to enter into a new lease to allow the family to remain as tenants.

Under current law they are tenants at sufferance, but under this bill, they could legally be locked out of their home, once the lease has expired. This scenario is very timely, when banks are foreclosing on so many rental properties in Connecticut. Tenants in foreclosed

properties would continue to be protected from abrupt displacement, however, by recent federal law that preempts state law to the contrary.

- Occupants of a tenant household that is subject to changes in composition

There are several sub-classes here, for example a roommate or the other person in a couple who moves in even with the landlord's consent then or at some time after the lease is signed, but whose name never appears on the lease. This is very common. Even when a married couple moves into a dwelling unit, the lease may not have the spouse's name on it. The family may bring an elderly or disabled family member into the home to provide care for the person. A child living in the home may reach adulthood. The landlord may have no objection to the person occupying the home, but if the lease is not changed, that person is not a tenant, if the bill is enacted. If the landlord's opinion about the person changes, the household member and the entire household may have no protection from immediate displacement or worse.

The language of this bill raises many questions. If the owner of residential rental property chooses not to any longer allow a family that had been occupying a dwelling unit under an oral lease to continue occupancy, does that suddenly make them trespassers? Would they then be subject to immediate arrest, if they did not immediately leave? That seems to be the only logical consequence of the language in the bill. What would happen if there were, in fact, a written lease, but the landlord had locked the family out of the home? When the family calls the police for assistance, the landlord insists untruthfully that there is no written lease. If the family has a copy of the lease [Not all tenants do.] it's certain to be in the locked apartment. How can the family prove they're tenants? Whom is the police officer to believe?

Currently existing law makes it illegal to lock anyone out of residential property the person peacefully occupies. That's the jurisdiction of our courts. This may not be true of guests. Our eviction and entry and detainer laws have developed in the manner they have in order to preserve public peace. This law would have the consequence of disrupting public order. The Chief State's Attorney's staff has been very active in training police officers on how to handle landlord-tenant relations, and officers professionally responding to calls for assistance are very effective in addressing private disputes and avoiding arrests and violence. The training effort and its benefits would be disrupted by the enactment of H.B. 5753.

The Bill as Drafted Is Unconstitutional

In each of the situations described in this testimony, the dwelling unit has been the individual's or family's residence, yet their status is such that they have no right to occupy, regardless of their having done everything they could to establish a lawful tenancy and to comply with all obligations. Only a landlord can issue a lease, and without it, the occupants are guests without legal rights.

I believe that the language in the bill would require changes in dozens of other laws that regulate landlord and tenant conduct, including most of those cited in this testimony. With the necessary changes, the laws regarding removal of occupants from their homes would create a system that would be unconstitutional. A generation ago, the U.S. and Connecticut Supreme Courts and other courts invalidated laws that allowed private parties to take the law into their own hands.

The language in this bill seems to allow a landlord to dispossess a family renting under an oral lease when the rent has not been paid, as early as the second of the month or for no reason at all, without any opportunity for the tenant to defend against the action in court. The federal and state Constitutions provide that persons may not be deprived of life liberty and property without due process of law. The right to occupy the home is protected. The bill's language is inconsistent with the protections of due process.

Conclusion

The seven lines in this bill are insufficient to address the issue I believe the sponsors wanted to address. The choice of language will have terrible consequences that could not have been anticipated when it was drafted. The bill should not be passed by the Committee.

