

# EVICTION IN VERMONT

## A Closer Look



Vermont Legal Aid  
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## Acknowledgments

This report is the product of extensive research and writing by Peter Beck, a third year student at Yale Law School, who interned at Vermont Legal Aid during the summer of 2018. Over the summer, Peter learned about Vermont eviction defense law and community resources available in the State, reviewed and analyzed every 2016 eviction case from Windsor and Lamoille Counties, studied eviction prevention efforts nationwide, and was the lead author of this study.

We are also indebted to Isaac Scher, a Shepherd Higher Education Consortium on Poverty (SHECP) intern from the College of Wooster. Isaac studied the eviction problem in Vermont and reached out to over 300 defendants in eviction cases to obtain ethnographical accounts of the eviction process and its impacts. The interviews conducted by Isaac are captured in the stories presented within the Report, and can help inform our solutions by raising awareness of the real-life experiences of low-income Vermonters.

Jessica Radbord supervised the work of Peter Beck and Isaac Scher, and drafted the recommendations with support from the Housing Task Force of Vermont Legal Aid, including Maryellen Griffin, Sandy Paritz, Maureen O'Reilly, Kelli Kazmarski, Jean Murray, Wendy Morgan, and David Koeninger.

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Lastly, thank you to the tenants whose stories and experiences inspire our work and provided us with the foundation for this report.

## About Vermont Legal Aid

**Vermont Legal Aid** is a non-profit 501(c)(3) law firm established in 1968. Through our work that spans seven broad projects, we strive to advance fairness and justice in the civil legal system, address the social and economic interests of our clients, and confront the underlying causes of poverty, discrimination and inequality. We work closely with our partner agency, Legal Services Vermont, which provides a legal advice hotline and manages the Vermont Volunteer Lawyers Project in cooperation with the Vermont Bar Association. Vermont Legal Aid and Legal Services Vermont work together to identify innovative and efficient ways to provide legal advice and assistance to as many people as possible, even as funding for free legal services decreases. To learn more about the work of Vermont Legal Aid and the myriad of subjects we address, visit our websites at [www.vtlegalaid.org](http://www.vtlegalaid.org) and [www.vtlawhelp.org](http://www.vtlawhelp.org). To contact Vermont Legal Aid about this report, call our Burlington office at 802.863.5620.

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## Introduction & Executive Summary

In Vermont, around 1,700 eviction cases are filed every year.<sup>1</sup> In most of the cases, families lose their housing.<sup>2</sup> Evictions lead to increased rates of homelessness, unemployment, mental and physical illness, and financial and housing instability.<sup>3</sup> The number one cause of eviction is falling behind on rent.<sup>4</sup> Eviction, therefore, is a kind of accelerant for poverty: it comes out of poverty and it creates even more. Reducing evictions in Vermont could be one of the most effective anti-poverty tools we have.

Eviction is expensive for everyone involved. Most significantly, the tenants lose their home—and reduce their future prospects for housing, employment, and health. But the landlord also loses a source of income: evictions cost money in time, court and attorney fees, and foregone rent. And the State has to use its own (that is, taxpayers’) resources for the court system overseeing the process and the shelter system when evictions lead to homelessness.

It is hard to solve a problem that is not being measured—and until now, there has never been a reliable measure of evictions in Vermont.<sup>5</sup> The most comprehensive database on evictions in the United States—Matthew Desmond’s Eviction Lab—does not include accurate information for Vermont.<sup>6</sup> The Lab’s map suggests that in 2016 there were 39 evictions in Vermont. The real number is closer to 1,300.<sup>7</sup>

This report marks the most comprehensive attempt to date to track eviction in the State: How many people get evicted in a given year? What are they being evicted for? What does the typical eviction process look like? What are the results? To answer these questions, we looked at every eviction case filed in a single year from two representative counties, Windsor and Lamoille.<sup>8</sup>

This report suggests some solutions to the State’s eviction problem. What would it take to prevent landlords from having to file an eviction in the first place? What would it take to prevent an eviction filing from turning into an actual eviction? What would it take to make housing more secure for Vermonters across the State?

### **FINDINGS:**

1. One in 44 (2.25%) renting households had an eviction filed against them in 2016.<sup>9</sup> This is referred to as the “eviction filing rate.” Of these eviction filings, approximately 86% involved unsubsidized rental units, 13% had a project-based or tenant-based subsidy, and 1% were mobile home park evictions.
2. In 70% of the cases, unpaid rent was the only issue (as opposed to violating the lease, foreclosure, or evicting “without cause”).
3. In the cases where unpaid rent caused the eviction, the median amount of rent due was \$2,000.
4. In 43% of the cases, the notice or eviction complaint did not comply with legal requirements, yet the defect went unnoticed or unaddressed by the tenant or the Court.
5. In three-quarters of the cases, the plaintiff (landlord) had a lawyer, and the defendant (tenant) did not.
6. Three-quarters of the households that had an eviction filed against them ended up getting evicted. This is referred to as the “eviction rate.”

## RECOMMENDATIONS:

1. When tenants fall behind on rent, provide adequate financial supports to help tenants become current. We estimate that \$800,000 strategically invested in back rent support could cut Vermont's eviction rate by over 50%.
2. Once a case is filed, increase legal representation of defendants in eviction cases or make it easier for defendants to capably represent themselves.
  - At minimum, provide a fill-in-the-blanks Answer form, so tenants can more easily give the Court the relevant information.
  - Expand the "lawyer-for-the-day" programs that are already providing limited representation for tenants in housing cases.<sup>10</sup>
3. Expand and develop programs to help tenants manage their rental payments.
4. Reduce the number of tenants who fall behind on rent by addressing the broader housing affordability crisis.
  - Support and expand affordable housing programs.
  - Support and expand rental subsidy programs that make rent more affordable.

Together, these recommendations would dramatically reduce Vermont's eviction filing rate and eviction rate. Vermont could lead the nation in—and provide a model for—combating the national eviction crisis.

## The Roth Family's Story\*

The Roth family, Marcus, Jennifer, and their three children, moved into their four-bedroom rental home in 2012. Their first winter there, the Roths received a utility bill for almost \$600. "I tried to convince [our landlord]...that [the house] didn't hold heat...but nothing came of it." Marcus said the furnace "could not sustain heat above 60 degrees," so they had to run space heaters all winter.

By September 2017, Marcus and Jennifer could not afford another winter of high utility bills and insufficient heat. Marcus told the landlord that he needed to weatherize the home or the family would withhold rent payments. "Next thing you know," Marcus said, "we had a sheriff at our door serving us eviction papers."

Marcus and his family did not understand the proper legal procedure for withholding rent. The judge did not find that their home was worth \$0, even with the poor insulation, so the Roths owed a significant arrearage that they could not afford to pay. **The Roths were evicted.**

After they were evicted, the Roths stayed with Marcus's father. They secured storage units for their personal possessions, but **many items were lost or destroyed, including their wedding photos and Jennifer's mother's ashes.** The family found it incredibly difficult to secure new housing after the eviction. Marcus said, "It's not right that I can't get a fair shot," but **many landlords were unwilling to take a chance on renting to the family because of their poor reference from their previous landlord and their recent eviction history.** After six months and almost \$2000 in storage expenses, they finally signed a lease for a new home.

\* The stories included in this report are based on interviews conducted by Isaac Scher, a Shepherd Higher Education Consortium on Poverty Intern at Vermont Legal Aid, Inc., during the summer of 2018. All tenant names and identifying information have been changed to protect tenants' confidentiality.

## The Consequences of Eviction

When an individual tenant or family is evicted, they have, at a minimum, lost their home. But the costs and consequences of eviction can extend far beyond this single disruptive event. First, they may not be able to find a new home. Around 40% of the families in homeless shelters nationwide are there because of an eviction.<sup>11</sup> Eviction is a housing issue, but it is also a homelessness issue.

Second, researchers have found that even a year after eviction, evicted parents and children are more likely to suffer from depression, stress, and negative health outcomes than non-evicted peers.<sup>12</sup> Housing loss has even been linked to higher rates of suicide in the United States.<sup>13</sup> Eviction is a public health issue.

Third, evictions remain on the public record in every state except California,<sup>14</sup> and can significantly damage a tenant's employment, housing, and credit prospects.<sup>15</sup> In some areas, landlords will flat out reject any tenant who has a previous eviction.<sup>16</sup> As a result, even when evicted tenants find new housing, it is typically a downward move in both neighborhood and housing conditions.<sup>17</sup> Eviction is a social and economic mobility issue.

Clearly, researchers are not exaggerating when they describe eviction as "all-encompassing."<sup>18</sup> That is where eviction can end—in homelessness, compromised health, and downward mobility. Where does it begin?

### Holly's Story

Holly, who is disabled, was extremely grateful to have a federal housing subsidy so she could afford a safe and decent place to live. To cover expenses, Holly relied on a Reach Up grant. However, when Holly's daughter turned 18 in early 2018, the family's Reach Up was terminated based on a rule that requires the presence of an "eligible child" in the household, i.e., a child under the age of 18. Holly was not immediately aware that she could keep getting benefits as long as her daughter was 18 and enrolled in high school. She fell behind on rent and utilities, and she owed \$690 when she was served with a notice of termination of her tenancy. Holly and her daughter feared that they'd be evicted. "It's a very scary time when you could become homeless," said Holly. If she were to lose her federal subsidy, she wondered, "Where do you go from there?"

After three months, Holly proved that her daughter was still in school and her Reach Up was finally reinstated. With this income restored, **she could afford her rent going forward, but she needed help to deal with her arrearage.** She contacted the Housing Resource Center of the Committee on Temporary Shelter (COTS) for help. She secured Housing Opportunity Grant Program (HOP) funding to cover her arrearage and help with developing a budget before she had to appear in court. **With the help of legal representation through Legal Services Vermont's Pro Bono Innovation Fund Clinic and the HOP grant, Holly was able to pay her landlord and resolve the eviction case so she could stay in her home.**



## The Eviction Process in Vermont: How it Happens, When to Intervene

The next several sections of this report walk through the eviction process—from the Notice of Termination through resolution of the case. We also look at the problems that lead up to an eviction. At each step, we have proposals to reduce the incidence and costs of eviction.

### Notice of Termination

An eviction in Vermont begins with a Notice of Termination: a letter from the landlord to the tenant, explaining that the tenancy is being terminated, why it is being terminated, and the date of termination.<sup>19</sup> The reasons can be that the tenant fell behind on rent; broke the terms of their lease; engaged in criminal, drug, or violent activity; or simply for “no cause” at all.<sup>20</sup> The first step in combating eviction in Vermont is figuring out which of these causes motivates most evictions. There might be completely different policy solutions for tenants owing money and for tenants violating other terms of their lease. This study makes it clear: eviction in Vermont is primarily a result of alleged nonpayment of rent. In 70% of the cases studied, nonpayment was the *only* issue raised. As a result, the most effective interventions at the Notice of Termination stage will be related to payment of rent.<sup>21</sup>

In a nonpayment case, the Notice must give the tenant a “right to redeem.”<sup>22</sup> That is, they have a chance to become current in their rent before the termination date, thereby ending the eviction process. In fact, they have that right all the way up until the final moment, when the Writ of Possession is executed by the sheriff.<sup>23</sup> But every additional step will only add to the amount owed, as rent builds up, and court costs accumulate.

The Rising Costs of Redemption: Amounts Owed in a Sample Case	
Notice of Termination:	\$1,580
Summons & Complaint:	\$3,130
Judgment:	\$7,121
Docket No. 315-6-16 Wrcv (2016)	

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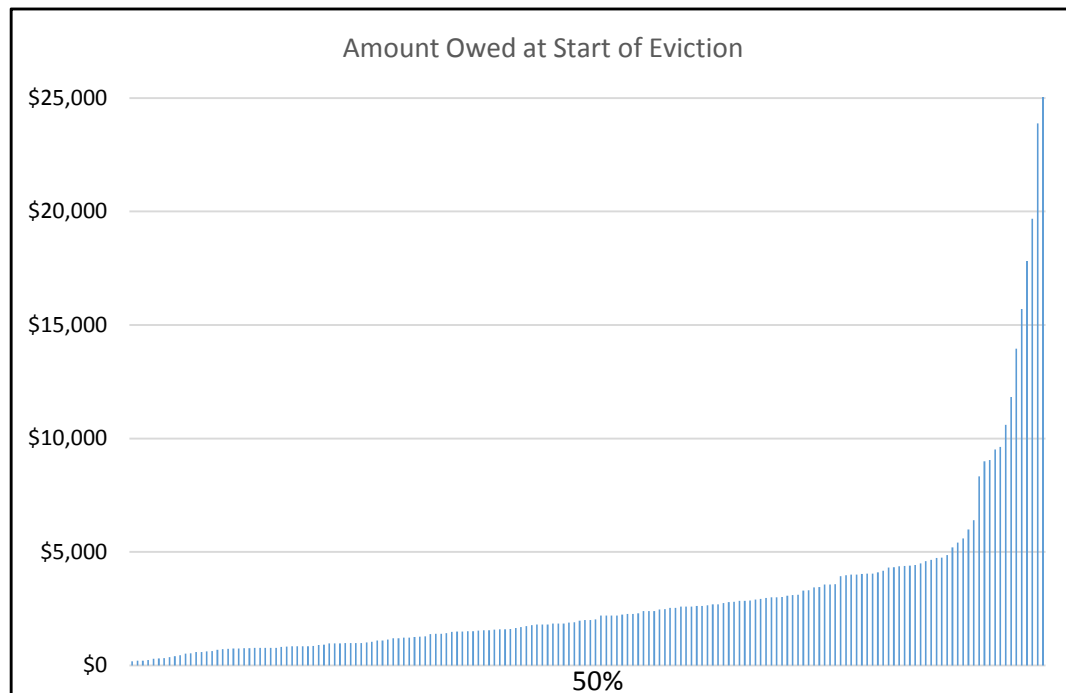
This moment—when the Notice of Termination says how much the tenant owes—is the cheapest possible time to save the tenancy. If the tenant is not able to become current at that time, they may owe twice as much by the time a Summons and Complaint is filed in court. They may owe twice as much again by the time a judgment is reached. At the Notice of Termination stage, the median amount owed in the cases we studied was \$2,000. Some Notices, though, were sent for less than \$300.

A program focused on stopping evictions at the least expensive stage could have a massive impact for very little money.<sup>24</sup> The cheapest half of the cases we studied could have been stopped for less than \$100,000. Statewide, this would work out to less than \$800,000. In other words, by intervening at the right time, Vermont could cut its evictions by half with less than \$800,000. Of course, this program would not solve the many evictions that happen when a tenant’s ability to pay is compromised permanently or semi-permanently. But it would solve the hundreds of evictions that occur when a small and temporary shock disrupts a family’s income.<sup>25</sup>

In Vermont, state agencies, non-profits, and faith-based organizations offer some financial assistance for rental arrearages. Vermont’s Housing Opportunity Grant Program (HOP), formerly known as the Emergency Solutions Grant program, is administered through the Office of Economic Opportunity (OEO), and provides a blend of state and federal funding to support homelessness prevention programs,

including rental arrearage grants, to prevent evictions.<sup>26</sup> OEO limits HOP funding for rental arrears to no more than three months of rent, and some community agencies administering the grant at the local level opt to further reduce that restriction to spread program funding further.<sup>27</sup> Limits on the HOP program funds mean that many tenancies cannot be redeemed. Further, other programs available to assist with back rent are underpublicized.<sup>28</sup> Many tenants and landlords are simply unaware of the resources available. At certain times of year, funds simply run out in some counties. Finally, the funds are decentralized to the extent that when available, they can still be difficult to cobble together. A client of Legal Services Vermont (formerly known as Legal Services Law Line of Vermont), for example, found three organizations willing to chip in for her arrears—but only if each put her over the amount needed. As a result, all three organizations held onto their funds, since she had not yet “received” enough to save her home.<sup>29</sup>

Rental arrearage programs need to be adequately funded, publicized, and, where feasible, centralized. It is to the benefit of the tenant (they keep their home), the landlord (they keep a paying tenant), and the State of Vermont (it saves money by preventing court cases and homelessness). The investment is too small and the potential gain is too great not to adequately fund such a program as soon as possible.



This chart demonstrates the distribution of amounts owed in every nonpayment case studied. **Half of the cases were for \$2,000 or less; 90% of them were for less than \$5,000.**

Impact and Cost of Arrearage-Support Programs		
Cap on Grant Amount	Estimated Percentage of Evictions that Could be Prevented	Estimated Vermont-Wide Cost
\$1,000 or less	21%	\$246,000
\$2,000 or less	42%	\$783,000
\$3,000 or less	58%	\$1,494,000
\$4,000 or less	66%	\$1,947,000

Even a program that limits arrearage-support to the least expensive cases could still have a massive impact on eviction in the State. **Note that a cap on eligibility of \$2000 or less is estimated to resolve 42% of cases overall, and 50% of non-payment cases.**

### Trying to “Answer”

If a tenant does not or cannot pay off their back rent by the termination date, the landlord will file a Summons and Complaint with the Court, initiating the formal, legal eviction proceeding.<sup>30</sup> The tenant then has twenty-one days to file an Appearance (saying they are present for the case) and an Answer (responding to the claims in the Complaint).<sup>31</sup> If they do not appear or answer—and they often do not—a default judgment is entered against the tenant.

Frequently, however, the tenants do try to answer—they just do not answer according to proper court procedure. This is the first of many steps in the formal eviction proceeding where legal advice or representation could make a substantial difference to the outcome of the case. The “Answer” is a technical legal document, not a colloquial, personal “answer.” The tenant is supposed to respond to each paragraph of the landlord’s complaint, by agreeing, disagreeing, or noting what he or she does not know. Most importantly, the tenant must bring up any affirmative defenses or claims for relief they might have, like retaliation, or problems with the unit’s habitability.

Instead, too often, tenants submit handwritten notes to the Court or “To whom it may concern,” explaining their situation in tragic, personal—but not legal—detail. Some examples, typical of the documents filed by pro se tenants, are excerpted below. Spelling and grammar are preserved from the original documents.

“We have been battling with disability. My husband is not able to work . . . [We are] desperately looking for other housing . . . but all resources have been depleted. . . . Please allow my family (my husband, my 2 young children with one more on the way) just a little more time to pay . . . .”<sup>32</sup>

“[U]ntil my fiance lost her job at Applebee’s everything was going so well . . . . My fiance is starting a new job at Chili’s full time soon but we have been very broke. . . . We love our home and our children are doing quite well at their school and we would hate to need to uproot them and move.”<sup>33</sup>

“In the past 3 months we have had many hard ships. First my hours at my job were cut and I was not working full time. . . . My husband became sick and I had to take time off . . . . We have fallen behind in our car payment, our rent, and not

to mention trying to keep food on the table. . . . We are both in our 60’s and moving all about is not something that we wish to do.”<sup>34</sup>

“I fell asleep during my ride home from work, totaling my car. (Due to lack of sleep from working a full time overnight job & being a full time mommy) Unfortunately I lost my job due to injuries that kept me from going to work. . . . We always pay (late or not) and we will catch up!”<sup>35</sup>

The Answer, of course, is not the only place where tenants submit handwritten notes instead of legally cognizable pleadings or motions. Even after losing, as shown below, some tenants continued to plead their cases to the Court.

“We are a family of 5, with 3 children 14, 10, and 1 1/2 years old. . . . I will do whatever I need to do to keep a roof over my families head. We have nowhere to go from here. My babies want to have a warm bed to come home to every night. I’m doing whatever I can to come up with what I owe. Please your honor, I beg you to reconsider . . . .”<sup>36</sup>

“I have 4 children, 13, 12, 8 and a 2 year old. We have absolutely nowhere to go on such short notice. . . I’m terrified of being homeless with my children in just 10 days after this being our home for over 4 years. I sincerely ask for mercy. . . .”<sup>37</sup>

These are important, devastating letters. They are not often *legally relevant*. They contain honesty, and pain, and explanation—and rarely a legal claim. The Court, unfortunately, has to treat them for their legal worth, and nothing else. The response to the last motion, above: “The motion is DENIED.”<sup>38</sup> To many of the situations above: eviction. Sometimes, the answer even inadvertently makes the landlord’s case. Some letters will admit to owing rent in the first sentence but then go on for pages explaining why they have fallen behind, and how they plan to make it up.<sup>39</sup> Unbeknownst to the tenant, only that first sentence was legally relevant, and they just conceded their case. This is not lost on the landlord’s lawyer, who typically responds to such an answer with a motion for summary judgment. There is no longer any dispute over any of the legally relevant facts, goes the motion, so the landlord is due immediate judgment in his or her favor. Often, this motion prevails.<sup>40</sup>

Who Has a Lawyer in Vermont Eviction Cases?	
Landlord Only	75%
Neither Party	14%
Both Parties	10%
Tenant Only	<1%
<i>*Numbers based on courts without a rent escrow clinic.</i>	

There are many legal environments where both sides have a lawyer; there are many where neither side does. But arguably the least just situation is where only one side has a lawyer and the other does not. That was the situation in three-quarters of the cases reviewed: of the 207 cases analyzed, in 156 of the cases, the plaintiff (landlord) had a lawyer and the defendant (tenant) did not. The situation was reversed—the tenant had a lawyer but the landlord did not—in only one case. It is simply impossible, in an adversarial legal system, to imagine that such lopsided housing cases are a fair contest.

Vermont Legal Aid and Legal Services Vermont, due to limited staffing resources, are unable to provide full representation in the vast majority of the eviction cases filed every year. The Vermont Bar Association’s Low Bono Project pays private attorneys for up to five hours to represent income-eligible tenants (and landlords) in eviction cases in nine Vermont counties, but the Low Bono Project has

insufficient funding to meet the full level of demand. Absent free legal services, most tenants will be unrepresented.

Short of guaranteeing a lawyer for all tenants who cannot afford one—a solution considered in the next section of this report—there are smaller improvements to be made. The easiest, cheapest one is to simply help tenants answer properly. The court system already helps self-represented litigants “Appear” correctly by providing a fill-in-the-blanks “Appearance” form.<sup>41</sup> The Court needs a specific kind of “Answer” for evictions; the court system could facilitate that with a model form.<sup>42</sup> Tenants could be told to check “Agree,” “Disagree,” “Do Not Know” for each paragraph of the Complaint. They could be told to check off any defenses they have (“All rent has been paid,” “There are unsafe conditions in the home,” etc.) and be given a space to provide more information.<sup>43</sup> An Answer form should be part of the Summons, Complaint, and Appearance form that is served on the tenant when the case begins. In addition, an Answer form should be included with the Notice of Rent Escrow Hearing sent by the Court.

The tenant should not have to guess what a legal “Answer” is. The Court—as well as the landlord or the landlord’s lawyer—should not have to search through long handwritten letters for scattered legal claims. A short, fill-in-the-blanks Answer form, provided as a matter of course with the documents served on the tenant, would help identify the legal issues and defenses immediately and clearly.

## In Court

The first court hearing for most eviction cases in Vermont is typically for “rent escrow.”<sup>44</sup> It is a hearing to determine whether the tenant should pay rent into court during the proceedings, and if so how much. It is often the first chance for the parties to meet with each other and in front of a judge—and is a moment ripe for negotiation, mediation, or settlement.

Recognizing the potential for legal intervention at this stage, in 2015, Legal Services Vermont—with the support of the Vermont Judiciary and Vermont Legal Aid—introduced a “lawyer-for-the-day” program at rent escrow hearings in Chittenden County.<sup>45</sup> In 2016, with a grant from the Legal Services Corporation, Legal Services Vermont expanded its “lawyer-for-the-day” program for rent escrow hearings to three additional counties through the Pro Bono Innovation Fund (“PBI”). These rent escrow programs are proving very successful.<sup>46</sup> It is often to the advantage of the tenant, the landlord, and the Vermont court system to work out a settlement rather than continue to litigate the eviction proceedings. But it is very hard to negotiate when one side has representation and leverage, and the other side does not. The rent escrow programs help the parties reach an equitable settlement by putting lawyers on both sides of the table.

An eviction defense lawyer can sometimes gain leverage—and time—by discovering flaws in the plaintiff’s case. Sometimes these are considered “technical” flaws—minor procedural irregularities. But often they are fundamental to the stakes of the case: for instance, the landlord did not inform the tenant that they had a right to pay off their back rent to prevent the case from being filed in the first instance. On finding one of these errors, the landlord may agree to a resolution or the tenant or tenant’s lawyer can file a motion asking the Court to dismiss the entire case. Sometimes this can only buy time. For example, if the case was based on the tenant’s long-term inability to pay rent due to a permanent reduction in income, it is likely the landlord will simply refile the case later. But often, time is all the tenant needs: to cobble together savings or rental arrearage assistance funding, to find a new house, or to negotiate a payment plan with the landlord.

## Amber and Mary's Story

"We went through hell," said Mary. For nearly three years, she and her teenage daughter, Amber, were homeless, living in shelters and motels around Vermont. In 2013, they were offered an apartment with a project-based rental subsidy. With the subsidy, Mary only had to pay 30% of her household income toward rent. Mary promised Amber that they would never be homeless again.

Unfortunately, meager and unstable income put that promise in jeopardy. Mary is disabled and applied for Social Security, but her application took years to process. In the meantime, the family received Reach Up, but their case closed when Amber graduated high school. The family relied on Amber's minimum wage income, but then Amber got sick and was not paid for months. During that time, the family's sole income was \$198 per month in General Assistance, and they simply could not keep up with their bills, including their rent.

In May of 2018, Mary and Amber were sent an eviction notice for failure to pay rent. At that time, **they owed only \$677**, but they had no savings and were unable to pay. Their landlord filed an eviction case against them along with a request that they pay rent into court. They appeared at the Rutland Superior Court for a rent escrow hearing, where they were represented by an attorney through the PBI clinic of Legal Services Vermont. **The attorney helped them work out an agreement to pay rent into court**, file an answer to the eviction complaint, and explain the next steps to resolve the case. Since that hearing, Mary's application for Social Security was approved, and **Mary was able to pay off her arrearage** and is going to be able to stay in her apartment.

As noted by Margaret Frye, Coordinator of the PBI clinics, "The goal of the clinic is to provide legal intervention at a critical time in the case. The consequence of missing a rent escrow payment means a tenant can be moved out of their apartment before ever telling their side of the story to the court, which is a devastating outcome. Getting legal advice at this juncture provides clients with information they need to make decisions for themselves and their families, and, for clients like Amber and Mary, to plan for a way to stay in their homes."

A review of the cases filed in Windsor and Lamoille in 2016 reveal that many tenants are evicted despite having good legal challenges to the suits filed against them. In 2016, there was no rent escrow lawyer-for-the-day program in Windsor County or Lamoille County. In those counties, there were obvious grounds for a Motion to Dismiss in 43% of the eviction cases. That does not include the cases where the judge or the defendant caught the error themselves. In other words, two out of five cases violated Vermont law, including: the tenant was not told they could redeem, the tenant was not given the required time to redeem, the redemption amount was incorrect, the tenant was not told why the lease was being terminated, the lease was not attached to the complaint, or the landlord's corporation was not actually registered in Vermont. In two out of five cases, a lawyer—even through a lawyer-for-the-day program—could have immediately found a reason for the judge to dismiss the case or for the landlord to negotiate a settlement.

The rent escrow “lawyer-for-the-day” program of Legal Services Vermont is funded through 2020 thanks to the Pro Bono Innovation Fund of the Legal Services Corporation. Its current funding level is insufficient to operate similar programs in all counties, and further, the PBI fund grant is not a long-term, renewable source of funding.<sup>47</sup> Rent escrow “lawyer-for-the-day” programs should be sustainably funded and geographically expanded for the simple reason that, as Chittenden Superior Court Judge Helen Toor has said, “The system was made for people with lawyers.”<sup>48</sup> Programs to provide representation by lawyers should also be expanded because lawyers can weed out flawed cases, encourage settlement, and foster negotiation—all of which can benefit landlords, tenants, and courts.

Indeed, many state and local governments are concluding that legal representation should be expanded beyond limited, lawyer-for-the-day programs. New York City expects to save money (especially in reduced homeless shelter costs) by giving low income tenants a free lawyer for evictions.<sup>49</sup> California’s Judicial Council funded five similar and successful projects;<sup>50</sup> San Francisco saved over \$1 million by providing full representation for 117 eviction cases and limited representation for an additional 692 cases.<sup>51</sup> Philadelphia has committed \$500,000 to fight eviction, in part by providing counsel for tenants;<sup>52</sup> Washington D.C. is committing \$4.5 million.<sup>53</sup> In Boston, Mayor Marty Walsh recently proposed a package of laws designed to “help existing tenants remain in their home,” one of which will “make legal representation in eviction proceedings a right, rather than an option.”<sup>54</sup> From providing better forms to guaranteeing a lawyer in eviction cases, there is a whole spectrum of increased legal assistance that Vermont could provide tenants. Each proposal has the intrinsic value of equalizing the scales in housing court, creating a more fair legal process. But they can also help courts reach more informed decisions.

For some percentage of eviction cases, the legally correct outcome will be an eviction. But what percentage? When only the landlord had a lawyer, the tenant was evicted 78% of the time. When both sides had a lawyer, the tenant was evicted 52% of the time. The latter number is probably a better reflection of the number of cases where eviction is the legally correct outcome because having lawyers on both sides of a case can bring all the relevant factual and legal issues to the Court’s attention.

Apart from the greater fairness and accuracy provided by a right to counsel, the cities and states that are implementing these changes expect the reforms to *save* them money. Having a lawyer cuts the eviction rate and avoids homelessness and costly emergency housing. Vermont should join the many state and local governments that are providing greater access to legal services. A lawyer in housing court is cheaper—in dollars and human suffering—than an eviction or homelessness. As noted in the Vermont Roadmap to End Homelessness, “[F]or the most vulnerable populations . . . overwhelming evidence indicates [that] housing interventions deliver better outcomes for individuals and the community while at the same time saving valuable public resources.”<sup>55</sup>

## Stepping Back: The Problem Behind the Problem

Before the eviction, before the court case, even before the Notice of Termination, a tenant falls behind on rent. Why? Solve that problem, and you wipe out 70% of all eviction cases before they even start. Unfortunately—and perhaps not surprisingly—this is both the largest and hardest area to reform. Tenants are falling behind in Vermont and nationwide because there is a massive shortage of affordable housing in this country.<sup>56</sup>

## Kayla and Elijah's Story

Kayla was pregnant when she and her partner Elijah moved into a Springfield apartment in early 2016. When both Kayla and Elijah were working, they could afford their rent of \$925 per month. But Kayla's employer did not offer paid parental leave, so **when Kayla was out of work after giving birth to their baby in May, staying on top of bills became impossible.** As Kayla recalled, "We weren't...bringing in enough to cover the rent, let alone living expenses." In order to afford formula, diapers, and wipes for their child, the parents virtually stopped eating. "Every night," Kayla said, "[Elijah] would bring home a small pizza and that is all we would eat for [the following 24 hours]."

Kayla and Elijah were evicted for nonpayment of rent in September 2016. **They had no attorney to help them and found the eviction process confusing and stressful.** The process strained their relationship, and Kayla and Elijah split up when they had to move out of the apartment. Elijah moved into a mobile home park with the help of a loan from a family member. Kayla was looking for an apartment for herself and the baby, but she said, "There was absolutely nothing I could afford." She rented a room in the house of a male family friend.

Kayla felt unsafe in her new home shortly after she moved in. She felt like she was being sexually harassed by her landlord. After a few months, Kayla's mother agreed to take in Kayla and the baby.

Once Kayla was back in a stable living situation with her mother, her anxiety decreased. She was better able to cope with motherhood and with her other relationships, including her relationship with Elijah. Kayla went back to work full time after she got the baby into daycare with the help of the Vermont Child Care Financial Assistance Program. Kayla and Elijah got back together in early 2017, and with their combined incomes, they were able to secure an apartment they could afford. They feel hopeful about their future together as a family, and are setting aside money for a down payment on a house.

The Department of Housing and Urban Development recommends that tenants spend no more than 30% of their income on rent.<sup>57</sup> More than that, and the household risks not having enough money to pay for other necessities of life (let alone non-necessities). When a household is "cost-burdened"—spending more than 30% of their income on rent—they are always on the brink of eviction. A single shock to their income, or a temporary spike in their spending, can lead to a missed payment and an eviction case. Today, nearly half of rental households in Vermont spend more than 30% of their income on rent.<sup>58</sup> Nearly a quarter of Vermonters spend more than half of their income on rent; HUD defines these renters as "severely cost-burdened."<sup>59</sup>

There are only three possible solutions to this problem: increase wages, lower rents, or subsidize the gap. If wages were higher, low-income households would be able to bring their rental cost-burden closer to the sustainable rate of 30%. If programs that create or subsidize low-income housing (like the Housing Trust Fund or Low Income Housing Tax Credit) were expanded, that cost-burden would shrink as well. Or, the government can subsidize the difference between what a family can afford to pay and what is available on the market (through, for example, Vermont Rental Subsidies and Housing Choice Vouchers). Each of these options suffers from some level of political or practical infeasibility. Vermont's governor



recently vetoed a minimum-wage increase;<sup>60</sup> “affordable” housing developments are not always geared towards extremely low-income families;<sup>61</sup> and developing and operating affordable housing sufficient to end homelessness in Vermont would cost over \$300 million dollars over six years.<sup>62</sup>

Still, eviction is like the acute symptom of a chronic housing affordability condition. When half of the population is paying more for rent than is sustainable, some large number of tenants will always fall into nonpayment and eviction. Housing affordability is a gigantic problem to tackle, but ultimately the only one that will fundamentally change the landscape of eviction in the State and nation.

## Recommendations

Evictions are often the cause of homelessness, and homelessness has devastating effects on individuals, families, household finances, livelihoods, education, and mental health. We also know the costs of homelessness to the taxpayer are significant and a huge drain on the resources of the State. As the United States Interagency Council on Homelessness (USICH) and the Department of Housing and Urban Development (HUD) put it, the goal is that “every community will have a comprehensive response in place that ensures homelessness is prevented whenever possible, or if it can’t be prevented, it is a rare, brief, and one-time experience.”<sup>63</sup> In this section we offer practical recommendations and ideas for how we could reduce homelessness through enhanced eviction prevention in the State of Vermont.

### I. Direct Funding for Rental Arrearages to Prevent Eviction

***When tenants fall behind on rent, provide adequate financial supports to help tenants become current.***

In Vermont, most funding for eviction prevention is provided through the Vermont Housing Opportunity Grant Program (HOP), a combination of federal Emergency Solutions Grant and Global Commitment Investment and state funding. Of the more than \$6.9 million in HOP funding in state fiscal year 2018,<sup>64</sup> only \$488,289<sup>65</sup> went toward homeless prevention rental assistance.

Smaller grants through non-profit organizations and faith-based groups may be available to assist tenants, and such funding streams should be better publicized to provide greater access to needy members of the community.

Actions:

- Increase HOP funding for rental arrearages and increase caps on assistance.
  - The HOP grant program caps funding at 3 months of rental assistance, but each county has the discretion to set a lower maximum. By changing to a cap on the amount of the grant, as opposed to the number of months of the arrearage, and investing more heavily in rental arrearage assistance, we estimate that evictions in Vermont could be dramatically lowered. [See reprint of chart on next page]

Impact and Cost of Arrearage-Support Programs		
Cap on Grant Amount	Estimated Percentage of Evictions that Could be Prevented	Estimated Vermont-Wide Cost
\$1,000 or less	21%	\$246,000
\$2,000 or less	42%	\$783,000
\$3,000 or less	58%	\$1,494,000
\$4,000 or less	66%	\$1,947,000

- As noted earlier, HOP is a combination of state and federal funds. Federal Emergency Solutions Grant funding is restricted by regulation to six months of rental arrears, including any late fees on those arrears,<sup>66</sup> and OEO policy is to limit rental arrears funding to no more than three months of rent. The Office of Economic Opportunity could set more liberal guidelines by using the federal maximum level of assistance, and beyond that, by authorizing use of state-only funds for additional grant funding to prevent homelessness for families in subsidized housing or mobile home parks.
- Reallocate General and Emergency Assistance (GA) funds currently used for temporary emergency housing to rental arrearages.<sup>67</sup>
  - In fiscal year 2018, 11,781 requests for temporary emergency housing were approved by DCF.<sup>68</sup> Of those, 2,768 were approved pursuant to the “catastrophic eligibility” criteria, which includes court-ordered eviction.<sup>69</sup> It is likely that some portion of those 2,768 “catastrophic eligibility” emergency shelter approvals could have been prevented using upstream eviction prevention. At a cost of \$75.85 per night,<sup>70</sup> on average, the State could see significant savings in the emergency housing program were it to invest more in assisting with rental arrearages.
- Expand the inventory of resources included in the Vermont 2-1-1 database, which contains detailed descriptions of programs and services that are provided by local community groups, social service agencies, government organizations, and so forth. If, due to its exclusion criteria, 2-1-1 is unable to list particular resources, develop an alternative resource list.

## II. Court-Based Eviction Prevention

***Once a case is filed, increase legal representation of defendants in eviction cases or make it easier for defendants to capably represent themselves.***

Although some households evicted from their rental units do not become homeless, for many, eviction leads to long-term housing instability or homelessness. Legal strategies that reduce evictions can be used as an upstream homelessness prevention tool. Partnerships among the Judiciary, Vermont Legal Aid, Legal Services Vermont, and social service agencies that provide budgeting and financial assistance, can prevent evictions, when possible, and mitigate the harm where eviction cannot be prevented.

Of the major civil cases filed in Vermont during fiscal year 2017, the largest percentage were landlord-tenant cases (31%).<sup>71</sup> These cases often take a significant amount of time to resolve. For instance, in 2016, the mean length of an eviction case in Rutland County was 144 days, while in Windsor County, the mean length was 164 days. This is a significant drain on judicial resources. In addition to reducing the number of households that are evicted, lawyer-for-the-day programs can generate settlements to facilitate a more orderly departure where housing cannot be preserved. With a negotiated move-out date, tenants are often able to secure alternative housing to avoid homelessness. Further, cases resolve more quickly with the help of an attorney. In Rutland County, after Legal Services Vermont introduced the lawyer-for-the-day PBI clinic program for eviction cases, the average length of each case went from 144 to 88 days – a reduction of 39%.

Actions:

- Hearing Notices: Include contact information for Vermont Legal Aid and Legal Services Vermont in hearing notices, notice of availability of limited representation for rent escrow hearings, and a referral to [vtlawhelp.org](http://vtlawhelp.org).
- Forms: Offer an easy-to-complete eviction answer form at the courthouse and with the notice of hearing.
- Scheduling: Improve access to legal services by engaging in block-scheduling of eviction cases. That way, legal services staff and pro bono attorneys can more easily arrange to be at court to assist tenants.
- Social service coordination: Eviction prevention rental assistance is available through social service providers in each county in Vermont. Coordinating with these agencies to have staff on-

### Josh and Vanessa's Story

Josh and Vanessa had full-time jobs and had been building up their savings. When they rented an apartment in 2016, they may have been able to buy a house had they known about programs for lower-income homebuyers. Instead, they rented an apartment that was perfect, with one exception: the lease did not permit pets, and the family wanted a dog.

Josh and Vanessa adopted a dog in spite of the terms of their lease. They did not think it was going to be a big deal. But just a few months later, in November of 2017, they were evicted because of their dog. **They did not have any legal assistance, so there is no way to know whether a lawyer could have prevented the eviction** by advising them to give up their dog or offering a pet deposit to their landlord, or at the very least, if their landlord would have agreed to a move-out deal in exchange for a decent reference. After they lost the eviction case, Josh and Vanessa only had ten days to find alternative housing before the sheriff would remove them from the property. They were unable to find a pet-friendly home in that short amount of time.

Josh and his family stayed with a friend for a month. Then they spent a month with family. In early 2018, Josh, Vanessa, and the two children started living in a hotel after they had worn out their welcome with friends and family. To do so, they had to give up their dog. They stayed at that first hotel for more than three months. At a rate of \$75 per day, or \$2,250 each month, **the family spent over \$6,000 at the hotel.** Their savings were nearly depleted. In April 2018, the family moved into a second, cheaper hotel, where they pay \$350 per week. They were still living there as of July of 2018.

*Continued on next page...*

site at the courthouse to either issue immediate payment or a promise of payment in the near future could cure a significant number of nonpayment cases. Where the tenancy cannot be saved, Coordinated Entry<sup>72</sup> or comparable social services should be offered at the courthouse to minimize or avoid a period of homelessness following the eviction. To this end, the social

service providers ideally would offer to help tenants with budgeting, applying for benefits, arranging vendor payments, and so forth.

- Meeting space: Space is needed in each courthouse for attorney-client consultation and for social service agencies.
- Landlord-Tenant Lawyer-for-the-Day Clinics:
  - Adequately fund legal services to support statewide representation of tenants at rent escrow hearings either through clinics or individual representation.
    - Identify sustainable funding sources to enable representation for tenants at rent escrow hearings in the 10 counties currently not served by clinics.
    - Identify funding to continue the work of Legal Services Vermont in Washington, Addison, and Rutland counties after its PBI grant expires in 2020.
  - Vermont Legal Aid and Legal Services Vermont will work with the Vermont Bar Association (VBA) to better integrate the VBA Low Bono Program into the work of the lawyer-for-the-day PBI clinics.

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Josh reports that it has “been really rough” living in hotels and motels. **“It interrupts your life, not having a place to call your own.** [The eviction] has...mentally, physically, [and] emotionally...taken a toll.” The family hopes to relocate to a new, affordable apartment as soon as they can, but their eviction history and lack of savings have made the search for a place to live harder than ever.

## Jamie's Story

Jamie is a veteran, and his family had been living in an affordable apartment for over a year when they were served with notice of termination of their tenancy for “no cause.” The family had never fallen behind on rent, never disturbed the neighbors, never caused damage – they did not even know that they could be evicted when **they had done nothing wrong**. Unfortunately, Jamie’s landlord had decided to sell the property and, believing it would be more marketable if it were vacant, wanted the family out. Jamie was unable to find new housing in the short amount of time provided in the notice, so his landlord filed an eviction case against him.

With the help of an attorney at the Legal Services Vermont PBI rent escrow clinic, the family was able to negotiate a move-out deal with their landlord and better understand their rights and responsibilities as tenants. **Pathways Vermont’s Veteran’s Family (SSVF) program worked with Jamie’s family to engage in an extensive and personalized housing search based on the household’s needs and preferences.** The Pathways team engaged in negotiations with the family’s new landlord, helped plan the move, and secured funding for deposits and rent. Jamie also received financial assistance from Friends of Veterans to facilitate their relocation. Pathways will continue to support Jamie’s family for several months to ensure sustainability and comfort in their new home and to offer referrals to other services and resources as needed.

Jamie happily reports that the family’s new home is “even nicer” than their old place, and they hope to stay there until they are ready to purchase a home of their own.

### III. Expand and Develop Programs to Help Tenants Manage Their Rental Payments

#### *a. The convenience of automatic payments of rent, repayment agreements, and utilities should be accessible to all Vermonters who wish to take advantage of such services.*

Reach Up allows recipients to request vendor payments of their rent and, if applicable, payments made according to a repayment plan. Such services should continue to be offered to tenants as a way of preserving a tenancy at risk.

When the Social Security Administration (SSA) finds that Social Security recipients are unable to manage their finances, it can redirect benefit payments to a representative payee, commonly called a “rep payee.” SSA field office personnel handle the operation of the rep payee program, including determining whether beneficiaries need a rep payee, and selecting and monitoring rep payees. Upon determining that a recipient qualifies for a rep payee, the SSA must designate one. While the preference is for a legal guardian, family member, or close friend to be appointed, at times such a person is not available. Efforts should be made to recruit more public and nonprofit institutions, who do not have conflicting financial interests with Social Security recipients, to perform rep payee services for those individuals who express a desire and need for a rep payee.

**b. Encouraging repayment agreements**

Innovative strategies should be explored to encourage landlords to work with tenants to retain housing through repayment agreements.

Rutland’s Homelessness Prevention Center (HPC) has been successful in drawing out back rent assistance payments by engaging tenants and landlords. For instance, the HPC may make an agreement that it will submit back rent payments after receiving confirmation from the landlord that the tenant has satisfied his payment responsibilities for a particular period of time. The strategy has been embraced by landlords as it provides ongoing accountability to the tenant for forward rent payments and allows the tenant to demonstrate a commitment to remaining in good standing with the landlord. The landlord agrees to maintain communication with HPC, and the tenant commits to making appropriate payments and working with a housing specialist on money management and budgeting strategies.

Mike’s Story
Mike and his three children have lived in the same apartment in Windsor County since 2004. He and his landlord have always had a great working relationship. Even so, in 2016, his landlord served him with a notice of termination for non-payment of rent. At court, Mike and his landlord struck a deal: Mike would pay his standard rent, plus an extra \$75 per month to cover the arrearage and court costs until his balance was paid in full. He hopes that the hours at his two part-time jobs will remain stable enough to avoid missing any payments. Paying the higher amount has been a struggle, but he is glad that <b>his landlord gave him a chance to get caught up over time</b> and remain in his home.

In 2016, Champlain Housing Trust instituted a counseling and repayment program for CHT tenants who have fallen behind on rent: “On Track.” The program offers tenants the opportunity to avoid eviction for nonpayment of rent by agreeing to a repayment plan and engaging in credit counseling and budget education. The program has seen tremendous results, with 71% of tenants either paying back their arrears in full or decreasing their arrears.

The Vermont Landlords’ Association, an organization that has represented the interests of residential and commercial landlords since 1974, notes that a landlord is taking a risk when committing to a repayment agreement with a tenant who has fallen behind in the past. The Association encourages providing financial incentives to landlords to encourage them to take the risk of accepting repayment plans.

**c. Banking opportunities should be available to all Vermont households.**

Many low-income households in Vermont are “unbankable,” *i.e.*, they have negative banking and/or credit histories and are unable to open accounts with conventional banking institutions. Services like those provided by Community Development Credit Unions (CDCUs) should be expanded and supported to ensure all low-income Vermonters have access to banking services, including savings accounts and low-interest small loans.

#### IV. Expand Rental Subsidies and Affordable Housing Programs

***Reduce the number of tenants who fall behind on rent by addressing the broader housing affordability crisis.***

For many households, one-shot assistance is insufficient to solve the housing affordability problem. Additional opportunities for longer term rental assistance should be explored.

The Vermont Rental Subsidy (VRS) should be expanded. Eighty-four days in a motel costs as much as one year of VRS rental assistance. There are currently no rules governing the VRS program. Rulemaking is appropriate so that the procedures can be adjusted to better meet community needs and priorities. Through rulemaking, additional details regarding case management and client obligations could be identified.

Tax policy options to make it more attractive to and profitable for landlords to offer affordable housing should be explored. For example, tax credits could be made available to landlords who rent to low-income tenants or who improve rental properties in ways that benefit low-income tenants, such as installing insulation or a more efficient heating system, or undertaking lead abatement.

Lastly, affordable housing development should continue to be supported throughout Vermont.

## Appendix: Background and Methodology

At both a national and state level, we have not been studying eviction well enough. Matthew Desmond, the leading scholar of eviction, has lamented: “Millions of families across the United States are evicted each year. Yet, we know next to nothing about the impact eviction has on their lives.”<sup>73</sup> Not only have we been in the dark about impact, but “very little is known about who gets evicted” in the first place.<sup>74</sup> There is “no comprehensive national data on evictions, and local data is largely incomplete.”<sup>75</sup> A vice president of Housing Vermont has stated, “We don’t have good data describing how many Vermonters end up in the eviction process, why they’re in the process and what the outcome is.”<sup>76</sup> A spokesperson for Vermont’s Committee on Temporary Shelter (COTS) has asked organizations to “track evictions to create a baseline for analyzing eviction data.”<sup>77</sup> The problem extends from nonprofit service providers to government agencies, from private landlords to public housing authorities. The gap exists across disciplines: “Social scientists and policymakers have all but ignored eviction,”<sup>78</sup> and “legal scholarship by and large has disengaged from the study of housing and poverty.”<sup>79</sup>

Princeton’s Eviction Lab was a huge step in the right direction for collecting eviction data. It is already being used to analyze and address eviction in states and counties across the country.<sup>80</sup> But the data is confident for only thirty-four states. For the other states, like Vermont, the authors acknowledge “low counts in our map and raw data, owing to the remoteness of some areas or data collection difficulties.”<sup>81</sup> Indeed, the data collected for Vermont may be less accurate than for any other state in the project.<sup>82</sup> Only two counties in the State (Rutland and Windsor) use e-filing to manage court documents.<sup>83</sup> Even in those two counties, the e-filed documents are not available on any public or private database—they are only available at the actual county courts. The result is that anyone wishing to study eviction cases in Vermont must go, county by county, to the superior courts and request individual files for review. The self-described “first nationwide database of evictions” was not able to perform this task.<sup>84</sup> For this report, with the help of the court clerks in Windsor and Lamoille counties, we pulled every eviction case from those two counties in 2016.<sup>85</sup> The result was our dataset of 207 eviction cases resulting in 156 evictions. The previous largest study of Vermont evictions was less than half that size.<sup>86</sup> This report gives us a closer look at eviction in Vermont than we have ever had before.

For each case, we looked at every document filed with the Court. We recorded who had a lawyer, what the basis of the case was, how much was owed (in dollar terms and in months of rent), whether there was a flaw in the pleadings that would support a motion to dismiss, and whether the case ended in an eviction. This is more fine-grained than the data available from any other resource—including the Eviction Lab, which does not record or publish information about legal representation, rent owed, or flaws in the case. Importantly, this study also allows for a more accurate count of evictions. The Eviction Lab includes settlements and stipulations in its count of evictions.<sup>87</sup> This is a good heuristic—most settlements do include the tenant vacating, but it is not always true: we counted at least eight settlements in our 207 cases where the tenant retained possession.<sup>88</sup> In some cases, the tenants had counterclaims and the settlement or stipulation was for both sides to dismiss all claims and counterclaims. In others, the tenant and landlord worked out a payment plan, and later recorded with the Court that all the payments had been made. By looking at every document—including the terms of the settlements and stipulations submitted to the Courts—we were able to much more precisely count which settlements were “evictions” and which were not.



We chose Windsor County as particularly representative of Vermont as a whole. Along all the dimensions typically studied by eviction researchers, Windsor was a near-perfect match for the State: age, race, renting population, size of households, education, displacement, employment, income, poverty, and housing stock.<sup>89</sup> In addition, it is one of the only two counties that e-files—making court record collection much easier. Lamoille—which does not e-file—was chosen to check whether the information collected varied widely from county to county. None of the results were markedly different between Windsor and Lamoille counties. As a result, we felt confident that our 207 cases (twelve percent of the 1,690 cases filed in Vermont in 2016) were a fair representation of the State as a whole.

To extrapolate our data to reach statewide estimates, we divided our data by twelve percent (207/1690 cases). For instance, in our dataset of 207 from Windsor and Lamoille counties, to cure (i.e., pay off the full amount of back rent due) all eviction cases in which the tenant owed \$2,500 or less in rent would cost \$128,061. That would resolve 59% of all nonpayment eviction cases in those two counties. Extrapolating to Vermont as a whole results in a total cost of \$1,045,522.

We hope that this report inspires researchers to continue to collect more data from more counties and more years.

## Endnotes

<sup>1</sup>Annual Statistical Report for FY16, Appendix 1 VERMONT JUDICIARY 9, available at [https://www.vermontjudiciary.org/sites/default/files/documents/Appendix%20I%20-%2020020217\\_1.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/Appendix%20I%20-%2020020217_1.pdf)

<sup>2</sup> The data show that 75% of eviction cases filed in Vermont end in actual evictions. See Finding (6), *infra* p.2.

<sup>3</sup> See, e.g., *Protect Tenants, Prevent Homelessness*, NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY 7 (“Evictions . . . are a direct cause of homelessness”)(hereinafter *Protect Tenants*); Matthew Desmond, *Unaffordable America: Poverty, housing, and eviction*, INSTITUTE FOR RESEARCH ON POVERTY 4-5 (Mar. 2015) (“Eviction can also lead to job loss . . . [and is] negatively associated with mental health . . . and increased material hardship.”).

<sup>4</sup> See Matthew Desmond & Carl Gershenson, *Who gets evicted? Assessing individual, neighborhood, and network factors*, SOCIAL SCIENCE RESEARCH 1 (2016) (“Nonpayment of rent is a leading cause of eviction.”).

<sup>5</sup> Indeed, until recently, there had been very little comprehensive data on evictions anywhere. See, e.g., Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94(1) SOCIAL FORCES 295, 295 (Sept. 2015) (“Millions of families across the United States are evicted each year. Yet, we know next to nothing about the impact eviction has on their lives.”); Andrew Flowers, *How We Undercounted Evictions By Asking The Wrong Questions*, FIVETHIRTYEIGHT (Sep. 15, 2016), <https://fivethirtyeight.com/features/how-we-undercounted-evictions-by-asking-the-wrong-questions/> (“The federal government does a poor job of tracking evictions, and the sources that do exist, such as court records, are incomplete and lack detail.”).

<sup>6</sup> *Eviction Lab*, PRINCETON UNIVERSITY, [evictionlab.org](http://evictionlab.org) (last visited December 2018), (collecting and publishing eighty-three million eviction records from across the United States). Matthew Desmond started studying housing, poverty, and eviction in 2008, summarizing his work in his book, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016). Desmond founded the Eviction Lab in 2017 in order to collect national data on eviction. See <https://evictionlab.org/about/>.

<sup>7</sup> There were 1,690 eviction cases in Vermont in 2016. If 75% of them ended in eviction, there would have been 1,267 evictions that year. See *supra* notes 1-2.

<sup>8</sup> 165 eviction cases were from Windsor County and 42 cases were from Lamoille County. For more information on why those counties were selected, see *infra* “Appendix: Background and Methodology.”

<sup>9</sup> 2016’s 1,690 landlord/tenant cases divided by Vermont’s 75,035 renting households. *Annual Statistical Report, supra* note 1; *Housing Needs, infra* note 58, at 2. By county, the filing rates ranged from a high of 3.25% in Rutland to a low of 1.21% in Lamoille.

<sup>10</sup> Vermont Rule of Civil Procedure 79.1(h) allows an attorney to enter a “limited appearance” on behalf of a self-represented client for certain purposes, including filing a complaint or other pleading, filing or arguing a specific motion or motions, and acting as counsel for a particular hearing or trial. “Lawyer-for-the-day” programs are able to provide tenants with representation at a single hearing or to file a single motion through the limited appearance rule.

<sup>11</sup> Elizabeth Brown, *Estimate of the Cost of Legal Counsel in Housing Court and Potential Homeless Shelter Savings Due to Averted Evictions*, CITY OF NEW YORK INDEPENDENT BUDGET OFFICE 6 (Dec. 10, 2014), available at <http://www.ibo.nyc.ny.us/iboreports/2014housingcourtleter.pdf> (estimating 37% of families in NYC shelters are there because of eviction); *Protect Tenants, supra* note 3, at 7 (estimating 45% of families in Massachusetts shelters and 40% nationwide are there because of eviction). Similar data is not available specifically for Vermont.

<sup>12</sup> Desmond & Kimbro, *supra* note 5, at 296. See also Rose Meltzer, *Why providers, lawyers and community-based workers are the public health dream team*, FIERCE HEALTHCARE (Oct. 8, 2018), available

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at <https://www.fiercehealthcare.com/hospitals-health-systems/are-providers-lawyers-and-community-based-workers-public-health-dream-team>.

<sup>13</sup> Katherine A. Fowler et al., *Increase in Suicides Associated With Home Eviction and Foreclosure During the US Housing Crisis: Findings From 16 National Violent Death Reporting System States, 2005-2010* 105(2) AMERICAN JOURNAL OF PUBLIC HEALTH 311 (2015).

<sup>14</sup> Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANNUAL REV. L. SOC. SCI. 15, 19 (2015).

<sup>15</sup> Rilwan Babajide et al., *Effects of Eviction on Individuals and Communities in Middlesex County*, MIDDLESEX COUNTY COALITION ON HOUSING AND HOMELESSNESS 1 (May 2016).

<sup>16</sup> Lior Jacob Strahilevitz, *Reputation Nation: Law in an Era of Ubiquitous Personal Information*, 102 NW. U. L. REV. 1667, 1678 (2008) (quoting the founder of a tenant-screening company: “It is the policy of 99 percent of our customers in New York to flat out reject anybody with a landlord-tenant record.”).

<sup>17</sup> Desmond, *supra* note 3, at 4.

<sup>18</sup> Babajide, *supra* note 15.

<sup>19</sup> 9 Vermont Statutes Annotated (V.S.A.) § 4467.

<sup>20</sup> *Id.*

<sup>21</sup> For maximum impact, the focus of this section is on nonpayment cases, which constitute the majority of evictions. This is not to suggest that stakeholders should ignore other kinds of eviction cases. “Breach” cases, for instance, made up roughly 10% of the evictions studied. They may be most appropriately resolved through supportive housing programs (to help the tenant conform to the lease) or reasonable accommodations (to help the landlord accommodate a tenant’s disability or need).

<sup>22</sup> 9 V.S.A. § 4467(a).

<sup>23</sup> 12 V.S.A. § 4773. After the eviction becomes a court case, the tenant must also pay off court costs and interest.

<sup>24</sup> A potential model is New York City Housing Court’s “One-Shot Program.” Tenants facing eviction can apply, typically only once a year, for up to \$15,000 in arrearages support. The average amount granted is \$3,800. N.R. Kleinfield, *Where Brooklyn Tenants Plead the Case for Keeping Their Homes*, N.Y. TIMES (May 20, 2018); *One Shot Deals*, HOUSING COURT ANSWERS, available at <http://housingcourtanswers.org/answers/for-tenants/housing-court-tenants/rent-arrears-tenants/one-shot-deals/>.

<sup>25</sup> In Vermont, there is no data measuring the number of financially-sustainable tenancies that are terminated due to a temporary reduction in income. Looking to other jurisdictions, one estimate for how many cases are the result of a complete loss of income comes from the New York City program described in Endnote 24. To qualify for an arrearage payment, the tenant must have an outside source of income. Sixty-seven percent of the arrearage applications are approved. N.R. Kleinfield, *Where Brooklyn Tenants Plead the Case for Keeping Their Homes*, N.Y. TIMES (May 20, 2018).

<sup>26</sup> *Housing Opportunity Grant Program (HOP) Annual Report – State Fiscal Year 2018*, VERMONT AGENCY OF HUMAN SERVICES, DEPARTMENT FOR CHILDREN AND FAMILIES, OFFICE OF ECONOMIC OPPORTUNITY 1 (2018). <https://dcf.vermont.gov/sites/dcf/files/OEO/Docs/HOP-AR-2018.pdf>.

<sup>27</sup> *Housing Opportunity Grant Program (HOP): State Fiscal Year 2018 Awards Summary*, VERMONT DEPT. FOR CHILDREN & FAMILIES OFFICE OF ECONOMIC OPPORTUNITY 2 (2018), available at <https://dcf.vermont.gov/sites/dcf/files/OEO/Docs/HOP-Grants-SFY2018.pdf>.

<sup>28</sup> Vermont 2-1-1 provides referrals for community resources for rent payment assistance, but some non-profits and faith-based organizations are not included within the 2-1-1 resource database. See <http://www.vermont211.org>.

<sup>29</sup> Interview with Margaret Frye, LEGAL SERVICES VERMONT, in Burlington, Vermont (June 2018).

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- <sup>30</sup> Vermont Rule of Civil Procedure (V.R.C.P.) 3.
- <sup>31</sup> V.R.C.P. 12.
- <sup>32</sup> Docket No. 52-2-16 Wrcv (June 1, 2016).
- <sup>33</sup> Docket No. 13-1-16 Wrcv (Feb. 29, 2016).
- <sup>34</sup> Answer, Docket No. 184-11-16 Lecv (2016).
- <sup>35</sup> Answer, Docket No. 529-11-16 Wrcv (Nov. 22, 2016).
- <sup>36</sup> Motion, Docket No. 529-11-16 Wrcv (Dec. 23, 2016).
- <sup>37</sup> Motion, Docket No. 546-11-16 Wrcv (Dec. 23, 2016).
- <sup>38</sup> Order, Docket No. 546-11-16 Wrcv (Jan. 11, 2017).
- <sup>39</sup> See, e.g., Answer, Docket No. 530-11-16 Wrcv (Nov. 14, 2016); Answer, Docket No. 427-9-16 Wrcv, (Oct. 18, 2016).
- <sup>40</sup> See, e.g., Order, Docket No. 530-11-16 Wrcv (Jan. 5, 2017); Order, Docket No. 427-9-16 Wrcv, (Dec. 30, 2016).
- <sup>41</sup> *Notice of Appearance for Self-Represented Litigant*, VERMONT JUDICIARY, available at <https://www.vermontjudiciary.org/sites/default/files/documents/100-00265.pdf>.
- <sup>42</sup> The Connecticut court system, for example, provides a fill-in-the-blanks form for Answers, not just Appearances. *Form JD-HM-5: Summary Process (Eviction) Answer to Complaint*, STATE OF CONNECTICUT SUPERIOR COURT, available at <https://www.jud.ct.gov/webforms/forms/HM005.pdf>.
- <sup>43</sup> A similar form is available on Vermont Law Help’s website. *Eviction Answer Form*, VERMONT LAW HELP, available at [https://vtlawhelp.org/sites/default/files/Eviction%20Answer%20Form\\_0.pdf](https://vtlawhelp.org/sites/default/files/Eviction%20Answer%20Form_0.pdf).
- <sup>44</sup> 12 V.S.A. § 4853a.
- <sup>45</sup> Jess Aloe, *Lawyers lurk court halls offering free help to renters facing eviction*, BURLINGTON FREE PRESS (Aug. 23, 2017).
- <sup>46</sup> James Sandman, president of the national Legal Services Corporation, said, “The Vermont program could be a national model.” Katie Jickling, *A Little Free Advice: Lawyers Help Vermonters Facing Eviction*, SEVEN DAYS (Mar. 15, 2017).
- <sup>47</sup> Frye, *supra* note 29.
- <sup>48</sup> Jickling, *supra* note 46.
- <sup>49</sup> *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, STOUT RISIUS ROSS (Mar. 2016), available at [https://www2.nycbar.org/pdf/report/uploads/SRR\\_Report\\_Financial\\_Cost\\_and\\_Benefits\\_of\\_Establishing\\_a\\_Right\\_to\\_Counsel\\_in\\_Eviction\\_Proceedings.pdf](https://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf); Brown *supra* note 11.
- <sup>50</sup> *Report to the Judicial Council*, JUDICIAL COUNCIL OF CALIFORNIA 5, 9 (July 2017) (finding that the program “improves litigant satisfaction and enhances court efficiency,” and recommending that it “should continue to be funded to build on the positive results,” through “increased funding for legal representation.”).
- <sup>51</sup> *San Francisco Right to Civil Counsel Pilot Program Documentation Report*, JOHN & TERRY LEVIN CENTER FOR PUBLIC SERVICE AND PUBLIC INTEREST AT STANFORD LAW SCHOOL 2 (May 2014).
- <sup>52</sup> Jake Blumgart, *Philadelphia sets aside \$500,000 to help renters fight eviction*, PLANPHILLY (June 29, 2017).
- <sup>53</sup> Teresa Wiltz, *How Free Legal Help Can Prevent Evictions*, HUFFPOST (Oct. 27, 2017).
- <sup>54</sup> *Mayor Walsh Unveils Anti-Displacement Legislative Agenda*, CITY OF BOSTON (Jan. 13, 2017).
- <sup>55</sup> *Vermont Roadmap to End Homelessness*, CORPORATION FOR SUPPORTIVE HOUSING 5-6 (Jan. 2017)[hereinafter *Roadmap*] available at <https://legislature.vermont.gov/assets/Legislative-Reports/Homelessness-Study.pdf>.

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<sup>56</sup> *Roadmap*, *supra* note 55, at 15 (“[T]he need for more deeply affordable rental housing for Vermont households at the lowest end of the income scale remains as pressing as ever.”). See also *Out of Reach: The High Cost of Housing*, NATIONAL LOW INCOME HOUSING COALITION 1 (2018) (“In no state, metropolitan area, or county can a worker earning the federal minimum wage or prevailing state minimum wage afford a two-bedroom rental home at fair market rent by working a standard 40-hour week.”); *The Gap: A Shortage of Affordable Homes*, NATIONAL LOW INCOME HOUSING COALITION (2017).

<sup>57</sup> Affordable Housing, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, [https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/](https://www.hud.gov/program_offices/comm_planning/affordablehousing/).

<sup>58</sup> *Vermont Housing Needs Assessment*, VT. DEPT. OF HOUSING & COMM. DEV., Executive Summary-8 (2015)(hereinafter *Housing Needs*), available at <https://accd.vermont.gov/sites/accdnew/files/documents/Housing/H-Research-VTHousingNeedsAssessment.pdf.pdf>.

<sup>59</sup> *Id.*

<sup>60</sup> April McCullum, *Gov. Scott vetoes four bills, including \$15 minimum wage*, BURLINGTON FREE PRESS (May 22, 2018).

<sup>61</sup> *The cost of affordable housing: Does it pencil out?* URBAN INSTITUTE & NATIONAL HOUSING CONFERENCE, available at <http://apps.urban.org/features/cost-of-affordable-housing/>.

<sup>62</sup> *Roadmap*, *supra* note 55, at 22.

<sup>63</sup> What Does Ending Homelessness Mean, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/goals/what-does-ending-homelessness-mean/>.

<sup>64</sup> *Housing Opportunity Grant Program (HOP) Annual Report – State Fiscal Year 2018*, VERMONT AGENCY OF HUMAN SERVICES, DEPARTMENT FOR CHILDREN AND FAMILIES, OFFICE OF ECONOMIC OPPORTUNITY 3 (2018).

<sup>65</sup> Interview with Sarah Phillips, Director of Office of Economic Opportunity, March 15, 2019.

<sup>66</sup> 24 C.F.R. § 576.106(a)(3).

<sup>67</sup> The GA Program is designed to serve as the State’s program of last resort to provide basic necessities of life, including emergency housing, when those needs cannot be met by any other assistance program within the Department for Children and Families (DCF). GA Rules 2600 *et seq.* and 2800 *et seq.* are available at <https://dcf.vermont.gov/esd/rules/current>.

<sup>68</sup> *General Assistance Emergency Housing Program – Legislative Report*, VERMONT AGENCY OF HUMAN SERVICES 10 (September 2018)(hereinafter *GA Report*).

<sup>69</sup> *GA Report supra* note 68, at 9.

<sup>70</sup> *GA Report supra* note 68, at 8.

<sup>71</sup> See *Annual Statistical Report for FY17*, VERMONT JUDICIARY 34, available at <https://www.vermontjudiciary.org/sites/default/files/documents/FY17%20Statistics.pdf>.

<sup>72</sup> Coordinated Entry (CE) is a process designed to provide people experiencing or at risk of homelessness with fair and equal access to housing assistance resources based on their strengths and needs. CE is required pursuant to Department for Housing and Urban Development regulation. See 24 C.F.R. § 578.7.

<sup>73</sup> Desmond & Kimbro, *supra* note 5.

<sup>74</sup> Desmond & Gershenson, *supra* note 4, at 1.

<sup>75</sup> *Protect Tenants, supra* note 3, at 14.

<sup>76</sup> Steve Zind, *New Project Looks to Reduce Homelessness by Preventing Evictions*, VERMONT PUBLIC RADIO (Nov. 3, 2016).

<sup>77</sup> Jess Aloe, *Vermont city debates a kinder way to tackle evictions*, A.P. NEWS (Jan. 30, 2017).

<sup>78</sup> Desmond & Kimbro, *supra* note 5, at 298.

<sup>79</sup> Desmond & Bell, *supra* note 14, at 16.

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<sup>80</sup> Emily Badger & Quoc Trung Bui, *In 83 Million Eviction Records, a Sweeping and Intimate New Look at Housing in America*, N.Y. TIMES (Apr. 7, 2018).

<sup>81</sup> *Eviction Lab*, *supra* note 6.

<sup>82</sup> Matthew Desmond et al., *Eviction Lab Methodology Report*, PRINCETON UNIVERSITY 58 (Apr. 2018).

<sup>83</sup> *Electronic Filing*, VERMONT JUDICIARY, <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access>.

<sup>84</sup> *Eviction Lab*, *supra* note 6.

<sup>85</sup> We chose 2016 to ensure that all or nearly all of the cases had reached their final disposition. Some late-2016 cases stretched into early 2018. Had we studied 2017, some of the later cases may still have been ongoing. Furthermore, by studying 2016 we were able to compare Vermont with the states analyzed by the Eviction Lab, which collected data from 2000 through 2016. *Eviction Lab*, *supra* note 6.

<sup>86</sup> See *Housing Vermont Eviction Prevention Initiative*, HOUSING VERMONT, (studying eighty-one evictions) available at <https://www.hvt.org/resources/documents/epi.pdf>.

<sup>87</sup> Desmond et al., *supra* note 82, at 28 n. 27 (“Settlements and stipulations were not separated from money or forcible detainer judgments.”).

<sup>88</sup> Docket Nos. 32-1-16 Wrcv (escrowed rent is split between parties; all claims and counterclaims dismissed); 76-2-16 Wrcv (a six-month payment to pay off back rent; successfully completed and tenants kept possession); 307-6-16 Wrcv (a six-month payment to pay off damages and keep possession; successfully completed and tenants kept possession); 380-8-16 Wrcv (stipulation to dismiss all claims and counterclaims); 425-9-16 Wrcv (stipulation to dismiss all claims and counterclaims); 473-10-16 Wrcv (stipulation to sell the property to defendants); 482-10-16 Wrcv (settlement to allow continued possession and payment plan); 537-11-16 Wrcv (payment plan to pay off damages and keep possession; successfully completed and tenants keep possession).

<sup>89</sup> Comparing Vermont / Windsor: Age (% persons under 18): 18.4 / 19.0; Age (% persons 65 and over): 22.0 / 18.1; Race (% white): 96.2 / 94.6; % Black or African American: 0.8 / 1.3; Owner-occupied housing unit rate: 70.8 / 70.6; Median gross rent: \$886 / \$913; Persons per household: 2.27 / 2.34; Living in same house 1 year ago: 88.3 / 86.4; Education (% high school graduate or higher): 92.4 / 91.9; Education (% bachelor’s degree or higher): 35.2 / 36.2; In civilian labor force (% of pop. 16 years+): 63.5 / 66.2; Median household income: \$54,763 / \$56,106; Persons in poverty: 10.0% / 11.9%. QuickFacts, U.S. CENSUS BUREAU. Windsor is also one of two counties where the relationship between the average wage and the fair market rent is exactly the same. (In Vermont at large and Windsor specifically, an average wage-earner would need to work 1.7 full-time jobs to afford a two-bedroom fair market rent apartment.) *Out of Reach*, *supra* note 56, at 245.

This report was revised on March 18, 2019, to correct the rental assistance figure provided on page 13 (\$488,289) and to update footnote 65.

"We are a family of 5....I will do whatever I need to do to keep a roof over my families head. We have nowhere to go from here. My babies want to have a warm bed to come home to every night."

"...my hours at my job were cut and I was not working full time....My husband became sick and I had to take time off....We have fallen behind in our car payment, our rent, and not to mention trying to keep food on the table....We are both in our 60s and moving all about is not something we wish to do."

"I have 4 children....We have absolutely nowhere to go on such short notice...I'm terrified of being homeless with my children in just 10 days after being in our home for over 4 years. I sincerely ask for mercy."

*\*Spelling and grammar preserved from original documents.*

