

Bill as Introduced

SB 415 - AS INTRODUCED

2010 SESSION

10-2724
06/09

SENATE BILL **415**

AN ACT relative to remedies against landlords.

SPONSORS: Sen. Gallus, Dist 1; Sen. Downing, Dist 22; Sen. Carson, Dist 14; Rep. Stohl,
 Coos 1; Rep. Chandler, Carr 1

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits the assessment of a daily fine for certain violations by landlords prior to service of a complaint.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struckthrough~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to remedies against landlords.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 Prohibited Practices; Remedies. Amend RSA 540-A:4, IX(a) to read as follows:
- 2 IX.(a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3
- 3 shall be subject to the civil remedies set forth in RSA 358-A:10 *for the initial violation*, including
- 4 costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues
- 5 *after service of the complaint* shall constitute a separate violation.
- 6 2 Effective Date. This act shall take effect January 1, 2011.

SB 415 - AS AMENDED BY THE SENATE

03/17/10 0964s
03/17/10 1072s

2010 SESSION

10-2724
06/09

SENATE BILL **415**

AN ACT relative to remedies against landlords.

SPONSORS: Sen. Gallus, Dist 1; Sen. Downing, Dist 22; Sen. Carson, Dist 14; Rep. Stohl, Coos 1; Rep. Chandler, Carr 1

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill prohibits the assessment of a daily fine for certain violations by landlords or tenants prior to the issuance of a temporary order.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 415 - AS AMENDED BY THE SENATE

03/17/10 0964s
03/17/10 1072s

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3 shall be subject to the civil remedies set forth in RSA 358-A:10 *for the initial violation*, including
4 costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues
5 *after issuance of a temporary order* shall constitute a separate violation.
6 2 Effective Date. This act shall take effect upon its passage.

CHAPTER 116
SB 415 - FINAL VERSION

03/17/10 0964s
03/17/10 1072s

2010 SESSION

10-2724
06/09

SENATE BILL **415**

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Coos 1; Rep. Chandler, Carr 1

COMMITTEE: Judiciary

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CHAPTER 116
SB 415 - FINAL VERSION

03/17/10 0964s
03/17/10 1072s

10-2724
06/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to remedies against landlords.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 116:1 Prohibited Practices; Remedies. Amend RSA 540-A:4, IX(a) to read as follows:
- 2 IX.(a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3
- 3 shall be subject to the civil remedies set forth in RSA 358-A:10 *for the initial violation*, including
- 4 costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues
- 5 *after issuance of a temporary order* shall constitute a separate violation.
- 6 116:2 Effective Date. This act shall take effect upon its passage.
- 7 Approved: June 1, 2010
- 8 Effective Date: June 1, 2010

Amendments

Senate Judiciary
March 11, 2010
2010-0964s
06/09

Amendment to SB 415

1 Amend RSA 540-A:4, IX(a) as inserted by section 1 of the bill by replacing it with the following:

2

3 IX.(a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3
4 shall be subject to the civil remedies set forth in RSA 358-A:10 *for the initial violation*, including
5 costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues
6 *after issuance of a temporary order* shall constitute a separate violation.

Amendment to SB 415
- Page 2 -

2010-0964s

AMENDED ANALYSIS

This bill prohibits the assessment of a daily fine for certain violations by landlords or tenants prior to the issuance of a temporary order.

Committee Minutes

SENATE CALENDAR NOTICE JUDICIARY

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's
Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: February 10, 2010

HEARINGS

Tuesday

3/2/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

2:00 PM SB439 2:15 PM SB438 2:30 PM SB341 2:45 PM SB415 3:00 PM SB431	making technical corrections and changes to court sites and names. relative to procedures in small claims actions. relative to remedies available in landlord-tenant actions. relative to remedies against landlords. relative to housing and tenancy protections for victims of domestic violence, sexual assault, or stalking.
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Sponsors:

SB439

Sen. Deborah Reynolds
Rep. David Cote

Sen. Bette Lasky

Sen. Robert Letourneau

Sen. Sheila Roberge

SB438

Sen. Deborah Reynolds
Rep. David Cote

Sen. Bette Lasky

Sen. Robert Letourneau

Sen. Sheila Roberge

SB341

Sen. Deborah Reynolds

SB415

Sen. John Gallus
Rep. Gene Chandler

Sen. Michael Downing

Sen. Sharon Carson

Rep. Eric Stohl

SB431

Sen. Matthew Houde
Rep. Beth Rodd

Sen. Bob Odell
Rep. Stephen Shurtleff

Sen. Molly Kelly
Rep. David Welch

Sen. Amanda Merrill
Sen. Martha Fuller Clark

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on SB 415 – *AN ACT relative to remedies against landlords.*

HEARING DATE: March 2, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds,
Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Senator Gallus with Senators Downing and Carson;
Representatives Stohl and Chandler

What the bill does: This bill prohibits the assessment of a daily fine for certain violations by landlords prior to service of a complaint.

Who supports the bill: Senator Gallus; Senator Downing; Michael LaFontaine, Housing Action NH; Maggie Fogarty of the American Friends Service Center; Francine Ryan; June Favazza; Chris Bilodeau; Thomas Toye; Joe Nelson; Attorney Elliott Barry, NHLA; Attorney Fred Mayer of Nashua; Debbie Valente representing NHPOA; Ron DuPont
(NOTE: Please see hearing report and transcript on SB 341 as some individuals testified on that bill in support of this bill.)

Who opposes the bill: No one

Summary of testimony received:

- Senator Gallus introduced the legislation and asked that the Committee please consider both this bill and the one heard previously (SB 341) which is on the same topic (assessment of a daily fine for violations by landlords). He said that he filed the bill at the request of a number of landlords.
- Senator Reynolds commented that it is helpful to have these two bills before the committee for consideration so that we can integrate them. She noted for the record that some individuals referenced this legislation when speaking on the first bill.
- Attorney Elliott Barry testified in support and spoke of why the law, if modified, will work well.

- He noted that under SB 415, if and only if the court later finds that there was a justified lockout, there would be a one-time fine of \$1,000 against the landlord.
- He remarked that even in the horror story given earlier, the Judge was “completely off the wall” in his order.
- He urged committee members to please not take apart the incentives in these statutes to have landlords behaving appropriately.
- He said that by making sure there is a \$1,000 limit, then no one risks a damages order.
- He said that Judges sometimes do make mistakes and this is why we have the appeals process available.
- Senator Reynolds commented that the fine can result not just in damages but also awarding of attorney’s fees and the recovery of the costs of filing. She said that she has seen a number of cases in her years of practice, one in Grafton County that resulted in an award of \$60,000 to the tenant.
- Attorney Mayer testified that he practices landlord/tenant law and is appearing today to endorse SB 415. He said that he believes that this does provide a good solution to the problem. He said that unfortunately, June’s award and the Grafton County award of \$60,000 are not unique. He said that these awards are not just happening in District Courts but in other cases, too.
- He went on to testify regarding a number of specific cases, Mr. Young’s specifically, where the tenant had been gone from the property for 2-1/2 months and how an inexperienced landlord can get trapped by this statute.
- In Carter v. Lachance in 1999, the District Court Judge said that there is no discretion in the \$1,000 per day fine that must be imposed. Unfortunately the Supreme Court has reiterated this and stated that the purpose is to deter landlord harm.
- In past rulings, the Court has invited the Legislature to weigh in on the issue and that he’s delighted that the matter is receiving this hearing today.
- In a recent Supreme Court decision, the court ruled that when the landlord interfered with a cable TV connection, even though the connection was unlawful, the court said that it didn’t matter that the services were being stolen, and still held the landlord liable and ruled that it was a taking of a utility.
- Senator Letourneau asked about the definition of the word “tenant.” Attorney Mayer responded that it is defined in 504-A.
- Senator Roberge asked for a definition of “willful.” Attorney Mayer responded that the individual intended the action, as opposed to violating the law.
- Ms. Valente clarified for the record that in June’s case, they did appeal, but that the Supreme Court refused to accept the case, instead affirming the lower court’s ruling.

- Ron DuPont testified in support of the legislation and shared his experiences 25 years ago when he was a new landlord. He asked that the committee please pass this much-needed legislation.

Fiscal Impact: Not applicable

Future Action: The Committee took the bill under advisement.

sfd
[file: SB 415]
Date: March 8, 2010

SB

Date: March 2, 2010
Time: 3:25 p.m.
Room: State House Room 103

The Senate Committee on Judiciary held a hearing on the following:

SB 415 relative to remedies against landlords.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on SB 415 and invited the prime sponsor, Senator John Gallus, to introduce the legislation.

Senator John T. Gallus, D. 1: Good afternoon, Madam Chairman, members of the Committee. For the record, I am Senator John Gallus, representing District 1, the North Country of New Hampshire.

Madam Chair, I have submitted this bill on behalf of the New Hampshire Property Owners Association who have decided that your bill is well-crafted and better suits their needs and therefore, I would like to ask you to consider both bills, and at the end of the day, to send my bill to study to give us time to see the results of your legislation.

I thank you.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Gallus. Senator Gallus, I think it would be very helpful to have both bills before us. I gather that if this Committee decides they would like to integrate the bills somehow to try to strike a balance, you wouldn't have any objection to that either.

Senator John T. Gallus, D. 1: None whatsoever.

RUB

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Gallus. Any questions for Senator Gallus at all? Seeing none, thank you very much for your testimony.

Senator John T. Gallus, D. 1: Thank you.

Senator Deborah R. Reynolds, D. 2: I want to note that with regard to SB 415, and I apologize, I don't want to cut anyone off, but we do have some people who have already testified. Elliott Berry has signed in in favor of SB 415. I gather you probably don't need to testify again. Is that right, Elliott?

Attorney Elliott Berry: If I might just clarify.

Senator Deborah R. Reynolds, D. 2: Why don't you come forward?

Attorney Berry: I will be as quick as I can.

Senator Deborah R. Reynolds, D. 2: Thank you, Elliott.

Attorney Berry: My name is still Elliott Berry and, again, I am strongly in support of 415.

I just want to comment on a couple of things that I think underscore why the law as modified by 415 will work well. Number one, the most important thing here is that, although an order might mistakenly be entered, I mean judges make mistakes, obviously and especially on ex parte orders the first thing that the tenant gets if they are locked out or whatever. At the time they are locked out, the only order they get is an injunctive order saying let them back in. I just want to be crystal clear that, under 415, if and only if the court later finds at the contested hearing that there was in fact an unjustifiable lock-out, then they will awarded a one-time \$1,000 penalty. And, it will only go out further only if the landlord, when they got the order, refused to comply.

Even in the horror stories that June told about where I think the judge was completely off the wall, it sounds like that the judge did believe her testimony and her witnesses that there was no willful lock-out, that she genuinely thought he was gone and therefore didn't enter any contempt order or any continuance out for that. It sounds like he went bananas, quite frankly, over the fact that she didn't comply with a different part of 540-A which says she has to use reasonable care for twenty-eight days to take care of the property and to give it back to him if he comes for it. Now, again, I don't know anything about the case, but in most respects, in a case under 415, there wouldn't have been any fine because the judge would have found there was

no willful violation because she honestly believed that he had vacated voluntarily, would have voluntarily vacated the premises.

Then, I just want to urge you not to take apart these important incentives because a single judge really messed up in applying the law that says she has to make reasonable, take reasonable care of the property that got left behind for twenty-eight days. Judges do make mistakes. They are no more infallible than we are and that is what they have appeal courts for and I'm sure that Senator Reynolds will do everything she can to assist in making sure that what seems like an unjust order will get overturned. You can't write a law that a judge isn't going to mess up on. But, I do think, again, that by making sure that there is no more of a penalty than \$1,000 for any violation that doesn't continue beyond the time when the court specifically orders the landlord to undo it. By taking that, no one is going to risk a damages order.

One final point on this. I have never seen. Debbie Valente understandably interpreted 358-A by saying it could be \$3,000, you could have double or triple damages under 358-A. The trouble is, you have to have it willful. They have to have a finding that it is willful in order to double or treble the damages under 358-A, but because, to have a 540-A violation, it already has to be willful. I have never seen a case where the damages were doubled or tripled because the court sensibly says it can be an extra willful. If it wasn't willful, you don't have a 540-A violation at all. So, the courts usually apply the \$1,000 a day, but they don't make it double or treble because you already had the prerequisite willful finding in order to have the violation of 540-A.

Senator Deborah R. Reynolds, D. 2: Thank you, Elliott. I think, thought, that it is fair to say that it is not just the damages themselves; it can be attorneys' fees. The way I am reading 415, the prevailing party can still recover costs and reasonable attorneys' fees that could also be thousands of dollars. Do you agree with that?

Attorney Berry: Yes. It is the vast majority of tenants in these cases. It was made to be a pro se proceeding.

Senator Deborah R. Reynolds, D. 2: It still authorizes that.

Attorney Berry: That's true.

Senator Deborah R. Reynolds, D. 2: And, the second piece of my would you believe, that it is not just one case; that there's probably any number of these cases out there, including cases that I have seen in Grafton County where, at least in one case, the landlord had to pay \$50,000. Would you believe that?

Attorney Berry: Yes. Again, please let me be clear. The bizarre thing about this one is that he apparently ruled in June's favor on the initial lock-out and then went off on a different section of the law. All I'm saying is I have never seen that or never heard of that happening.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Elliott Berry.

Attorney Berry: You're welcome.

Senator Deborah R. Reynolds, D. 2: Any other questions of Mr. Berry? Seeing none, I just want to note Mike LaFontaine, did you want to testify again, Mike or are you all set?

Unidentified speaker: He has gone.

Attachment #1 – testimony of Michael LaFontaine.

Senator Deborah R. Reynolds, D. 2: Oh, he has gone. Okay. Thank you. Maggie Fogarty, again, are you all set? Deb Valente, I think you haven't signed in either way.

Debbie Valente: I just would like to say one thing please.

Senator Deborah R. Reynolds, D. 2: If you could come forward, Deb.

Ms. Valente: Thank you. I would like to make mention that actually June did do an appeal and it was turned down and it was not heard because the higher court felt that the lower court was the sole finder of fact and therefore they did not accept her appeal.

Senator Deborah R. Reynolds, D. 2: Thank you, Deb. So, is it fair to say there was a notice of appeal filed in the New Hampshire Supreme Court and the Supreme Court did not allow that?

Ms. Valente: That is correct. So, in other words, we are following our judicial process, but we are not getting our day in court basically and we are running into the judges that are going bananas as Mr. Berry said.

Senator Deborah R. Reynolds, D. 2: Thank you very much. I just want to note for the record that we have the same parties primarily down – Francine Ryan, June Favazza, Chris Bilodeau, Thomas Toye, Joe Nelson in support of 415.

JHB

I think there is one other person here, Fred Mayer, who would like to testify relative to 415. Did you want to come forward, sir?

Attorney Fred Mayer: My name is Fred Mayer. I am an attorney in Nashua, New Hampshire. The focus of my practice is landlord/tenant law. For over a decade, I have been representing mostly landlords in various district courts throughout the state. Based on that experience... Oh, before I go any further, I should be clear. Although I am a member of the New Hampshire Property Owners Association, I speak exclusively for myself today and I am taking a slightly different position than the organized landlord groups that are addressing you.

I speak here today to endorse SB 415. I think you have heard at some length about the problem and I believe that SB 415 is a solution to that problem. I heard, I have listened to the prior testimony and I can assure you that June's situation is not a unique situation. That the \$60,000 verdict in Grafton County is not a unique situation. You can get these situations, I would hazard to guess, in every county and you can find the evidence, not just in the district courts, but in the cases reported by our New Hampshire Supreme Court.

Just within the past year or two, I noticed in the Locke v. Fuller case, there is a \$20,000 judgment and in the Simpson v. Young case, and these are folks that actually had their hearing before the New Hampshire Supreme Court. The New Hampshire Supreme Court found, in Mr. Young's case, Mr. Young being the landlord, that there was a \$34,000 judgment that should have been imposed. I am all too familiar with Mr. Young's case. He walked into my office about two weeks before his brief was due in the New Hampshire Supreme Court and asked if I would become involved in his case. I did, with unfortunately very limited results. I think Mr. Young's case is useful to consider on the heels of the testimony that you have heard here today because I think his experience would resonate with June's experience.

Mr. Young is a roofer. As the record on appeal notes, he was an inexperienced landlord. This was his first property, his first landlord and obviously last landlord/tenant experience. Mr. Young was not protected by the willfully language that is contained in the statute because the way that has usually been interpreted is that, if you intend the act, namely if you intended to say something to your tenant or you intended to change the locks. It doesn't matter that you had no knowledge whatsoever of the trap that this particular statute imposes, I think, upon the unwitting and unsavvy and inexperienced landlord. Frankly, an awful lot of experienced landlords get caught in the trap of this statute as well.

In Mr. Young's case, the tenant had been gone for two and a half months. There had been a husband and a wife. The wife got a restraining order. After some two and a half months, neither the wife nor husband was paying Mr. Young. At that point, the wife said she was leaving, the husband showed up and this is a matter of record in the Supreme Court appeal, Mr. Young said something to the effect of you have been gone for two and a half months and you need to find another place. That was his "willful act". Based on that action, the Supreme Court said that this was an unlawful eviction and that based on that mere conversation, because there was no testimony in the record about an actual loss. We tried to introduce some and we were barred on appeal. We tried to introduce some, which is another illustration of what is wrong with this statute.

June and Mr. Young, these are not the only landlords that go to district court representing themselves. They don't know that the New Hampshire Supreme Court has been interpreting RSA 540-A:4 going back to the Carter v. Lachance case that you referred to, I think it was back in 1999. They don't know that, under that case decision, the district court judge has no discretion. They don't know that the tenant doesn't need to plead or prove any damages to get this \$1,000 a day. They don't know that this \$1,000 a day penalty can be imposed regardless of their knowledge of the statute.

In more than one case, including Simpson v. Young, the Supreme Court has reiterated that the purpose of the statute is to deter unacceptable landlord conduct rather than remedy harm to the tenant. In more than one case, including Simpson v. Young, the Supreme Court has invited the Legislature to say something different if this is not the result the Legislature intended. My verdant hope that this was not the result that the Legislature intended. I am absolutely delighted that this issue is getting the hearing that it is getting today, both in this hearing and the hearing that immediately preceded this one.

I mention a situation in which an individual, namely Mr. Young, goes to court by himself, walks out of the court thinking he has been hit with a \$1,000 judgment. The Supreme Court said, well, you didn't allow this individual in until after you were served with the order, which didn't happen for thirty-four days after the conversation took place. So, he went out of court thinking he was hit with a \$1,000 judgment. Consequently, he didn't cross appeal. When we got to the Supreme Court, we were told that because he had not cross appealed, it was too late for him to raise the issue of whether or not he had violated the statute at all. The Supreme Court found that these additional thirty-three new violations, plus attorneys' fees because the tenant had an attorney. He wound up paying something on the order of \$54,000 to

JTB

buy his property back at a sheriff's sale by the time that the dust settled. That was his situation.

There are other situations, for example, in the Johnson v. Wheeler case. Now, I must submit that in Johnson v. Wheeler, that particular landlord did things he shouldn't have done. But, one interesting factor about that case is that part of the time the tenant was in jail and the court concluded that he should still get \$1,000 a day even though during part of that time he was incarcerated.

At the district court level, there have been, unfortunately a number of instances in which clients have come to me because, upon being released from jail, they went to the local district court, filed the 540-A and got ex parte relief to get back into their case. So, I am constantly telling my clients, unless you have a written surrender of the premises, unless you have a writ of possession that has been served, you need to serve the individual who has been incarcerated, and I don't care what the crime is, I don't care whether you know whether he is coming back or not, it is the only way now that you can protect yourself.

So, we have the statute, the way it is currently interpreted and currently written, in which landlords are liable when the tenant has been incarcerated, when the tenant has been the subject of a domestic violence restraining order, when a tenant but has left property behind, when the lease has expired, when utilities are owed, when rent is owed. In all of these situations, in the more recent case of Wiley v. Pleader, I don't know if you saw that one, but in the record, the Supreme Court acknowledges that the landlord interfered with a cable TV connection. When the landlord testified that he learned, after getting a writ of possession or getting a judgment against the tenant, that the connection was unlawful, none of that made any difference. The Supreme Court did not address the issue of perhaps the tenants as stealing cable services, nevertheless found that that didn't matter. He had interrupted the cable. That was a utility as the statute is now being interpreted by the New Hampshire Supreme Court. Therefore, the liability is there. This is another situation in which landlords would not expect liability, but it is being imposed. I'm sorry. I know you have heard a lot.

Senator Deborah R. Reynolds, D. 2: We are just, I'm falling behind, it is not you, it is me. But, this is such an important issue; I want to make sure that people have a chance to testify. Senator Letourneau has a question, but what I would ask you to do is, if you could, just wrap up and maybe communicate with the Committee to either Mrs. Duncan or Mrs. Brown some of the cases that you're talking about. That would be really helpful. So, Senator Letourneau, why don't you go ahead and ask your question.

JSD

Senator Robert J. Letourneau, D. 19: Thank you very much, Madam Chairman. I appreciate the time. You're right; this is a very important issue. Thank you for taking the question. What constitutes a tenant?

Attorney Mayer: I'm sorry. I didn't hear you.

Senator Robert J. Letourneau, D. 19: What constitutes a tenant? I'm going to bring this to you in a scenario that I know that occurred.

A tenant occupies an apartment, brings in another person. The person who occupied the apartment who has the tenant's lease leaves and leaves the person who he brought in there, who has no legal obligations with the landlord. Has never paid a penny of rent. Never gave any rent to the person that he was going to share the apartment with and then never paid the landlord any rent. Suddenly goes to court because the landlord locked him out because he didn't have a right to the property. The judge said no matter. You have to let him back in.

What constitutes a tenant under that circumstance? I mean, the landlord has not agreement with that person. Are they a squatter? What are they? What constitutes a tenant? Does there have to be some kind of written agreement?

Attorney Mayer: The statute defines tenant in different ways for different purposes. With specific regard to 540-A, and this is liability, the definition in the statute is a person to whom a landlord rents or leases residential premises, including manufactured housing or space in a manufactured housing park. That is the literal definition. That definition, I acknowledge, doesn't answer your question because, under our statute in our case law, a tenant doesn't necessarily need to be a tenant under a written lease. So, if a landlord had come to me with that question, I would tell him you need to protect yourself against the possibility that a court will find this person to be a tenant at will.

Generally speaking, I am encouraging my clients to, when they learn of somebody coming into the unit without their permission, to immediately notify their real tenant, you have an unauthorized occupant. He needs to leave or you are in violation of our agreement. Also, if there is a change being made with the tenant's acquiescence, with the landlord's acquiescence, that ought to be in writing. But, if yet another unintended consequence of the statute as it is currently constructed.

One other housekeeping matter. In SB 415, I notice it uses the word "complaint". The statute in the final sentence, final line, that statute doesn't actually refer to complaint and that is a more generic term. My suggestion would be to change that word to "petition and/or temporary orders" because what the statute says, I've got something in writing. I will simply leave it here and I thank you for your patience.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Senator Roberge has a question for you.

Senator Sheila Roberge, D. 9: How would you define willful?

Attorney Mayer: The way the Supreme Court, and I'm summarizing, it has considered that question in other contexts, specifically in the consumer protection context, and I'm paraphrasing here, but the general construction is willful means that you intended the act as opposed to intended to violate the law. So, in Simpson v. Young, merely willfully saying verbally you need to find another place was a willful act. Another case is changing a lock would be a willful act. The only time where I find any kind of cover for the landlord is in those situations where you have two statutes that conflict.

Senator Deborah R. Reynolds, D. 2: Thank you. Thank you very much for your testimony.

I just want to note Ron Dupont has singed in, but wasn't sure support or opposition.

Ron Dupont: Support.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you.

Mr. Dupont: May I speak on it?

Senator Deborah R. Reynolds, D. 2: You can speak for about one minute. I'm sorry, Ron, but we are so behind. If you could come forward, that would be fine.

Mr. Dupont: I honestly will try to keep it to one minute. My name is Ron Dupont. I am the owner of Red Oak Apartment Homes, Inc. in Manchester, New Hampshire. I just want to share a little story.

I was an experienced owner twenty-five years ago. I totally understand what everybody has been saying here. Elliott Berry, Debbie Valente and Fred Mayer did an outstanding job explaining the issues. They really did. I think

you have a majority of the people behind me in favor of 415. Okay? I think you really need to pass such a bill. There are residents out there who are looking to make money on us. There are not a lot of them, but there are some. So, I strongly support and urge you pass 415.

Senator Deborah R. Reynolds, D. 2: Thank you very much for your testimony. I'm going to now close the hearing on SB 415 and thank everyone for coming in to testify.

Hearing concluded at 3:50 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "L. Gail Brown". The signature is written in a cursive, flowing style.

L. Gail Brown

Senate Secretarial Supervisor

6/16/10

TESTIMONY OF MICHAEL LAFONTAINE
ON BEHALF OF HOUSING ACTION NEW HAMPSHIRE
IN SUPPORT OF SB 415 AND IN OPPOSITION TO SB341

I am Michael LaFontaine. I am a member of the Governing Council of Housing Action NH. Although these are separate bills and separate hearings, as a practical matter this is an either-or situation: either you support some credible deterrent to illegal behavior by that small set of landlords who willfully violate the law or you are comfortable putting everyone on the honor system.

I won't repeat the arguments you've already heard or that I know you will hear. Instead, I would like to put this in context. HANH is an umbrella organization for a wide range of organizations for which the availability of affordable housing is a critical issue. Those of our members who own and manage np housing are themselves landlords who are exposed to the same penalties for illegal behavior. Other member organizations are principally concerned about tenants' interests. Both sets of members recognize that if NH is ever to achieve a balanced housing market, it will be the private rental market that makes this happen. For this reason, it is in no one's interest to place unreasonable burdens on landlords.

Stable rental housing is home for a large proportion of NH's low income households and an increasing number of middle income households as well. The loss of that home because of the illegal actions of a landlord can be devastating. Most landlords obey the law. For the few who are inclined not to, it is important not just to punish that behavior after the fact but to deter it. That is, I presume, the reasoning behind the stiff penalties currently in place.

Both bills say that the current penalties are too stiff. We agree. SB415 modifies those penalties in ways that we think are reasonable and effective; on the other hand, eliminating any penalty for illegal behavior, as SB341 would do, seems to us to go entirely too far.

There are bad tenants. There are bad landlords. Bad tenants can make a landlord's life miserable and cost that landlord a good deal of money. Bad landlords can and do make families homeless. (I volunteer in a local shelter. I can tell you from experience that it is a lot easier to fall into homelessness than it is to get yourself out once you're there.)

We need to be careful that when penalties are imposed, they are deserved and proportionate to the injury the sanctioned behavior has inflicted. But we also need to be sure that the prospect of the penalty for violating the law is strong enough to deter illegal behavior in as many cases as possible. As I noted at the beginning of my testimony, this is an either-or situation. One bill comes down on the side of balance, the other does not. For this reason, we encourage the Committee to recommend enactment of SB 415.

Speakers

SENATE JUDICIARY COMMITTEE

Date: 3/2/10

Time: 2:45 p.m. Public Hearing on SB 415

SB 415 – relative to remedies against landlords.

Please check box(es) that apply:

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Senator Downing	D-22
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	ELLIOTT BERRY	NH Legal Assistance
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Michael LaFontaine	Housing Action NH
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Maggi Fogarty	American Friends Soc. Con
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	D. Valente	NHPOA
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marcine Ryan	NHPOA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Joe Favazza	NHPOA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Chris Bilodeau	NHPOA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	THOMAS TOYE	RPOA
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Joe Nelson	NHPOA
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Senator John Gallow	District 1
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Fred Mayer	self
✓	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RON DUPONT	RED OAK APART. HB 1116
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # SB 415

Hearing date: 3/2/10

Executive session date: 3/10/10

Motion of: amendment

VOTE: _____

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: OTP/A

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 11, 2010

THE COMMITTEE ON Judiciary
to which was referred Senate Bill 415

AN ACT relative to remedies against landlords.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0964s

Senator Deborah R. Reynolds
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of SB415

Docket Abbreviations

Bill Title: relative to remedies against landlords.*Official Docket of SB415:*

Date	Body	Description
01/06/2010	S	Introduced and Referred to Judiciary; SJ 1 , Pg.14
02/10/2010	S	Hearing: March 2, 2010, Room 103, State House, 2:45 p.m.; SC7
03/11/2010	S	Committee Report: Ought to Pass with Amendment 0964s, 3/17/10; SC11
03/17/2010	S	Committee Amendment 0964s, AA, VV; SJ 10 , Pg.166
03/17/2010	S	Sen. Reynolds Floor Amendment 1072s, AA, VV; SJ 10 , Pg.166
03/17/2010	S	Ought to Pass with Amendments 0964s, 1072s, MA, VV; OT3rdg; SJ 10 , Pg.166
03/17/2010	S	Passed by Third Reading Resolution; SJ 10 , Pg.169
03/18/2010	H	Introduced and Referred to Judiciary; HJ 27 , PG.1441
03/24/2010	H	Public Hearing: 3/30/2010 1:00 PM LOB 208
04/13/2010	H	Executive Session: 4/20/2010 10:00 AM LOB 208
04/21/2010	H	Committee Report: Ought to Pass for April 28 (Vote 17-0; CC); HC 33 , PG.1592
04/28/2010	H	Ought to Pass: MA VV; HJ 36 , PG.1699
05/12/2010	H	Enrolled; HJ 41 , PG.2097
05/12/2010	S	Enrolled
06/01/2010	S	Signed by the Governor on 06/1/2010; Effective 06/1/2010; Chapter 0116

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 415 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE on which you have taken attendance
- HEARING REPORT (written summary of hearing testimony)
- HEARING TRANSCRIPT (verbatim transcript of hearing)
- List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____
- SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0964 _____ - AMENDMENT # _____
- _____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

- AS INTRODUCED _____ AS AMENDED BY THE HOUSE
- FINAL VERSION AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

- EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7/12/10

[Signature]
COMMITTEE SECRETARY