HB 261, authorizing residential tenants to terminate their lease in instances of domestic violence or following a disabling illness or accident.

Hearing Date: April 11, 2023

Time Opened: 10:06 a.m. Time Closed: 10:46 a.m.

Members of the Committee Present: Senators Ricciardi, Innis and Chandley

Members of the Committee Absent: Senators Gannon and Soucy

Bill Analysis: This bill permits residential tenants to terminate their lease in instances of domestic violence or following a disabling illness or accident, and describes the written documentation required.

Sponsors:

Who supports the bill: 50 individuals were in support. Full sign in sheets are available upon request by contacting the Legislative Aide, Aaron Jones (aaron.jones@leg.state.nh.us).

Who opposes the bill: Representative Maria Perez, Representative Terry Roy, Nick Norman (Apartment Association of NH), David Cline, Julie Smith, Megan Schmitt, Curtis Howland, James Gardner, Jesse Medeiros

Who is neutral on the bill: Lindsay Lincoln (NH Legal Assistance), Krysten Evans (ABLE NH)

Summary of testimony presented in support:

Representative Ellen Read

- Presently, there are no legal protections for victims of domestic violence or stalking, or for those who acquire a new disability that makes their unit inaccessible.
- In addition to a personal experience, Representative Read filed this bill on behalf of a constituent who had lost the use of their legs and they lived in a third floor apartment.
• The bill was modeled after a law in Tennessee, which allows victims of domestic violence or stalking to leave their lease without a penalty.
• For public housing, only an attestation is required for a victim of domestic violence to leave their lease. If the Committee wanted to put this into the bill, Representative Read said she would support it.
• Representative Read provided the Committee with Amendment 23-1340h, which made numerous changes.
  o First, a permanent order of protection would be required as proof instead of a police report or documentation of an incident of domestic violence. An order of protection would need to be in place after a lease has been signed.
    ▪ Under TN law, once a person received documentation, they had 60 days to notify their landlord they would be leaving.
  o Second, there is an early termination fee established, which cannot exceed one quarter of one month’s rent. The fee would be prorated; thus, the longer a person has stayed, the less they would pay.
    ▪ Given the low vacancy rate, Representative Read said there is no expectation that a landlord would have difficulties finding another tenant.
  o Third, Paragraph V was reworded to take privacy into consideration, while ensuring landlords could still pursue evictions.
  o Fourth, the disability section removed the legal term “enjoy” and replaced it with “inaccessible” to prevent misinterpretations.
  o Finally, documentation for a disability would need to come from a medical doctor, physician assistant, or registered nurse. A disability would have to occur after a lease has been signed, and it would be expected to continue after a lease has ended.
• Representative Read reiterated that there are no protections given to people who are forced to live in dangerous.
• Representative Read asked the Committee to consider the bill, Amendment 23-1340h, and a section to clarify that a judge giving a protective order to a victim could make the perpetrator financially responsible for the early termination fee.

Representative Timothy Horrigan

• Representative Horrigan said he was a member of the policy committee that heard the bill. Amendments were introduced in Committee, but they were all rejected.
• If this bill were passed as is, Representative Horrigan said it would be an improvement over existing law.
• Representative Horrigan said the rental housing market has been heavily slanted towards landlords, and rents are higher than what the average working person can afford.
• If someone had a disability or had been a victim of domestic violence, Representative Horrigan asked why a landlord would want to stop them from
moving. He felt any sensible person would want to accommodate those situations.

- Representative Horrigan said tenants can be easily replaced; therefore, it would be a minor inconvenience to the landlord if an apartment became vacant.

**Jessica Margeson, Tenant Organizer, Granite State Organizing Project**

- Ms. Margeson helped an individual who could not return to their third floor apartment because they had a stroke. While this individual received assistance, Ms. Margeson said this is not always the case.
- This bill would help those who are suddenly disabled from a health condition, such as a stroke or a traumatic brain injury, and protect those who may not have a good landlord.
- Recently, Ms. Margeson has dealt with a family whose daughter fled from a domestic violence situation. The family, however, is facing eviction since they are living in subsidized housing. Since victims could move in with someone else who may be a tenant, Ms. Margeson hoped the Committee would add protections for both.
- This bill would not allow a perpetrator to remain in a unit because landlords can file a seven day eviction against someone who is a threat to other tenants.
- From her personal experience, however, there are domestic violence cases that do not affect other tenants.

**Summary of testimony presented in opposition:**

**Nick Norman, Apartment Association of NH**

- In the House policy committee, the amendments had no recommendation. On the floor, the final vote was 193 to 191.
- Mr. Norman said the introduced bill had a lot of problems. If a tenant is allowed to terminate a lease, then landlords are left “holding the bag.” Mr. Norman said residential rentals are extremely complex.
- In this bill, it is unknown if they are talking about couples or cohabitating individuals. Also, it is unknown if a domestic violence victim could terminate a lease and leave the perpetrator in the unit.
- If a victim can terminate a lease, Mr. Norman said a landlord should have the right to remove all the tenants and their belongings, which can be costly.
- Mr. Norman said there are strict laws on how security deposits must be treated and handled. In the introduced bill, a security deposit must go to the person leaving; however, Mr. Norman asked what about the person who is left behind who may have paid part of the deposit. Mr. Norman said violations of the security deposit statute can be hefty.
- Mr. Norman said a lot of provisions were vague. For example, requiring a police report or an original temporary order could lead to the termination of a lease, even if allegations are proven to be false.
As introduced, this bill required a person to provide a written notice; however, that was not defined, so Mr. Norman wondered if a slip of paper on a counter could be considered a written notification.

Under existing federal case law, a disabled person can receive a reasonable accommodation. Since the termination of a lease is already considered a reasonable accommodation, Mr. Norman said that section of the bill was unnecessary.

Mr. Norman said it was unreasonable for a person with a new disability to give a notice of only one day.

Mr. Norman said landlords are willing to work with victims because they do not want a domestic violence situation to continue in their residence because it is bad for the victim, other tenants, and their business.

Mr. Norman had not reviewed the amendment; however, he did not think the bill was needed.

Senator Ricciardi asked if there were provisions in place, similar to those for evictions, that did not require further laws.

  o Mr. Norman responded that things are routinely worked out for victims of domestic violence. In his over 35 years of experience, he said he has had only one situation. Landlords do not want someone to stay in a violent or unsafe situation because it is not good for that person, the other tenants, or the landlord’s business. If this became law, housing providers would be left “holding the bag” with a potentially bad tenant.

Senator Ricciardi did not want to mix up the bills, but she was thinking about HB 117.

  o Mr. Norman replied that the Fair Housing Act provides protections for those with disabilities; however, it does not protect against violence.

David Cline

Mr. Cline disagreed with Representative Horrigan because the introduced bill had too many ambiguities. The language affecting disabled people, for example, did not have a clear definition for who must provide documentation.

Mr. Cline did not want the Committee to pass the introduced bill, and he requested additional time to study Amendment 23-1340h.

Mr. Cline said most landlords do not want people who cause problems in their buildings to stay because it can hurt their reputation and they can lose good tenants.

Neutral Information Presented:

Lindsay Lincoln, NH Legal Assistance

  The Violence Against Women Act (VAWA) provides federal protections to victims of domestic violence, sexual assault, or stalking. The Act protects individuals from being denied assistance or being terminated from federal
programs. In addition, it allows individuals to break their leases. The Act is applicable to a broad range of federal housing subsidy programs, including public housing, tax credited properties, and Section 8 vouchers.

- The Fair Housing Act protects individuals against discrimination based on sex or disability, and it is applicable regardless of whether federal subsidies are involved. Certain exemptions exist, such as for an owner-occupied building of three or fewer units.
- Under state law, if a tenant in a private unit without a subsidy has broken their lease, then they could be liable for the remainder of the contract.
- Under existing law, landlords have a duty to mitigate their damages; therefore, if a unit is left vacant, then they have an obligation to make a good faith effort to rent it to another person. Given the low vacancy rate, Attorney Lincoln said it would not be difficult to find a tenant to relieve the other tenant of the remainder of their contract.
- Attorney Lincoln said they had specific concerns with the introduced bill, especially when it is compared to VAWA.
  - The definition of a household member, for example, is limited to a family member in the same household. There could be a situation where a household could not leave in its entirety, such as roommates that do not share a family relationship. Protections of VAWA are extended to an affiliated individual, which could be any other lawful occupant.
  - Self-certification is allowed under VAWA, which can be less burdensome for victims. Attorney Lincoln said obtaining police reports and protective orders can be challenging for those who are legitimate victims.
  - VAWA has more robust confidentiality protections in place that Attorney Lincoln said should be explored.
  - Attorney Lincoln said there are terms used in the bill that need to be better defined. For example, someone could be liable for rent in a 30-day period in addition to any previous obligations that are outstanding on the termination date.

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Date Hearing Report completed: April 17, 2023