

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

**In re:
MODIFICATION OF THE LOCAL RULES
OF PRACTICE AND PROCEDURE
IN THE U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT**

REVISING LOCAL RULE 4001-2

STANDING ORDER # 20-03

**TO CLARIFY THE PROCEDURE A DEBTOR MUST FOLLOW
TO RETAIN POSSESSORY RIGHTS IN LEASED PREMISES
WHEN LANDLORD OBTAINED PRE-PETITION
JUDGMENT OF POSSESSION FOR THOSE PREMISES,
PURSUANT TO 11 U.S.C. § 362(B)(22) AND § 362(L)**

The automatic stay that goes into effect upon the filing of a bankruptcy petition does not prohibit a lessor who obtained a judgment for possession with respect to the debtor's leasehold interest in real property, pre-petition, from exercising their rights under state law, pursuant to 11 U.S.C. § 362(b)(22), unless the debtor complies with the specific requirements of § 362(l). Since neither those statutes nor the Court's current Local Rule on the subject, see Vt. LBR 4001-2, provide sufficient procedural guidance with respect to the payments the debtor must deliver to the Clerk, the Court deems it necessary to revise that Local Rule to clarify the procedural steps required, in this District, for a debtor to retain possession of their leased premises, after entry of a pre-petition judgment of possession.

Accordingly, after due consideration, and input from the Vermont Bankruptcy bar, IT IS HEREBY ORDERED that Vt. LBR 4001-2 is revised to read as follows, with the changes noted in red:

VT. LBR 4001-2. AUTOMATIC STAY – DEBTOR’S ASSERTION OF EXCEPTION FOR LEASE OF RESIDENTIAL PROPERTY UNDER § 362(L).

(a) Filing of the Initial Certification, Official Form 101A, and Delivery of Payment for One Month’s Rent.

- (1) ~~Where~~ If a state court judgment of eviction has been entered against a debtor pre-petition, the debtor resides in that property as of the petition date, and the debtor seeks the benefit of the automatic stay with regard to ~~wishes to remain in~~ that residential leased property ~~post-petition, and the debtor resides in that property as of the petition date,~~ the debtor must include with their bankruptcy petition:
- (A) an Official Form 101A (“Initial Statement About an Eviction Judgment Against You”) with the “Certification About Applicable Law and Deposit of Rent” section of the form completed,
 - (B) a copy of the pre-petition judgment of eviction, ~~and~~
 - (C) a copy of the lease (or rental agreement), or an affidavit from the debtor specifying the monthly rent amount, and
 - (D) a sum equal to the monthly rental obligations due under the applicable rental agreement, payable to the debtor’s lessor (i.e., the landlord), in the form of a bank check, attorney trust account check, or money order.

~~(2)(1) — If a debtor delivers the rent payment to the Clerk, but fails to file either a copy of the judgment of eviction or Official Form 101A, the Clerk will return the rent payment to the debtor with a notice informing the debtor that the Clerk will not accept or process the rent payment unless and until it is accompanied by the judgment of eviction and Official Form 101A.~~

(2) When a debtor’s case is filed electronically, the rent payment must be delivered to the Clerk by hand delivery, first-class mail, or private courier service within 3 business days after filing the petition. If the Clerk receives the rent payment within ~~the~~ at 3-day period, the Clerk will treat the rent payment as if received with the petition (provided Official Form 101A and a copy of the judgment of eviction were filed with the petition).

(3) If a debtor timely delivers the rent payment to the Clerk, but the filing is deficient due to the debtor’s

(A) failure to file either a copy of the judgment of eviction,

(B) failure to file ~~or~~ Official Form 101A,

(C) delivery of a rent payment in the wrong amount, or

(D) delivery of a rent payment which is not valid tender (e.g., a check that is not signed or not payable to the lessor);

then, the Clerk will note this deficiency on the docket and immediately return the rent payment to the debtor with a deficiency notice informing the debtor that the Clerk will not accept or process the rent payment unless the debtor cures the filing deficiency, by filing the required documents or delivering the proper payment, within 7 days of the petition date and until it is accompanied by the judgment of eviction and Official Form 101A.

~~(3)~~

~~(4) If the debtor fails to timely deliver the rent payment, as specified above, the Clerk will note this filing deficiency on the docket. Thereafter, the Clerk will promptly serve upon both the debtor and the lessor a certified copy of the docket entry indicating the debtor’s failure to make the requisite rent deposit and indicating the applicability of the exception to the stay under § 362(b)(22) of the Code. (There is no fee due for the issuance and service of these certified copies.)~~

(b) Clerk’s Notification upon Receipt of Official Form 101A and Payment for One Month’s Rent.

When the Clerk receives Official Form 101A together with the required copy of the judgment of eviction and the proper rent payment, the Clerk will

- (1) issue a notice to the lessor, stating that the Clerk has received (A) the debtor’s Official Form 101A, (B) a copy of the judgment of eviction, and (C) rent payment, and enclose copies of each with the notice;
- (2) set a deadline of 7 days after service of notice to the lessor within which time the lessor may either (A) consent to the inapplicability of the stay exception under § 362(b)(22) of the Code, or (B) object to an averment made by the debtor in Official Form 101A and request the entry of an order stating that the § 362(b)(22) exception does apply; and
- (3) notify the lessor that if the lessor files its consent, the Clerk will promptly transmit the rent payment to the lessor.

...

(d) Filing of the Second Certification, Official Form 101B.

- (1) Within 30 days of filing the petition, the debtor must file with the Clerk, and serve on the lessor, Official Form 101B (“Statement About Payment of an Eviction Judgment Against You”) indicating the debtor has cured, under applicable non-bankruptcy law, the entire monetary default that was the basis of the issuance of the judgment of eviction. The debtor must file Official Form 101B regardless of whether the lessor objected to Official Form 101A.
- (2) However, if the lessor is a public housing entity, the debtor does not need to file Official Form 101B.


...

(f) Debtor’s Failure to Timely Deliver Payment for One Month’s Rent or Timely File Official Form 101A or 101B.

If a debtor fails to timely deliver the proper rent payment or timely file Official Form 101A along with all required and completed documents, as specified in paragraph (a) of this Rule, the petition, or fails to timely file Official Form 101B as specified in paragraph (d) of this Rule, then within 30 days of filing the petition, the Clerk will note that filing deficiency on the docket. Thereafter, the Clerk will promptly serve upon the debtor and the lessor a certified copy of the docket entry indicating the absence of the form(s) and indicating the debtor failed to comply with the applicable statute and applicability of the exception to declaring the exception to the automatic stay specified in under § 362(b)(22) of the Bankruptcy Code applies. See also 11 U.S.C. § 362(l)(4)(A). (No fee will be due for these certified copies.)

IT IS FURTHER ORDERED this revision to the Local Rule is effective upon entry of this Order.

February 25, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge