S T A T E O F N E W Y O R K

29

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the New York city civil court act, in relation to judges of the New York city housing part

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 110 of the New York city civil court act, as added by chapter 982 of the laws of 1972, subdivisions (a) and (l) as amended, subdivision (n) as relettered and subdivision (o) as added by chapter 849 of the laws of 1977, paragraph 9 of subdivision (a) as amended by chapter 309 of the laws of 1978, subdivision (c) as amended by chapter 701 of the laws of 1973, subdivision (e) as amended by chapter 528 of the laws of 1984, subdivision (f) as amended by chapter 64 of the laws of 2007, subdivision (g) as amended by chapter 488 of the laws of 2010, subdivision (h) as amended by chapter 524 of the laws of 2005, subdivision (i) as amended by chapter 310 of the laws of 1978, subdivision (m) as amended by chapter 664 of the laws of 1978, paragraph 3 of subdivision (m) as amended by chapter 524 of the laws of 1980, subdivision (n) as added by chapter 704 of the laws of 1973 and subdivision (p) as added by chapter 95 of the laws of 1989, is amended to read as follows:

S 110. Housing part. (a) A part of the court shall be devoted to actions and proceedings involving the enforcement of state and local laws for the establishment and maintenance of housing standards, including, but not limited to, the multiple dwelling law and the housing maintenance code, building code and health code of the administrative code of the city of New York, as follows:

(1) Actions for the imposition and collection of civil penalties for the violation of such laws.

(2) Actions for the collection of costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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nuisance or other violation of such laws, or in the removal or demolition of any dwelling pursuant to such laws.

(3) Actions and proceedings for the establishment, enforcement or foreclosure of liens upon real property and upon the rents therefrom for civil penalties, or for costs, expenses and disbursements incurred by the city of New York in the elimination or correction of a nuisance or other violation of such laws.

(4) Proceedings for the issuance of injunctions and restraining orders or other orders for the enforcement of housing standards under such laws.

(5) Actions and proceedings under article seven-A of the real property actions and proceedings law, and all summary proceedings to recover possession of residential premises to remove tenants therefrom, and to render judgment for rent due, including without limitation those cases in which a tenant alleges a defense under section seven hundred fifty-five of the real property actions and proceedings law, relating to stay or proceedings or action for rent upon failure to make repairs, section three hundred two-a of the multiple dwelling law, relating to the abatement of rent in case of certain violations of section [D26-41.21] 27-2017 of such housing maintenance code.

(6) Proceedings for the appointment of a receiver of rents, issues and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such laws.

(7) Actions and proceedings for the removal of housing violations recorded pursuant to such laws, or for the imposition of such violation or for the stay of any penalty thereunder.

(8) Special proceedings to vest title in the city of New York to abandoned multiple dwellings.

(9) The city department charged with enforcing the multiple dwelling law, housing maintenance code, and other state and local laws applicable to the enforcement of proper housing standards may commence any action or proceeding described in paragraphs one, two, three, four, six and seven of this subdivision by an order to show cause, returnable within five days, or within any other time period in the discretion of the court. Upon the signing of such order, the clerk of the housing part shall issue an index number.

(b) On the application of any city department, any party, or on its own motion, the housing part of the civil court shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.

(c) Regardless of the relief originally sought by a party the court may recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest; provided in the event any such proposed remedy, program or procedure entails the expenditure of monies appropriated by the city, other than for the utilization and deployment of personnel and services incidental thereto, the court shall give notice of such proposed remedy, program or procedure to the city department charged with the enforcement of local laws relating to housing maintenance and shall not employ such proposed remedy, program or procedure, as the case may be, if such department shall advise the court in writing within the time fixed by the court, which shall not be less than fifteen days after such notice has been given, of the reasons such order should not be issued, which advice shall become part of the record. The

court may retain continuing jurisdiction of any action or proceeding relating to a building until all violations of law have been removed.

(d) In any of the actions or proceedings specified in subdivision (a) OF THIS SECTION and on the application of any party, any city department or the court, on its own motion, may join any other person or city department as a party in order to effectuate proper housing maintenance standards and to promote the public interest.

(e) Actions and proceedings before the housing part shall be tried before civil court judges, acting civil court judges, or housing judges. Housing judges shall be [appointed] ELECTED pursuant to [subdivision (f) of this section] SECTION FIFTEEN OF ARTICLE SIX OF THE CONSTITUTION and shall be duly constituted judicial officers, empowered to hear, determine and grant any relief within the powers of the housing part in any action or proceeding except those to be tried by jury. Such housing judges shall have the power of judges of the court to punish for contempts. Rules of evidence shall be applicable in actions and proceedings before the housing part. The determination of a housing judge shall be final and shall be entered and may be appealed in the same manner as a judgment of the court; provided that the assignment of actions and proceedings to housing judges, the conduct of the trial and the contents and filing of a housing judge's decision, and all matters incidental to the operation of the housing part, shall be in accordance with rules jointly promulgated by the first and second departments of the appellate division for such part.

(f) [The housing judges shall be appointed by the administrative judge from a list of persons selected annually as qualified by training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs by the advisory council for the housing part. The list of persons who have been approved by such advisory council, whether or not appointed to such judicial position, shall be deemed public information and be published in the city record immediately after such list is submitted to the administrative judge.] The annual salary of a housing judge shall be one hundred [fifteen] TWENTY-FIVE thousand [four] SIX hundred dollars.

(g) The advisory council for the housing part shall be composed of three members representative of real estate owners or lessors, including the chair of the New York city housing authority; three members representative of tenants' organizations; and two members representative of each of the following: civic groups, bar associations and the public at large. Such members shall be appointed by the administrative judge, with the approval of the presiding justices of the first and second departments of the appellate division. Except for the member representing the housing authority, the members of the advisory council shall be appointed for non-renewable terms of three years. In addition the mayor of the city of New York shall appoint one member to serve at his or her pleasure and the commissioner of housing and community renewal shall be a member.

(h) The advisory council shall meet at least four times a year, and on such additional occasions as they may require or as may be required by the administrative judge. Members shall receive no compensation. Members shall visit the housing part from time to time to review the manner in which the part is functioning, and make recommendations to the administrative judge and to the advisory council. A report on the work of the part shall be prepared annually and submitted to the administrative judge, the administrative board of the judicial conference, the majority and minority leaders of the senate and assembly, the governor, the

chairpersons of the judiciary committee in the senate and assembly and the mayor of the city of New York by the thirty-first day of January of each year.

(i) Housing judges shall have been admitted to the bar of the state for at least five years, two years of which shall have been in active practice. Each housing judge shall serve full-time for [five] TEN years[. Reappointment shall be at the discretion of the administrative judge and on the basis of the performance, competency and results achieved during the preceding term].

[(k)] (J) Unless a party requests a manual stenographic record by filing a notice with the clerk two working days prior to the date set for an appearance before the court, hearings shall be recorded mechanically. A party may request a transcript from a mechanical recording. Any party making a request for a copy of either a mechanically or manually recorded transcript shall bear the cost thereof and shall furnish a copy of the transcript to the court, and to the other parties.

[(l)] (K) Any city department charged with enforcing any state or local law applicable to the enforcement of proper housing standards may be represented in the housing part by its department counsel in any action or proceeding in which it is a party. A corporation which is a party may be represented by an officer, director or a principal stockholder.

[(m)] (L) The service of process in any of the actions or proceedings specified in subdivision (a) OF THIS SECTION which are brought under the housing maintenance code of the administrative code of the city of New York shall be made as herein provided:

(1) Service of process shall be made in the manner prescribed for actions or proceedings in this court, except where the manner of such service is provided for in the housing maintenance code of the administrative code of the city of New York, such service may, as an alternative, be made as therein provided.

(2) Where the manner of service prescribed for actions or proceedings in this court includes delivery of the summons to a person at the actual place of business of the person to be served, such delivery may be made alternatively to a person of suitable age and discretion at the address registered with the department charged with the enforcement of local laws relating to housing maintenance pursuant to article [forty-one] TWO OF SUBCHAPTER FOUR OF CHAPTER TWO OF TITLE TWENTY-SEVEN of such code, hereinafter referred to as the "registered address".

(3) Where the manner of service prescribed for actions or proceedings in this court includes affixing the summons to the door of the actual place of business of the person to be served, the summons may, as an alternative, be posted in a conspicuous place on either the premises specified in the summons or the registered address.

(4) Where the manner of service for actions or proceedings in this court includes mailing the summons to the person to be served at his OR HER last known residence, the summons may, as an alternative, be mailed to the registered address; however, if the person to be served has not registered as required by article [forty-one] TWO OF SUBCHAPTER FOUR OF CHAPTER TWO OF TITLE TWENTY-SEVEN of such housing maintenance code, such summons may, as an alternative, be mailed to an address registered in the last registration statement filed with such department other than the address of the managing agent of the premises and to the last known address of the person to be served.

(5) Where the manner of service for actions or proceedings in this court includes mailing the summons to the person to be served at his OR

HER last known residence, if the person to be served is a corporation and if either: (i) an officer of such corporation, (ii) the managing agent of such corporation for the premises involved in the suit or (iii) a person designated by such corporation to receive notices in its behalf, other than the secretary of state, has been named a party to the suit, the summons may, as an alternative, be mailed to the registered address of such corporation or, if such corporation has not registered as required by such code, to the address of such corporation set forth in a document filed or recorded with a governmental agency.

(6) A copy of the summons with proof of service shall be filed in the manner provided in section four hundred nine OF THIS ACT, except that such filing shall be made with the clerk of the housing part in the county in which the action is brought.

[(n)] (M) Nothing contained in [the] THIS section [one hundred ten] shall in any way affect the right of any party to trial by jury as heretofore provided by law.

[(o)] (N) There shall be a sufficient number of pro se clerks of the housing part to assist persons without counsel. Such assistance shall include, but need not be limited to providing information concerning court procedure, helping to file court papers, and, where appropriate, advising persons to seek administrative relief.

[(p)] (O) The court shall review the performance and records of administrators appointed pursuant to article seven-A of the real property actions and proceedings law or receivers appointed pursuant to paragraph six of subdivision (a) of this section. Such review shall include but not be limited to an examination of the accountings submitted by such administrators or receivers and an examination of the plan submitted to the court pursuant to subdivision nine of section seven hundred seventy-eight of the real property actions and proceedings law. The court may compel the production of any records it deems necessary to perform such review.

S 2. For purposes of this act, those judges currently sitting as housing court judges of the housing part of the civil court of the city of New York on the effective date of this act may continue in such judicial positions until the expiration of their appointed judicial term. Upon any such expiration or other vacancy occurring in such judicial position the ensuing vacancy shall be filled in the manner provided by subdivision (e) of section 110 of the New York city civil court act.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.