

STATE OF NEW YORK

5862

2019-2020 Regular Sessions

IN SENATE

May 15, 2019

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, in relation to the determination of whether an overcharge of rent is willful

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The opening paragraph of subdivision a of section 26-516 of
2 the administrative code of the city of New York, as amended by chapter
3 116 of the laws of 1997, is amended to read as follows:
4 Subject to the conditions and limitations of this subdivision, any
5 owner of housing accommodations who, upon complaint of a tenant, or of
6 the state division of housing and community renewal, is found by the
7 state division of housing and community renewal, after a reasonable
8 opportunity to be heard, to have collected an overcharge above the rent
9 authorized for a housing accommodation subject to this chapter shall be
10 liable to the tenant for a penalty equal to three times the amount of
11 such overcharge. In no event shall such treble damage penalty be
12 assessed against an owner based solely on said owner's failure to file a
13 timely or proper initial or annual rent registration statement. If the
14 owner establishes by a preponderance of the evidence that the overcharge
15 was not willful, the state division of housing and community renewal
16 shall establish the penalty as the amount of the overcharge plus inter-
17 est. Neither the adjustment of the rent or a refund by an owner after
18 the service of an overcharge complaint shall be a basis upon which the
19 state division of housing and community renewal may determine that the
20 overcharge was not willful. (i) Except as to complaints filed pursuant
21 to clause (ii) of this paragraph, the legal regulated rent for purposes
22 of determining an overcharge, shall be the rent indicated in the annual
23 registration statement filed four years prior to the most recent regis-

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

LBD11538-01-9

1 tration statement, (or, if more recently filed, the initial registration
2 statement) plus in each case any subsequent lawful increases and adjust-
3 ments. Where the amount of rent set forth in the annual rent registra-
4 tion statement filed four years prior to the most recent registration
5 statement is not challenged within four years of its filing, neither
6 such rent nor service of any registration shall be subject to challenge
7 at any time thereafter. (ii) As to complaints filed within ninety days
8 of the initial registration of a housing accommodation, the legal regu-
9 lated rent shall be deemed to be the rent charged on the date four years
10 prior to the date of the initial registration of the housing accommo-
11 dation (or, if the housing accommodation was subject to this chapter for
12 less than four years, the initial legal regulated rent) plus in each
13 case, any lawful increases and adjustments. Where the rent charged on
14 the date four years prior to the date of the initial registration of the
15 accommodation cannot be established, such rent shall be established by
16 the division.

17 § 2. The opening paragraph of paragraph 1 of subdivision a of section
18 12 of section 4 of chapter 576 of the laws of 1974, constituting the
19 emergency tenant protection act of nineteen seventy-four, as amended by
20 chapter 116 of the laws of 1997, is amended to read as follows:

21 Subject to the conditions and limitations of this paragraph, any owner
22 of housing accommodations in a city having a population of less than one
23 million or a town or village as to which an emergency has been declared
24 pursuant to section three, who, upon complaint of a tenant or of the
25 state division of housing and community renewal, is found by the state
26 division of housing and community renewal, after a reasonable opportu-
27 nity to be heard, to have collected an overcharge above the rent author-
28 ized for a housing accommodation subject to this act shall be liable to
29 the tenant for a penalty equal to three times the amount of such over-
30 charge. In no event shall such treble damage penalty be assessed against
31 an owner based solely on said owner's failure to file a proper or timely
32 initial or annual rent registration statement. If the owner establishes
33 by a preponderance of the evidence that the overcharge was neither will-
34 ful nor attributable to his negligence, the state division of housing
35 and community renewal shall establish the penalty as the amount of the
36 overcharge plus interest at the rate of interest payable on a judgment
37 pursuant to section five thousand four of the civil practice law and
38 rules. Neither the adjustment of the rent or a refund by an owner after
39 the service of an overcharge complaint shall be a basis upon which the
40 state division of housing and community renewal may determine that the
41 overcharge was not willful.

42 (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes
43 of determining an overcharge, shall be deemed to be the rent indicated
44 in the annual registration statement filed four years prior to the most
45 recent registration statement, (or, if more recently filed, the initial
46 registration statement) plus in each case any subsequent lawful
47 increases and adjustments. Where the amount of rent set forth in the
48 annual rent registration statement filed four years prior to the most
49 recent registration statement is not challenged within four years of its
50 filing, neither such rent nor service of any registration shall be
51 subject to challenge at any time thereafter. (ii) As to complaints filed
52 within ninety days of the initial registration of a housing accommo-
53 dation, the legal regulated rent for purposes of determining an over-
54 charge shall be deemed to be the rent charged on the date four years
55 prior to the date of the initial registration of the housing accommo-
56 dation (or, if the housing accommodation was subject to this act for

1 less than four years, the initial legal regulated rent) plus in each
2 case, any lawful increases and adjustments. Where the rent charged on
3 the date four years prior to the date of the initial registration of the
4 accommodation cannot be established, such rent shall be established by
5 the division. Where the amount of rent set forth in the annual rent
6 registration statement filed four years prior to the most recent regis-
7 tration statement is not challenged within four years of its filing,
8 neither such rent nor service of any registration shall be subject to
9 challenge at any time thereafter.

10 § 3. This act shall take effect immediately; provided that the amend-
11 ments to section 26-516 of chapter 4 of title 26 of the administrative
12 code of the city of New York made by section one of this act shall
13 expire on the same date as such law expires and shall not affect the
14 expiration of such law as provided under section 26-520 of such law; and
15 provided that the amendments to section 12 of section 4 of the emergency
16 tenant protection act of nineteen seventy-four made by section two of
17 this act shall expire on the same date as such act expires and shall not
18 affect the expiration of such act as provided in section 17 of chapter
19 576 of the laws of 1974.