

STATE OF NEW YORK

350

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. BRAUNSTEIN, D. ROSENTHAL, WEPRIN, STIRPE, QUART, SEAWRIGHT, CARROLL, PHEFFER AMATO, COLTON, HYNDMAN, DINOWITZ, GRIFFIN, THIELE, COOK, PRETLOW, BENEDETTO, LAVINE, RICHARDSON, MONTESANO -- Multi-Sponsored by -- M. of A. McDONOUGH -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, the real property law, and the real property actions and proceedings law, in relation to excluding tenant-shareholders in cooperative housing corporations from certain housing provisions

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

1 Section 1. Paragraph (a) of subdivision 1-a of section 7-108 of the
2 general obligations law, as added by section 25 of part M of chapter 36
3 of the laws of 2019, is amended to read as follows:

4 (a) No deposit or advance shall exceed the amount of one month's rent
5 under such contract, except in dwelling units which are a cooperative
6 housing corporation and where the tenant would become a shareholder of
7 such dwelling unit.

8 § 2. Section 227-f of the real property law is amended by adding a new
9 subdivision 3 to read as follows:

10 3. This section shall not apply to a prospective tenant of a cooper-
11 ative housing corporation, where such prospective tenant would become a
12 shareholder of such cooperative housing corporation.

13 § 3. Subdivisions 1 and 2 of section 238-a of the real property law,
14 as added by section 10 of part M of chapter 36 of the laws of 2019, are
15 amended to read as follows:

16 1. (a) Except in instances where statutes or regulations provide for a
17 payment, fee or charge, no landlord, lessor, sub-lessor or grantor may
18 demand any payment, fee, or charge for the processing, review or accept-
19 ance of an application, or demand any other payment, fee or charge

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

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1 before or at the beginning of the tenancy, except background checks and
2 credit checks as provided by paragraph (b) of this subdivision, provided
3 that this subdivision shall not apply to entrance fees charged by
4 continuing care retirement communities licensed pursuant to article
5 forty-six or forty-six-A of the public health law, assisted living
6 providers licensed pursuant to article forty-six-B of the public health
7 law, adult care facilities licensed pursuant to article seven of the
8 social services law, senior residential communities that have submitted
9 an offering plan to the attorney general, or not-for-profit independent
10 retirement communities that offer personal emergency response, house-
11 keeping, transportation and meals to their residents. Nothing in this
12 paragraph shall prohibit a cooperative housing corporation from demand-
13 ing from a prospective tenant any payment, fee or charge which is neces-
14 sary to compensate a managing agent for the processing, review or
15 acceptance of such prospective tenant's application where such prospec-
16 tive tenant would become a shareholder of such cooperative housing
17 corporation.

18 (b) A landlord, lessor, sub-lessor or grantor may charge a fee or fees
19 to reimburse costs associated with conducting a background check and
20 credit check, provided the cumulative fee or fees for such checks is no
21 more than the actual cost of the background check and credit check or
22 twenty dollars, whichever is less, and the landlord, lessor, sub-lessor
23 or grantor shall waive the fee or fees if the potential tenant provides
24 a copy of a background check or credit check conducted within the past
25 thirty days. The landlord, lessor, sub-lessor or grantor may not collect
26 the fee or fees unless the landlord, lessor, sub-lessor or grantor
27 provides the potential tenant with a copy of the background check or
28 credit check and the receipt or invoice from the entity conducting the
29 background check or credit check. Notwithstanding the provisions of
30 this paragraph, a cooperative housing corporation shall be permitted to
31 charge a fee or fees to reimburse costs associated with conducting a
32 background check and credit check in excess of twenty dollars, where the
33 potential tenant would become a shareholder of such cooperative housing
34 corporation, provided the cumulative fee or fees for such checks is no
35 more than the actual cost of such background check and/or credit check.

36 2. No landlord, lessor, sub-lessor or grantor may demand any payment,
37 fee, or charge for the late payment of rent unless the payment of rent
38 has not been made within five days of the date it was due, and such
39 payment, fee, or charge shall not exceed fifty dollars or five percent
40 of the monthly rent, whichever is less, except that this subdivision
41 shall not apply to a tenant of a cooperative housing corporation, where
42 such tenant is also a shareholder of such cooperative housing corpo-
43 ration.

44 § 4. Section 702 of the real property actions and proceedings law, as
45 added by section 11 of part M of chapter 36 of the laws of 2019, is
46 amended to read as follows:

47 § 702. Rent in a residential dwelling. In a proceeding relating to a
48 residential dwelling or housing accommodation, the term "rent" shall
49 mean the monthly or weekly amount charged in consideration for the use
50 and occupation of a dwelling pursuant to a written or oral rental agree-
51 ment. No fees, charges or penalties other than rent may be sought in a
52 summary proceeding pursuant to this article, notwithstanding any
53 language to the contrary in any lease or rental agreement, except that
54 such additional fees, charges or penalties may be sought in a summary
55 proceeding brought by a cooperative housing corporation against a tenant
56 who is a shareholder of such cooperative housing corporation.

§ 5. Section 234 of the real property law, as amended by section 8 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

§ 234. Right to recover attorneys' fees in actions or summary proceedings arising out of leases of residential property. Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and/or expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. A landlord may not recover attorneys' fees upon a default judgment. Any waiver of this section shall be void as against public policy.

Nothing in this section shall prohibit a cooperative housing corporation from recovering attorneys' fees in an action against a tenant where such tenant is also a shareholder of such cooperative housing corporation.

§ 6. Subdivision (d) of section 235-e of the real property law, as added by section 9 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

(d) If a lessor, or an agent of a lessor authorized to receive rent, fails to receive payment for rent within five days of the date specified in a lease agreement, such lessor or agent shall send the lessee, by certified mail, a written notice stating the failure to receive such rent payment. The failure of a lessor, or any agent of the lessor authorized to receive rent, to provide a lessee with a written notice of the non-payment of rent may be used as an affirmative defense by such lessee in an eviction proceeding based on the non-payment of rent.

Notwithstanding the provisions of this subdivision, a lessor which is a cooperative housing corporation may provide for a deadline in excess of five days and a method of sending notice other than by certified mail, as long as such deadline and method of sending notice is provided for in the proprietary lease, and the lessee is a shareholder of such cooperative housing corporation.

§ 7. This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date.