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

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I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. LENTOL, WEINSTEIN, GREENE -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, COOK, DINOWITZ, ENGLEBRIGHT, GALEF, GLICK, GOTTFRIED, HOOPER, JACOBS, JOHN, PRETLOW, P. RIVERA, SEMINERIO -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to the return of tenants' security deposits

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

Section 1. Subdivisions 2 and 2-a of section 7-103 of the general obligations law, as amended by chapter 402 of the laws of 1979, are amended to read as follows:

2. Whenever the person receiving money so deposited or advanced shall deposit such money in a banking organization, such person shall thereupon notify in writing each of the persons making such security deposit or advance, giving the name and address of the banking organization in which the deposit of security money is made, and the amount of such deposit. Deposits in a banking organization pursuant to the provisions of this subdivision shall be made in a banking organization having a place of business within the state. If the person depositing such security money in a banking organization shall deposit same in an interest bearing account, he shall be entitled to receive, as administration expenses, a sum equivalent to one [per cent] PERCENT per annum upon the security money so deposited, which shall be in lieu of all other administrative and custodial expenses. The balance of the interest paid by the banking organization shall be the money of the person making the deposit or advance and shall, AT THE OPTION OF THE TENANT, either (A) be held in trust by the person with whom such deposit or advance shall be made, until repaid [or] PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO-C OF THIS SECTION, OR, (B) BE AT LEAST ANNUALLY applied for the use or rental of the leased premises, or, (C) BE annually paid to the person making the deposit of security money.

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

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2-a. Whenever the money so deposited or advanced is for the rental of property containing [six] THREE or more family dwelling units, the person receiving such money shall, subject to the provisions of this section, deposit it in an interest bearing account in a banking organization within the state which account shall earn interest at a rate which shall be the prevailing rate earned by other such deposits made with banking organizations in such area.

S 2. Section 7-103 of the general obligations law is amended by adding a new subdivision 2-c to read as follows:

2-C. (A) UPON THE TERMINATION OF A RESIDENTIAL TENANCY AND SURRENDER OF POSSESSION THEREOF, THE PERSON RECEIVING MONEY DEPOSITED OR ADVANCED AS SECURITY FOR PERFORMANCE OF THE CONTRACT OR AGREEMENT SHALL RETURN ANY SUCH MONEY PLUS ANY ACCRUED AND UNPAID INTEREST WITHIN THIRTY DAYS BY PERSONAL DELIVERY, OR REGISTERED OR CERTIFIED MAIL, TO THE PERSON MAKING SAID DEPOSIT OR ADVANCE. THE LANDLORD MUST AT THE TIME THE MONEY IS RETURNED FURNISH A STATEMENT TO THE TENANT SHOWING THE AMOUNT OF THE SECURITY DEPOSIT; ANY ACCRUED AND UNPAID INTEREST THEREON; SEPARATELY ITEMIZED DEDUCTIONS, IF ANY, AND THE BASIS THEREOF AS CLAIMED BY THE LANDLORD; AND THE NET AMOUNT RETURNED TO THE TENANT.

(B) PRIOR TO SAID RETURN IT SHALL BE PERMISSIBLE TO DEDUCT FROM SUCH MONEY DEPOSITED OR ADVANCED: (I) ANY UNPAID RENT OR ADDITIONAL COST WHICH HAS NOT BEEN LAWFULLY WITHHELD OR (II) A REASONABLE AMOUNT NECESSARY TO REPAIR ANY ACTUAL DAMAGE, ORDINARY WEAR AND TEAR EXCLUDED, CAUSED TO THE DWELLING UNIT BY THE PERSON MAKING THE DEPOSIT OR ADVANCE OR ANYONE UNDER HIS CONTROL. ANY SUCH DEDUCTION SHALL BE ITEMIZED IN WRITING, WITH NOTICE BEING GIVEN TO THE PERSON MAKING THE DEPOSIT OR ADVANCE IN THE SAME MANNER AND WITHIN THE SAME TIME PERIOD AS SPECIFIED IN THIS SUBDIVISION FOR THE RETURN OF MONEY DEPOSITED. SUCH STATEMENT SHALL CONTAIN AN ITEMIZED DESCRIPTION OF SUCH DAMAGES; THE ESTIMATED OR ACTUAL COST OF REPAIRS OF EACH ITEM; AND THE AMOUNT OF ANY OTHER EXPENSES WHICH ARE THE RESPONSIBILITY OF THE TENANT, AND HIS OR HER REASON THEREFOR. IF ANY REPAIRS HAVE BEEN COMPLETED BY THE LANDLORD OR HIS OR HER STAFF THAT FACT SHALL BE NOTED ON THE STATEMENT OPPOSITE THE PARTICULAR ITEM OF DAMAGE TOGETHER WITH THE ACTUAL COST OF REPAIR.

(C) MERE ACCEPTANCE BY THE TENANT OF ANY STATEMENT RENDERED OR MONEY RETURNED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL NOT OPERATE OR BE CONSTRUED TO DISCHARGE THE LANDLORD FROM DUTY TO RETURN MONEY SUBSEQUENTLY DETERMINED TO HAVE BEEN WRONGFULLY RETAINED.

(D) IN ANY ACTION BROUGHT UNDER THIS SECTION TO RECOVER THE AMOUNT OF THE SECURITY DEPOSIT AND ANY ACCRUED INTEREST OWED TO HIM OR HER, THE BURDEN OF PROVING THE REASONABLENESS OF ANY DEDUCTIONS SHALL BE ON THE PERSON WHO ASSERTS THEM.

(E) IN ANY SUCH ACTION WHERE THE COURT FINDS THAT THE PERSON RECEIVING THE MONEY DEPOSITED OR ADVANCED, FRAUDULENTLY OR WITHOUT LEGITIMATE BASIS THEREFOR: (I) FAILED TO DEPOSIT THE MONEY SO DEPOSITED OR ADVANCED IN SUCH AN INTEREST BEARING ACCOUNT IF REQUIRED, OR (II) FAILED TO FURNISH THE STATEMENT HEREIN REQUIRED, OR (III) FAILED OR REFUSED TO RETURN OR ACCOUNT FOR SAID MONEY TO THE PERSON MAKING THE DEPOSIT OR ADVANCE WITHIN THIRTY DAYS FROM THE DATE OF TERMINATION OF THE TENANCY, OR (IV) MADE UNAUTHORIZED DEDUCTIONS FROM SAID PERSON'S DEPOSIT OR ADVANCE, THE COURT MAY AWARD AS A CIVIL PENALTY NO MORE THAN THREE TIMES THE AMOUNT OF MONEY DETERMINED TO HAVE BEEN WRONGFULLY RETAINED OR, IN THE EVENT OF FAILURE TO DEPOSIT THE MONEY IN AN INTEREST BEARING ACCOUNT IF REQUIRED, THREE TIMES THE AMOUNT OF INTEREST THE MONEY WOULD REASONABLY HAVE EARNED IF SO DEPOSITED WITHOUT DEDUCTION FOR ANY ADMINIS-

TRATION EXPENSE PLUS, IN EITHER CASE, INTEREST ON SUCH AMOUNT, PLUS REASONABLE ATTORNEY'S FEES AND EXPENSES.

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