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

5296--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. SQUADRON, ADAMS, DIAZ, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, ONORATO, PERKINS, SAVINO, SCHNEIDERMAN, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four, and the emergency housing rent control law, in relation to adjustment of maximum allowable rent

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

Section 1. Subparagraph (e) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by chapter 253 of the laws of 1993, is amended to read as follows:

(e) The landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations. An adjustment under this subparagraph shall be equal to [one-fortieth] *ONE-SIXTIETH* of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges, provided further [than] *THAT* an owner who is entitled to a rent increase pursuant to this subparagraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the city rent agency of any such adjustment pursuant to this subparagraph[.]; *or*

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

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S 2. Paragraph 13 of subdivision c of section 26-511 of the administrative code of the city of New York, as added by chapter 253 of the laws of 1993, is amended to read as follows:

(13) provides that an owner is entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required.

(A) The permanent increase in the legal regulated rent for the affected housing accommodation shall be [one-fortieth] ONE-SIXTIETH of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges. [Provided further that an]

(B) AN owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

(C) NO INCREASE SHALL BE COLLECTIBLE UNDER THIS PARAGRAPH UNTIL THE LANDLORD HAS PROVIDED THE TENANT WITH A RIDER PURSUANT TO SUBDIVISION D OF THIS SECTION, INCLUDING AN EXPLANATION OF HOW THE RENT IN THE VACANCY LEASE HAS BEEN COMPUTED, AND THE SPECIFIC AMOUNTS OF ALL EXPENDITURES SUPPORTING A RENT INCREASE UNDER THIS PARAGRAPH.

(D) NO INCREASE SHALL BE COLLECTIBLE UNDER THIS PARAGRAPH WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THAT THE OWNER IS NOT MAINTAINING ALL BUILDING-WIDE REQUIRED SERVICES OR ALL REQUIRED SERVICES WITH RESPECT TO THE AFFECTED HOUSING ACCOMMODATION, OR WHERE THERE ARE CURRENT HAZARDOUS VIOLATIONS OF ANY MUNICIPAL, COUNTY, STATE OR FEDERAL LAW WHICH RELATE TO THE MAINTENANCE OF SUCH SERVICES.

(E) WITHIN THIRTY DAYS OF THE SIGNING OF A VACANCY LEASE INCLUDING A RENT INCREASE PURSUANT TO THIS PARAGRAPH THAT EXCEEDS TEN PERCENT OF THE RENT CHARGED TO THE PREVIOUS TENANT, THE OWNER WILL FILE WITH THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AN EXPLANATION OF HOW THE VACANCY RENT WAS COMPUTED, AND ALL DOCUMENTS NECESSARY TO SUPPORT THE COLLECTION OF SUCH INCREASE, INCLUDING BUT NOT LIMITED TO, CANCELLED CHECKS, INVOICES AND SIGNED CONTRACTS CONTEMPORANEOUSLY WITH THE IMPROVEMENTS ALLEGED, AND CONTRACTOR'S AFFIDAVITS INDICATING THAT THE INSTALLATION WAS COMPLETED AND PAID IN FULL. UPON RECEIPT OF ALL DOCUMENTS SUBMITTED BY THE OWNER, AND AFTER GIVING THE TENANT NAMED IN SUCH VACANCY LEASE AN OPPORTUNITY TO RESPOND, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL ISSUE AN ORDER APPROVING OR DISAPPROVING SUCH INCREASE IN WHOLE OR IN PART. BASED UPON SUCH DETERMINATION, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL ORDER A REFUND TO THE TENANT EQUAL TO THE AMOUNT COLLECTED IN EXCESS OF THE LEGAL REGULATED RENT APPROVED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL.

(F) IF THE OWNER FAILS TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE OVERCHARGE WAS NOT WILLFUL, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL ORDER THE OWNER TO PAY TO THE TENANT AN ADDITIONAL AMOUNT EQUAL TO THREE TIMES THE EXCESS CHARGED.

(G) THE NEXT ANNUAL REGISTRATION STATEMENT FILED FOR ANY HOUSING ACCOMMODATION SUBJECT TO AN INCREASE UNDER THIS PARAGRAPH, WHETHER OR NOT SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (E) OF THIS PARAGRAPH

SHALL CONTAIN A DETAILED BREAKDOWN OF THE COSTS OF ALL IMPROVEMENTS UNDERLYING SUCH INCREASE.

S 3. Paragraph 2 of subdivision d of section 26-511 of the administrative code of the city of New York is renumbered paragraph 3 and a new paragraph 2 is added to read as follows:

(2) FOR VACANCY LEASES, SUCH RIDER SHALL ALSO INCLUDE A NOTICE OF THE PRIOR LEGAL RENT, IF ANY, THAT WAS IN EFFECT IMMEDIATELY PRIOR TO THE VACANCY, AN EXPLANATION OF HOW THE RENTAL AMOUNT HAS BEEN COMPUTED, INCLUDING A DETAILED BREAKDOWN OF THE NATURE AND COST OF ANY IMPROVEMENTS UNDERLYING AN INCREASE UNDER PARAGRAPH THIRTEEN OF SUBDIVISION C OF THIS SECTION, AND A STATEMENT THAT ANY INCREASE ABOVE THE PREVIOUS RENT IS IN ACCORDANCE WITH ADJUSTMENTS PERMITTED BY LAW.

S 4. Paragraph 1 of subdivision d of section 6 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as added by chapter 253 of the laws of 1993, is amended to read as follows:

(1) there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings, provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. (A) The permanent increase in the legal regulated rent for the affected housing accommodation shall be [one-fortieth] ONE-SIXTIETH of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges. [Provided further than an] (B) AN owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. (C) THE OWNER SHALL GIVE WRITTEN NOTICE TO THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AND THE TENANT NAMED IN A VACANCY LEASE ON FORMS PRESCRIBED BY THE DIVISION OF ANY SUCH ADJUSTMENT PURSUANT TO THIS PARAGRAPH AND THE FAILURE TO PROVIDE SUCH WRITTEN NOTICE AS PROVIDED HEREIN SHALL PRECLUDE THE COLLECTION OF ANY SUCH ADJUSTMENT. SUCH NOTICE MUST INCLUDE A DETAILED BREAKDOWN OF THE NATURE AND COST OF ANY IMPROVEMENTS UNDERLYING AN INCREASE IN RENT UNDER THIS PARAGRAPH AND A STATEMENT THAT ANY INCREASE ABOVE THE PREVIOUS RENT IS IN ACCORDANCE WITH ADJUSTMENTS PERMITTED BY LAW. (D) NO INCREASE SHALL BE COLLECTIBLE UNDER THIS PARAGRAPH WHERE THE DIVISION OF HOUSING AND COMMUNITY RENEWAL HAS DETERMINED THAT THE OWNER IS NOT MAINTAINING ALL BUILDING-WIDE REQUIRED SERVICES OR ALL REQUIRED SERVICES WITH RESPECT TO THE AFFECTED HOUSING ACCOMMODATION, OR WHERE THERE ARE CURRENT HAZARDOUS VIOLATIONS OF ANY MUNICIPAL, COUNTY, STATE OR FEDERAL LAW WHICH RELATE TO THE MAINTENANCE OF SUCH SERVICES. (E) WITHIN THIRTY DAYS OF THE SIGNING OF A VACANCY LEASE INCLUDING A RENT INCREASE PURSUANT TO THIS PARAGRAPH THAT EXCEEDS TEN PERCENT OF THE RENT CHARGED TO THE PREVIOUS TENANT, THE OWNER WILL FILE WITH THE DIVISION AN EXPLANATION OF HOW THE VACANCY RENT WAS COMPUTED, AND ALL DOCUMENTS NECESSARY TO SUPPORT THE COLLECTION OF SUCH INCREASE, INCLUDING BUT NOT LIMITED TO, CANCELLED CHECKS, INVOICES AND SIGNED CONTRACTS CONTEMPORANEOUSLY WITH THE IMPROVEMENTS ALLEGED, AND CONTRACTOR'S AFFIDAVITS INDICATING THAT THE INSTALLATION WAS COMPLETED AND PAID IN FULL. UPON RECEIPT OF ALL DOCUMENTS SUBMITTED BY THE OWNER AND AFTER GIVING THE TENANT NAMED IN THE VACANCY LEASE AN OPPORTUNITY TO RESPOND, THE DIVISION SHALL ISSUE AN ORDER APPROVING OR DISAPPROVING SUCH

INCREASE IN WHOLE OR IN PART. BASED UPON SUCH DETERMINATION, THE DIVISION SHALL ORDER A REFUND TO THE TENANT EQUAL TO THE AMOUNT COLLECTED IN EXCESS OF THE LEGAL REGULATED RENT APPROVED BY THE DIVISION. (F) IF THE OWNER FAILS TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT THE OVERCHARGE WAS NOT WILLFUL, THE DIVISION SHALL ORDER THE OWNER TO PAY TO THE TENANT AN ADDITIONAL AMOUNT EQUAL TO THREE TIMES THE EXCESS CHARGED. (G) THE NEXT ANNUAL REGISTRATION STATEMENT FILED FOR ANY HOUSING ACCOMMODATION SUBJECT TO AN INCREASE UNDER THIS PARAGRAPH, WHETHER OR NOT SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (E) OF THIS PARAGRAPH SHALL CONTAIN A DETAILED BREAKDOWN OF THE COSTS OF ALL IMPROVEMENTS UNDERLYING SUCH INCREASE.

S 5. Clause 5 of the second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 253 of the laws of 1993, is amended to read as follows:

(5) the landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; provided that an owner shall be entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation. The permanent increase in the maximum rent for the affected housing accommodation shall be [one-fortieth] ONE-SIXTIETH of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the commission of any such adjustment pursuant to this clause; or

S 6. Section 26-504.2 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

C. NOTWITHSTANDING ANYTHING IN SUBDIVISION A OF THIS SECTION OR SUBPARAGRAPH (K) OF PARAGRAPH TWO OF SUBDIVISION E OF SECTION 26-403 OF THIS TITLE TO THE CONTRARY, THE FAILURE OF THE OWNER TO COMPLY WITH THE REQUIREMENTS OF SUBDIVISION B OF THIS SECTION SHALL RESULT IN THE HOUSING ACCOMMODATION REMAINING SUBJECT TO THE PROVISIONS OF THIS LAW OR THE CITY RENT AND REHABILITATION LAW AT THE LAST REGULATED RENT UNTIL THE OWNER COMPLIES WITH THE REQUIREMENTS OF SUBDIVISION B OF THE SECTION.

S 7. The opening paragraph of paragraph 13 of subdivision a of section 5 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four is designated subparagraph (i) and two new subparagraphs (ii) and (iii) are added to read as follows:

(II) THE OWNER OF ANY HOUSING ACCOMMODATION THAT IS NOT SUBJECT TO THIS ACT PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH OR PARAGRAPH (N) OF SUBDIVISION TWO OF SECTION TWO OF THE EMERGENCY HOUSING RENT CONTROL LAW SHALL GIVE WRITTEN NOTICE CERTIFIED BY SUCH OWNER TO THE FIRST TENANT OF THAT HOUSING ACCOMMODATION AFTER SUCH HOUSING ACCOMMODATION BECOMES EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW. SUCH NOTICE SHALL CONTAIN THE LAST REGULATED RENT, THE REASON THAT SUCH HOUSING ACCOMMODATION IS NOT

SUBJECT TO THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, A CALCULATION OF HOW EITHER THE RENTAL AMOUNT CHARGED WHEN THERE IS NO LEASE OR THE RENTAL AMOUNT PROVIDED FOR IN THE LEASE HAS BEEN DERIVED SO AS TO REACH TWO THOUSAND DOLLARS OR MORE PER MONTH, A STATEMENT THAT THE LAST LEGAL REGULATED RENT OR THE MAXIMUM RENT MAY BE VERIFIED BY THE TENANT BY CONTACTING THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, OR ANY SUCCESSOR THERETO, AND THE ADDRESS AND TELEPHONE NUMBER OF SUCH AGENCY, OR ANY SUCCESSOR THERETO. SUCH NOTICE SHALL BE SENT BY CERTIFIED MAIL WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR AFTER THE SIGNING OF THE LEASE BY BOTH PARTIES, WHICHEVER OCCURS FIRST OR SHALL BE DELIVERED TO THE TENANT AT THE SIGNING OF THE LEASE. IN ADDITION, THE OWNER SHALL SEND AND CERTIFY TO THE TENANT A COPY OF THE REGISTRATION STATEMENT FOR SUCH HOUSING ACCOMMODATION FILED WITH THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL INDICATING THAT SUCH HOUSING ACCOMMODATION BECAME EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, WHICH FORM SHALL INCLUDE THE LAST REGULATED RENT, AND SHALL BE SENT TO THE TENANT WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR THE FILING OF SUCH REGISTRATION, WHICHEVER OCCURS LATER.

(III) NOTWITHSTANDING ANYTHING IN SUBPARAGRAPH (I) OF THIS PARAGRAPH OR PARAGRAPH (N) OF SUBDIVISION TWO OF SECTION TWO OF THE EMERGENCY HOUSING RENT CONTROL LAW TO THE CONTRARY, THE FAILURE OF THE OWNER TO COMPLY WITH THE REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL RESULT IN THE HOUSING ACCOMMODATION REMAINING SUBJECT TO THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW AT THE LAST REGULATED RENT UNTIL THE OWNER COMPLIES WITH THE REQUIREMENTS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH.

S 8. This act shall take effect on the ninetieth day after it shall have become a law; provided that:

(a) sections six and seven of this act shall take effect on the thirtieth day after this act shall have become a law;

(b) the amendments to section 26-405 of the city rent and rehabilitation law made by section one of this act shall remain in full force and effect only as long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act;

(c) the amendments to chapter 4 of title 26 of the administrative code of the city of New York made by sections two, three and six of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law;

(d) the amendments to the emergency tenant protection act of nineteen seventy-four made by sections four and seven of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974;

(e) the amendments to section 4 of the emergency housing rent control law made by section five of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided in subdivision 2 of section 1 of chapter 274 of the laws of 1946; and

(f) effective immediately, the division of housing and community renewal is authorized to and shall promulgate all rules, regulations and standards necessary to implement the provisions of this act.