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

5539

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. TITUS, SCARBOROUGH, COOK, JEFFRIES, BENJAMIN, WRIGHT, POWELL, ROBINSON, BOYLAND -- Multi-Sponsored by -- M. of A. CLARK, DIAZ, FARRELL, GLICK, GOTTFRIED, JOHN, LAVINE, MILLMAN, PERRY, J. RIVERA, N. RIVERA, ROSENTHAL, TOWNS, WEISENBERG -- read once and referred to the Committee on Housing

AN ACT to amend the real property actions and proceedings law, in relation to requiring that certain public housing authorities establish an innocent tenant protection act applicable to tenants of public and federally assisted housing

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

Section 1. Legislative intent. The legislature finds that it is imperative that the forty-nine public housing authorities in the state provide that any criminal activities that threaten the health, safety or right to peaceful enjoyment of the premises, engaged in by a tenant of public or federally assisted housing, and members of the tenants' household, or any guest or other person under the tenants' control, shall be cause for termination of tenancy. The legislature further finds that law abiding tenants are vulnerable to "One-Strike" evictions given the policy's breadth and the United States Supreme Court's decision in UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT V. DAVIS. Anyone who leases public or assisted housing is a potential target of "One-Strike" evictions. It is of little consequence that a tenant may be law abiding, despise drug activity or have made his or her home a drug-free environment. Any link to guest or family members involved in drug activity on or off the public housing premises can trigger eviction. Therefore the legislature finds the adoption of an innocent tenant protection act vital to law abiding tenants of public and federally assisted housing in New York state.

S 2. The real property actions and proceedings law is amended by adding a new section 711-a to read as follows:

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

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S 711-A. INNOCENT TENANT PROTECTION. 1. EACH PUBLIC HOUSING AUTHORITY AND OWNERS OF FEDERALLY ASSISTED HOUSING SHALL UTILIZE LEASES WHICH PROVIDE THAT ANY CRIMINAL ACTIVITY THAT THREATENS THE HEALTH, SAFETY OR RIGHT TO PEACEFUL ENJOYMENT OF THE PREMISES, ENGAGED IN BY A PUBLIC HOUSING OR FEDERALLY ASSISTED HOUSING TENANT OR ANY DRUG RELATED CRIMINAL ACTIVITY ON OR OFF SUCH PREMISES ENGAGED IN BY A PUBLIC HOUSING OR FEDERALLY ASSISTED HOUSING TENANT, ANY MEMBER OF THE TENANT'S HOUSEHOLD, OR ANY GUEST OR OTHER PERSON UNDER THE TENANT'S CONTROL, SHALL BE CAUSE FOR TERMINATION, EXCEPT THAT NO TENANCY OF AN INNOCENT LESSEE SHALL BE TERMINATED PURSUANT TO THIS SECTION.

2. THE BURDEN OF PROOF SHALL BE ON THE GOVERNMENT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH TENANT ENGAGED IN CRIMINAL ACTIVITY AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION.

3. FOR PURPOSES OF THIS SECTION THE TERM "INNOCENT LESSEE" MEANS A LESSEE WHO:

(A) DID NOT KNOW OF THE CRIMINAL ACTIVITY GIVING RISE TO THE POSSIBLE TERMINATION OF TENANCY; OR

(B) UPON HEARING OF THE CONDUCT GIVING RISE TO THE POSSIBLE TERMINATION OF THE TENANCY, DID ALL THAT REASONABLY COULD BE EXPECTED UNDER THE CIRCUMSTANCES TO TERMINATE THE CRIMINAL ACTIVITY. FOR PURPOSES OF THIS SUBDIVISION, WAYS IN WHICH A PERSON MAY SHOW THAT SUCH PERSON DID ALL THAT REASONABLY COULD BE EXPECTED MAY INCLUDE DEMONSTRATING THAT SUCH PERSON, TO THE EXTENT ALLOWED BY LAW: (I) GAVE TIMELY NOTICE TO AN APPROPRIATE LAW ENFORCEMENT AGENCY OF INFORMATION THAT LED THE TENANT TO KNOW THE CONDUCT GIVING RISE TO A POSSIBLE TERMINATION OF TENANCY WOULD OCCUR OR HAD OCCURRED; OR (II) IN A TIMELY FASHION REVOKED OR MADE A GOOD FAITH ATTEMPT TO REVOKE PERMISSION FOR THOSE ENGAGING IN SUCH CONDUCT TO USE THE PROPERTY, OR TOOK REASONABLE ACTIONS IN CONSULTATION WITH A LAW ENFORCEMENT AGENCY TO DISCOURAGE OR PREVENT THE ILLEGAL USE OF THE PROPERTY.

4. A TENANT IS NOT REQUIRED BY SUBDIVISION THREE OF THIS SECTION TO TAKE STEPS THAT THE PERSON REASONABLY BELIEVES WOULD BE LIKELY TO SUBJECT ANY PERSON, OTHER THAN THE PERSON WHOSE CONDUCT GAVE RISE TO THE POSSIBLE TERMINATION OF TENANCY, TO PHYSICAL DANGER.

S 3. (a) Within six months of the effective date of this act and after granting notice and an opportunity to comment to affected tenants, the executive directors of the public housing authorities and owners of federally assisted housing shall review the drug-related eviction procedures of all jurisdictions having federally subsidized units for the purpose of determining whether procedures meet state due process standards.

(b) Upon conclusion of the review mandated by subdivision (a) of this section, if the executive directors of public housing authorities or the owners of federally assisted housing determine that due process standards are met for a jurisdiction, such directors and owners shall issue such jurisdiction a waiver of the procedure that mandates an administrative grievance hearing.

(c) Within sixty days of the completion of the review mandated by subdivision (a) of this section, the executive directors of the public housing authorities and owners of federally assisted housing shall report to the mayors in those cities where such housing authorities and owners are under the auspices of that government body or county, or state body of government, the findings of the review including all waivers granted in accordance with subdivision (b) of this section. The tenancy of a tenant of a public housing authority or federally assisted housing shall not be terminated without cause and without reason there-

for given to said tenant in writing prior to such housing authority and/or federally assisted housing filing an action for summary process or seeking an injunction.

S 4. This act shall take effect on the thirtieth day after it shall have become a law.