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

204

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to grounds and procedures to recover premises where use or occupancy is illegal

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

Section 1. Section 715 of the real property actions and proceedings law, as amended by chapter 494 of the laws of 1976, subdivision 1 as amended by chapter 555 of the laws of 1978, subdivision 3 as added and subdivisions 4 and 5 as renumbered by chapter 206 of the laws of 1980 and subdivision 5 as added by chapter 627 of the laws of 1978, is amended to read as follows:

S 715. Grounds and procedure where use or occupancy is illegal. 1. [An owner or tenant, including a tenant of one or more rooms of an apartment house, tenement house or multiple dwelling,] ANY OWNER, TENANT OR TENANT ORGANIZATION of any premises OR ANY BLOCK ASSOCIATION within [two hundred feet from] ONE THOUSAND FEET OF other [demised real] RENTED, TRESPASSED UPON OR SQUATTED UPON property used or occupied in whole or in part [as a bawdy-house, or house or place of assignation for lewd persons, or] for purposes of prostitution OR ILLEGAL GAMBLING OR ILLEGAL SALES OF CONTROLLED SUBSTANCES OR MARIHUANA, or for any OTHER illegal trade, business or manufacture, or any [domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the state department of social services and possesses a certificate from such department of such fact and of conformity with regulations of the department,] TENANT ORGANIZATION, COMMUNITY ORGANIZATION, BLOCK ASSOCIATION OR SIMILAR INCORPORATED OR UNINCORPORATED ASSOCIATION ORGANIZED TO PROMOTE THE PUBLIC WELFARE WITHIN AN AREA ENCOMPASSING ONE THOUSAND FEET OF THE SUBJECT PREMISES or any duly authorized enforcement

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

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agency of the state or of a subdivision thereof, under a duty to enforce the provisions of the penal law or of any state or local law, ordinance, code, rule or regulation relating to buildings, may serve personally upon the owner or landlord of the premises so used or occupied, or upon his OR HER agent, a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. If the owner or landlord or his OR HER agent does not make such application within [five] TWENTY days thereafter; or, having made it, does not in good faith diligently prosecute it, the person, corporation, ASSOCIATION or enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises, and shall have precedence over any similar proceeding thereafter brought by such owner or landlord or to one theretofore brought by him OR HER and not prosecuted diligently and in good faith. [Proof of the ill repute of the demised premises or of the inmates thereof or of those resorting thereto shall constitute presumptive evidence of the unlawful use of the demised premises required to be stated in the petition for removal.] NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO OWNER OR LANDLORD OR HIS OR HER AGENT NEED MAKE SUCH APPLICATION UNDER THIS ARTICLE UNLESS PROVIDED WITH ADMISSIBLE EVIDENCE CONCERNING A TENANT, OCCUPANT OR TRESPASSER'S ILLEGAL BUSINESS IN THE SUBJECT PREMISES. Both the person in possession of the property and the owner or landlord shall be made respondents in the proceeding. THE OWNER OR LANDLORD OR HIS OR HER AGENT MAY DEMAND WITHIN THE FIRST TEN DAYS AFTER RECEIVING THE WRITTEN NOTICE THAT THE PERSON, CORPORATION, ASSOCIATION OR ENFORCEMENT AGENCY, THAT SERVED IT PARTICULARIZE THE BASIS UPON WHICH THE ACTION IS TO BE BROUGHT. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW UNLESS A RESPONSE TO SAID DEMAND IS DULY RECEIVED WITHIN FIVE DAYS, AFTER SERVICE OF THE DEMAND THE PERIOD IN WHICH THE OWNER OR LANDLORD OR HIS OR HER AGENT MUST COMMENCE A PROCEEDING IS TOLLED UNTIL AN ADEQUATE RESPONSE IS RECEIVED.

2. For purposes of this section, two or more convictions of any [person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.05, 230.20, 230.25, 230.30 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution] TENANT OR OCCUPANT OF THE SUBJECT PREMISES HAD WITHIN A PERIOD OF ONE YEAR, FOR ANY OF THE OFFENSES DESCRIBED IN SUBDIVISION ONE OF SECTION 220.16 OR SECTION 220.31, 220.34, 220.39, 220.41, 220.43 OR 220.44 OF THE PENAL LAW, RELATING TO CONTROLLED SUBSTANCES; SECTION 220.45 OF THE PENAL LAW ONLY AS IT RELATES TO SALE OF A HYPODERMIC SYRINGE OR HYPODERMIC NEEDLE; SECTION 221.30, 221.35, 221.40, 221.45, 221.50 OR 221.55 OF THE PENAL LAW, RELATING TO MARIHUANA; SECTION 225.05, 225.10, 225.15, 225.20 OR 225.30 OF THE PENAL LAW, RELATING TO GAMBLING; OR SECTION 230.04, 230.05, 230.06, 230.20, 230.25, 230.30, 230.32 OR 230.40 OF THE PENAL LAW, RELATING TO PROSTITUTION, ARISING OUT OF CONDUCT ENGAGED IN INSIDE THE SUBJECT PREMISES, OR INSIDE THE BUILDING IN WHICH THE SUBJECT PREMISES IS LOCATED SHALL BE PRESUMPTIVE EVIDENCE OF THE UNLAWFUL USE OF SUCH PREMISES AND THE OWNER'S KNOWLEDGE OF THE SAME. ANY RELEVANT, ADMISSIBLE EVIDENCE MAY BE ADDUCED TO PROVE THE UNLAWFUL USE OF THE SUBJECT PREMISES. CRIMINAL CONVICTIONS SHALL NOT BE REQUIRED TO PROVE THE UNLAWFUL USE. PROOF OF THE ILL REPUTE OF THE SUBJECT PREMISES SHALL CONSTITUTE EVIDENCE OF THE UNLAWFUL USE.

UNLAWFUL USE OF THE SUBJECT PREMISES IS ESTABLISHED BY A FAIR PREPONDERANCE OF THE EVIDENCE.

3. [For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 225.00, 225.05, 225.10, 225.15, 225.20, 225.30, 225.32, 225.35 or 225.40 of the penal law, arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owner's knowledge of the same.] NOTWITHSTANDING THE PROVISION OF ANY LEASE OR REGULATION OR LAW TO THE CONTRARY, NEITHER A NOTICE TO CURE NOR A NOTICE OF TERMINATION IS A PREREQUISITE TO THE COMMENCEMENT OF A PROCEEDING BY THE OWNER OR LANDLORD OR AGENT OR OTHER PERSON ENTITLED TO PROCEED PURSUANT TO THIS SECTION.

4. A court granting a petition pursuant to this section may, in addition to any other order provided by law, make an order imposing and requiring the payment by the respondent of a civil penalty not exceeding [five] TEN thousand dollars to the municipality in which the subject premises is located and, the payment of reasonable attorneys fees and the costs of the proceeding to the petitioner. In any such case multiple respondents shall be jointly and severally liable for any payment so ordered and the amounts of such payments shall constitute a lien upon the subject realty. HOWEVER, ONLY RESPONDENTS WHO HAVE BEEN WILLFULLY NONCOMPLIANT SHALL BE SUBJECT TO SUCH CIVIL PENALTY. A RESPONDENT MAY BE FOUND WILLFULLY NONCOMPLIANT WHEN HE OR SHE HAS FAILED TO PROCEED DESPITE HAVING BEEN PROVIDED WITH CONVICTION INFORMATION CONCERNING A TENANT, OCCUPANT OR TRESPASSER'S ILLEGAL BUSINESS IN THE SUBJECT PREMISES UNLESS HE OR SHE PROVES SUBSTANTIAL MITIGATING CIRCUMSTANCES EXIST. ANY PERSON, CORPORATION, ASSOCIATION OR ENFORCEMENT AGENCY THAT IS FOUND TO HAVE MADE FRIVOLOUS OR UNSUBSTANTIATED CLAIMS WHEN PARTICULARIZING THE BASIS UPON WHICH THE ACTION IS TO BE BROUGHT SHALL BE LIABLE FOR ANY COSTS, FEES OR DAMAGES INCURRED BY THE LANDLORD, OWNER OR HIS OR HER AGENT.

5. For the purposes of a proceeding under this section, an enforcement agency of the state or of a subdivision thereof, which may commence a proceeding under this section, may subpoena witnesses, compel their attendance, examine them under oath before himself OR HERSELF or a court and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him OR HER for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered to do so by the officer conducting such inquiry, he OR SHE shall be guilty of a class B misdemeanor.

S 2. This act shall take effect immediately.