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

3849

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sens. KRUEGER, DUANE, HUNTLEY, MONSERRATE, ONORATO -- 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 proceedings to recover possession

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

Section 1. The opening paragraph of section 711 of the real property actions and proceedings law, as amended by chapter 739 of the laws of 1982, is amended to read as follows:

[A] NO TENANT IN A RESIDENTIAL DWELLING SHALL BE REMOVED FROM POSSESSION EXCEPT IN A SPECIAL PROCEEDING OR THROUGH OTHER JUDICIAL PROCESS. FOR THE PURPOSES OF THIS ARTICLE, A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer[; he shall not be removed from possession except in a special proceeding]. A special proceeding may be maintained under this article upon the following grounds:

S 2. Subdivision 1 of section 721 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

1. The landlord or lessor, PROVIDED, HOWEVER, THAT NO PERSON MAY INSTITUTE A PROCEEDING PURSUANT TO THIS ARTICLE WITH RESPECT TO PREMISES LOCATED IN A MULTIPLE DWELLING UNTIL SUCH TIME AS THE OWNER OF THE MULTIPLE DWELLING HAS REGISTERED PROPERLY WITH THE AGENCY RESPONSIBLE FOR CODE ENFORCEMENT, IN ACCORDANCE WITH THE PROVISIONS OF SECTION THREE HUNDRED OF THE MULTIPLE RESIDENCE LAW OR SECTION THREE HUNDRED OF THE MULTIPLE DWELLING LAW.

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

LBD05938-01-9

S 3. Subdivision 1 of section 731 of the real property actions and proceedings law, as amended by chapter 563 of the laws of 1994, is amended to read as follows:

1. The special proceeding prescribed by this article shall be commenced by petition and a notice of petition PREPARED IN ACCORDANCE WITH RULES APPROVED BY THE APPELLATE DIVISION WITH JURISDICTION OVER THE PROCEEDINGS. SUCH RULES SHALL PROVIDE FOR THE USE OF LANGUAGE THAT IS DESIGNED TO BE UNDERSTOOD BY THE RESPONDENT IN THE PROCEEDING. THE PETITION SHALL INCLUDE SUCH OTHER NOTICE OF THE RIGHTS OF THE RESPONDENT AS MAY BE DEEMED APPROPRIATE, INCLUDING A STATEMENT THAT A FORM ANSWER IS AVAILABLE FROM THE CLERK OF THE COURT. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.

S 4. Section 741 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, the opening paragraph as amended by chapter 583 of the laws of 1979 and subdivision 5 as amended by chapter 302 of the laws of 1976, is amended to read as follows:

S 741. Contents of petition. The petition shall be verified by the person authorized by section seven hundred twenty-one OF THIS ARTICLE to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules. An attorney of such person may verify the petition on information and belief notwithstanding the fact that such person is in the county where the attorney has his office. Every petition shall:

1. State the interest of the petitioner in the premises from which removal is sought.

2. State the respondent's interest in the premises and his relationship to petitioner with regard thereto.

3. Describe the premises from which removal is sought.

4. STATE WHETHER THERE ARE ANY VIOLATIONS OF ANY STATE OR LOCAL HOUSING CODES WHICH REMAIN OUTSTANDING ON THE PREMISES OR COMMON AREAS. IN CITIES WITH A POPULATION OF ONE MILLION OR MORE, OR IN ANY MUNICIPALITY IN WHICH HOUSING CODE VIOLATIONS ARE CLASSIFIED BY DEGREE OF THREAT TO HEALTH AND SAFETY, THE PETITION SHALL ITEMIZE ANY SUCH VIOLATIONS WHICH HAVE BEEN IDENTIFIED BY THE APPLICABLE CODE ENFORCEMENT AGENCY IN ITS NOTICE OF VIOLATION AS BEING "HAZARDOUS", "IMMEDIATELY HAZARDOUS" OR WHICH HAVE BEEN OTHERWISE CATEGORIZED AS CONSTITUTING A SERIOUS, OR IMMINENT, THREAT TO HEALTH AND SAFETY OR REQUIRING IMMEDIATE REPAIR.

5. STATE WHETHER THE PETITIONER HAS BEEN NOTIFIED BY THE LOCAL DEPARTMENT OF SOCIAL SERVICES THAT PAYMENT FOR RENT IS BEING WITHHELD PURSUANT TO SECTION ONE HUNDRED FORTY-THREE-B OF THE SOCIAL SERVICES LAW FOR ANY PORTION OF THE PREMISES.

6. WITH RESPECT TO PREMISES SUBSIDIZED DIRECTLY OR INDIRECTLY UNDER A STATE OR FEDERAL PROGRAM WHICH REQUIRES THAT CONDITIONS BE MET IN CONNECTION WITH LEASE TERMINATION OR EVICTION, STATE THE NAME OF THE PROGRAM, THE NAME OF THE AGENCY CHARGED WITH SUPERVISION AND WHETHER THE PETITIONER HAS COMPLIED WITH ALL APPLICABLE RULES, REGULATIONS AND ADMINISTRATIVE HEARING REQUIREMENTS AND HAS SERVED ALL NOTICES REQUIRED IN CONNECTION WITH LEASE TERMINATION OR EVICTION FROM THAT PUBLIC OR SUBSIDIZED HOUSING PROGRAM.

7. State the facts upon which the special proceeding is based.

[5.] 8. State the relief sought. The relief may include a judgment for rent due, and for a period of occupancy during which no rent is due, for the fair value of use and occupancy of the premises if the notice of

petition contains a notice that a demand for such a judgment has been made.

ANY WILLFUL MATERIAL MISSTATEMENT OR OMISSION BY THE PETITIONER WITH RESPECT TO THE REQUIREMENTS OF THIS SECTION SHALL SUBJECT THE PETITIONER TO A CIVIL PENALTY, NOT TO EXCEED ONE THOUSAND DOLLARS, TO BE ASSESSED IN THE EVICTION PROCEEDING OR IN A SUBSEQUENT PLENARY ACTION. THE PETITIONER MAY REQUEST LEAVE OF THE COURT TO AMEND THE PETITION FOR THE PURPOSE OF CORRECTING MATERIAL MISSTATEMENTS OR CURING OMISSIONS. IN THE EVENT LEAVE TO AMEND IS GRANTED, THE RESPONDENT SHALL BE PROVIDED AN ADJOURNMENT TO RESPOND OF NOT LESS THAN TEN DAYS FROM THE DATE OF SERVICE OF THE AMENDED PETITION. A PETITIONER SHALL BE DEEMED TO HAVE MADE A MATERIAL MISSTATEMENT OR OMISSION WITH RESPECT TO THE REQUIREMENTS OF SUBDIVISION FOUR OF THIS SECTION UPON SUBMISSION TO THE COURT OF CERTIFIED RECORDS, OR OTHERWISE PROPERLY AUTHENTICATED RECORDS, OF THE LOCAL AGENCY OR AGENCIES CHARGED WITH CODE COMPLIANCE THAT VIOLATIONS OF APPLICABLE CODES, OTHER THAN TENANT CAUSED OR HOUSEKEEPING AS DETERMINED BY THE COURT, WERE OUTSTANDING AT THE TIME OF THE VERIFICATION OF THE PETITION WHICH WERE NOT DESCRIBED THEREIN. A MATERIAL MISSTATEMENT SHALL BE DEEMED WILLFUL UNLESS THE PETITIONER CAN ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH MISSTATEMENT WAS NOT WILLFUL. IN ADDITION TO THE FOREGOING, IN THE EVENT THAT AN EVICTION WARRANT IS EXECUTED IN A PROCEEDING IN WHICH A WILLFUL MATERIAL MISSTATEMENT IS MADE, THE RESPONDENT SHALL BE ENTITLED TO DAMAGES NOT EXCEEDING THREE TIMES THE COSTS INCURRED AS A RESULT OF THE EVICTION UNLESS THE PETITIONER CAN ESTABLISH THAT THE EVICTION WOULD HAVE BEEN JUSTIFIED REGARDLESS OF THE MISSTATEMENT.

S 5. Section 743 of the real property actions and proceedings law, as amended by chapter 644 of the laws of 2003, is amended to read as follows:

S 743. Answer. Except as provided in section [732] SEVEN HUNDRED THIRTY-TWO OF THIS ARTICLE, relating to a proceeding for non-payment of rent, at the time when the petition is to be heard the respondent, or any person in possession or claiming possession of the premises, may answer, orally or in writing. If the answer is oral the substance thereof shall be recorded by the clerk or, if a particular court has no clerk, by the presiding judge or justice of such court, and maintained in the case record. A FORM ANSWER, IN A FORM APPROVED BY THE APPELLATE DIVISION WITH JURISDICTION OVER THE PROCEEDING, SHALL BE MADE AVAILABLE TO THE RESPONDENT BY THE CLERK OF THE COURT. THE FORM ANSWER SHALL INCLUDE POSSIBLE DEFENSES TO THE PROCEEDING, INCLUDING BUT NOT LIMITED TO DEFENSES ESTABLISHED BY SECTIONS TWO HUNDRED TWENTY-THREE AND TWO HUNDRED THIRTY-FIVE-B OF THE REAL PROPERTY LAW, SECTION ONE HUNDRED FORTY-THREE-B OF THE SOCIAL SERVICES LAW AND SECTION THREE HUNDRED FIVE-A OF THE MULTIPLE RESIDENCE LAW. If the notice of petition was served at least eight days before the time at which it was noticed to be heard and it so demands, the answer shall be made at least three days before the time the petition is noticed to be heard and, if in writing, it shall be served within such time; whereupon any reply shall be served at least one day before such time. The answer may contain any legal or equitable defense, or counterclaim. The court may render affirmative judgment for the amount found due on the counterclaim.

S 6. Subdivision 1 of section 745 of the real property actions and proceedings law, as amended by chapter 403 of the laws of 1983, is amended to read as follows:

1. Where triable issues of fact are raised, they shall be tried by the court unless, at the time the petition is noticed to be heard, a

party demands a trial by jury, in which case trial shall be by jury. WHEN THE PETITION INDICATES PURSUANT TO SUBDIVISION FOUR OF SECTION SEVEN HUNDRED FORTY-ONE OF THIS ARTICLE, THAT THERE ARE OUTSTANDING CODE VIOLATIONS, THE COURT SHALL INQUIRE REGARDING THE DURATION AND SEVERITY OF THE OUTSTANDING VIOLATIONS AND MAY STAY THE PROCEEDING PENDING REMOVAL OF THE VIOLATIONS IN ACCORDANCE WITH SECTION SEVEN HUNDRED FIFTY-FIVE OF THIS ARTICLE, OR MAKE OTHER DISPOSITION OF THE PROCEEDING INCLUDING GRANTING A TOTAL OR PARTIAL ABATEMENT OF RENT, OR DISMISSAL OF THE PROCEEDING, AS APPROPRIATE. At the time when issue is joined the court, in its discretion at the request of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure his necessary witnesses, or by consent of all the parties who appear, may adjourn the trial of the issue, but not more than ten days, except by consent of all parties.

S 7. Section 749 of the real property actions and proceedings law is amended by adding two new subdivisions 4 and 5 to read as follows:

4. THE NOTICE DESCRIBED IN SUBDIVISION TWO OF THIS SECTION SHALL INCLUDE A STATEMENT ADVISING THE RESPONDENT THAT ASSISTANCE TO PREVENT THE EVICTION OR OTHERWISE TO PREVENT THE RESPONDENT FROM BECOMING HOMELESS MAY BE AVAILABLE FROM THE LOCAL DEPARTMENT OF SOCIAL SERVICES AND SHALL INCLUDE THE PHONE NUMBER PROVIDED TO THE ENFORCEMENT OFFICER BY ANY PRIVATE OR PUBLIC AGENCY PROVIDING SUCH ASSISTANCE AT THE REQUEST OF SUCH AGENCY. REFERRAL TO LEGAL AID, LEGAL SERVICES OR OTHER LEGAL ASSISTANCE OFFICES SHALL ALSO BE INCLUDED ON SUCH NOTICES AT THE REQUEST OF SUCH OFFICES. IN A PROCEEDING BASED UPON NON-PAYMENT, SUCH NOTICE SHALL ALSO ADVISE THE RESPONDENT OF THE RENT DETERMINED DUE TOGETHER WITH TAXES, ASSESSMENTS, INTEREST, PENALTIES AND COSTS IN ACCORDANCE WITH THE PROVISION OF SUBDIVISION ONE OF SECTION SEVEN HUNDRED FIFTY-ONE OF THIS ARTICLE, AND SHALL ADVISE THE RESPONDENT OF THE AMOUNT REQUIRED AND PROCEDURE FOR PAYMENT.

5. UPON WRITTEN OR ORAL NOTIFICATION TO THE OFFICER BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES THAT AN APPLICATION FOR ASSISTANCE TO PREVENT EVICTION IS PENDING ON BEHALF OF THE RESPONDENT HOUSEHOLD, THE OFFICER SHALL REFRAIN FROM EXECUTION OF THE WARRANT UNTIL SUCH TIME AS THAT OFFICER IS ADVISED BY THE SOCIAL SERVICES OFFICIAL OF THE DETERMINATION OF SUCH APPLICATION, PROVIDED, HOWEVER, THAT THE SOCIAL SERVICES DISTRICT SHALL GUARANTEE PAYMENT TO THE PETITIONER FOR ANY ADDITIONAL RENT ACCRUING DURING THIS PERIOD TO BE CALCULATED ON A PRO-RATA BASIS FOR THE NUMBER OF DAYS DELAY OCCASIONED BY THE OPERATION OF THIS PROVISION.

S 8. The opening paragraph and subdivision 1 of section 751 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, are amended to read as follows:

The respondent may, at any time before a warrant is [issued] EXECUTED, stay the [issuing] EXECUTION thereof and also stay an execution to collect the costs, as follows:

1. Where the lessee or tenant holds over after a default in the payment of rent, or of taxes or assessments, he may effect a stay by depositing the amount of the rent due or of such taxes or assessments, and interest and penalty, if any thereon due, and the costs of the special proceeding, with the clerk of the court, or where the office of clerk is not provided for, with the court, who shall thereupon, upon demand, pay the amount deposited to the petitioner or his duly authorized agent; or by delivering to the court or clerk [his] A WRITTEN ASSURANCE BY AN AUTHORIZED REPRESENTATIVE OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES OR AN undertaking to the petitioner in such sum as the

court approves to the effect that [he will pay] the rent[, or] DUE WILL BE PAID TOGETHER WITH such taxes or assessments, and interest and penalty and costs within ten days, at the expiration of which time a warrant may issue, unless [he] THE RESPONDENT produces to the court satisfactory evidence of the payment.

S 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to actions and proceedings commenced on or after such effective date, provided, however, that effective immediately, all actions and procedures with respect to the proposed adoption, amendment, suspension or repeal of any rule or regulation necessary to the timely implementation of this act on its effective date are directed and authorized to be made and completed on or before such effective date.