

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:

1 Section 1. Subparagraph (e) of paragraph 1 of subdivision g of section
2 26-405 of the administrative code of the city of New York, as amended by
3 chapter 253 of the laws of 1993, is amended to read as follows:
4 (e) The landlord and tenant by mutual voluntary written agreement
5 agree to a substantial increase or decrease in dwelling space or a
6 change in the services, furniture, furnishings or equipment provided in
7 the housing accommodations. An adjustment under this subparagraph shall
8 be equal to [one-fortieth] ONE-SIXTIETH of the total cost incurred by
9 the landlord in providing such modification or increase in dwelling
10 space, services, furniture, furnishings or equipment, including the cost
11 of installation, but excluding finance charges, provided further [than]
12 THAT an owner who is entitled to a rent increase pursuant to this
13 subparagraph shall not be entitled to a further rent increase based upon
14 the installation of similar equipment, or new furniture or furnishings
15 within the useful life of such new equipment, or new furniture or
16 furnishings. The owner shall give written notice to the city rent agency
17 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.

LBD11158-04-0

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

4 (13) provides that an owner is entitled to a rent increase where there
5 has been a substantial modification or increase of dwelling space or an
6 increase in the services, or installation of new equipment or improve-
7 ments or new furniture or furnishings provided in or to a tenant's hous-
8 ing accommodation, on written tenant consent to the rent increase. In
9 the case of a vacant housing accommodation, tenant consent shall not be
10 required.

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

17 (B) AN owner who is entitled to a rent increase pursuant to this para-
18 graph shall not be entitled to a further rent increase based upon the
19 installation of similar equipment, or new furniture or furnishings with-
20 in the useful life of such new equipment, or new furniture or
21 furnishings.

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

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

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

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

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

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

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

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

13 S 4. Paragraph 1 of subdivision d of section 6 of section 4 of chapter
14 576 of the laws of 1974, constituting the emergency tenant protection
15 act of nineteen seventy-four, as added by chapter 253 of the laws of
16 1993, is amended to read as follows:

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

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

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

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

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

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

44 S 7. The opening paragraph of paragraph 13 of subdivision a of section
45 5 of section 4 of chapter 576 of the laws of 1974, constituting the
46 emergency tenant protection act of nineteen seventy-four is designated
47 subparagraph (i) and two new subparagraphs (ii) and (iii) are added to
48 read as follows:

49 (II) THE OWNER OF ANY HOUSING ACCOMMODATION THAT IS NOT SUBJECT TO
50 THIS ACT PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARA-
51 GRAPH OR PARAGRAPH (N) OF SUBDIVISION TWO OF SECTION TWO OF THE EMERGEN-
52 CY HOUSING RENT CONTROL LAW SHALL GIVE WRITTEN NOTICE CERTIFIED BY SUCH
53 OWNER TO THE FIRST TENANT OF THAT HOUSING ACCOMMODATION AFTER SUCH HOUS-
54 ING ACCOMMODATION BECOMES EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE
55 EMERGENCY HOUSING RENT CONTROL LAW. SUCH NOTICE SHALL CONTAIN THE LAST
56 REGULATED RENT, THE REASON THAT SUCH HOUSING ACCOMMODATION IS NOT

1 SUBJECT TO THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, A CALCU-
2 LATION OF HOW EITHER THE RENTAL AMOUNT CHARGED WHEN THERE IS NO LEASE OR
3 THE RENTAL AMOUNT PROVIDED FOR IN THE LEASE HAS BEEN DERIVED SO AS TO
4 REACH TWO THOUSAND DOLLARS OR MORE PER MONTH, A STATEMENT THAT THE LAST
5 LEGAL REGULATED RENT OR THE MAXIMUM RENT MAY BE VERIFIED BY THE TENANT
6 BY CONTACTING THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, OR
7 ANY SUCCESSOR THERETO, AND THE ADDRESS AND TELEPHONE NUMBER OF SUCH
8 AGENCY, OR ANY SUCCESSOR THERETO. SUCH NOTICE SHALL BE SENT BY CERTIFIED
9 MAIL WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR AFTER THE SIGNING
10 OF THE LEASE BY BOTH PARTIES, WHICHEVER OCCURS FIRST OR SHALL BE DELIV-
11 ERED TO THE TENANT AT THE SIGNING OF THE LEASE. IN ADDITION, THE OWNER
12 SHALL SEND AND CERTIFY TO THE TENANT A COPY OF THE REGISTRATION STATE-
13 MENT FOR SUCH HOUSING ACCOMMODATION FILED WITH THE STATE DIVISION OF
14 HOUSING AND COMMUNITY RENEWAL INDICATING THAT SUCH HOUSING ACCOMMODATION
15 BECAME EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING
16 RENT CONTROL LAW, WHICH FORM SHALL INCLUDE THE LAST REGULATED RENT, AND
17 SHALL BE SENT TO THE TENANT WITHIN THIRTY DAYS AFTER THE TENANCY
18 COMMENCES OR THE FILING OF SUCH REGISTRATION, WHICHEVER OCCURS LATER.

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

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

29 (a) sections six and seven of this act shall take effect on the thir-
30 tieth day after this act shall have become a law;

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

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

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

45 (e) the amendments to section 4 of the emergency housing rent control
46 law made by section five of this act shall expire on the same date as
47 such law expires and shall not affect the expiration of such law as
48 provided in subdivision 2 of section 1 of chapter 274 of the laws of
49 1946; and

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