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

1046

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to establishing failure to pay association fees and carrying charges as grounds for eviction and requiring attorneys' fees and late charges to be assessed when a tenant fails to make arrears payments

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

Section 1. Subdivision 2 of section 711 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

2. The tenant has defaulted in the payment of rent, ASSOCIATION FEES OR CARRYING CHARGES pursuant to the agreement under which the premises are held, and a demand of the rent, ASSOCIATION FEES OR CARRYING CHARGES has been made, or at least three days' notice in writing requiring, in the alternative, the payment of the rent, ASSOCIATION FEES OR CARRYING CHARGES or the possession of the premises, has been served upon him OR HER as prescribed in section [735] SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE. The landlord may waive his OR HER right to proceed upon this ground only by an express consent in writing to permit the tenant to continue in possession, which consent shall be revocable at will, in which event the landlord shall be deemed to have waived his OR HER right to summary dispossess for nonpayment of rent, ASSOCIATION FEES OR CARRYING CHARGES accruing during the time said consent remains unrevoked. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent, ASSOCIATION FEES OR CARRYING CHARGES due his OR HER predecessor in interest if he OR SHE has a right thereto. Where a tenant dies during the term of the lease and rent, ASSOCIATION FEES OR CARRYING CHARGES due [has] HAVE not been paid and no representative or person has taken possession of the premises and no

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

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administrator or executor has been appointed, the proceeding may be commenced after three months from the date of death of the tenant by joining the surviving spouse or if there is none, then one of the surviving issue or if there is none, then any one of the distributees.

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

S 711-A. LANDLORD'S RIGHT TO RECOVER ATTORNEYS' FEES AND LATE CHARGES IN ACTIONS OR SUMMARY PROCEEDINGS ARISING OUT OF A TENANT'S DEFAULT IN THE PAYMENT OF RENT, ASSOCIATION FEES OR CARRYING CHARGES. WHENEVER A LEASE OF RESIDENTIAL PROPERTY SHALL PROVIDE THAT IN ANY ACTION OR SUMMARY PROCEEDING THE LANDLORD MAY RECOVER ATTORNEYS' FEES AND/OR EXPENSES INCURRED AS THE RESULT OF THE FAILURE OF THE TENANT TO PAY RENT, ASSOCIATION FEES OR CARRYING CHARGES CONTAINED IN SUCH LEASE, OR SUCH AMOUNTS PAID BY THE LANDLORD THEREFOR SHALL BE PAID BY THE TENANT AS ADDITIONAL RENT, THERE SHALL BE IMPLIED AN AGREEMENT THAT SUCH FEES AND EXPENSES MAY BE RECOVERED AS PROVIDED BY LAW IN AN ACTION COMMENCED AGAINST THE TENANT. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES AND EXPENSES TO THE LANDLORD. ANY WAIVER OF THIS SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY.

S 3. This act shall take effect immediately.