

874

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. SQUADRON, ADAMS, DIAZ, HASSELL-THOMPSON, KRUEGER, MONTGOMERY, PERKINS, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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

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

LBD03120-01-1

(13) provides that an owner is entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required.

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

(B) AN owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

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

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

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

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

(G) THE NEXT ANNUAL REGISTRATION STATEMENT FILED FOR ANY HOUSING ACCOMMODATION SUBJECT TO AN INCREASE UNDER THIS PARAGRAPH, WHETHER OR NOT SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (E) OF THIS PARAGRAPH SHALL CONTAIN A DETAILED BREAKDOWN OF THE COSTS OF ALL IMPROVEMENTS UNDERLYING SUCH INCREASE.

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

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

11 S 4. Paragraph 1 of subdivision d of section 6 of section 4 of chapter
12 576 of the laws of 1974, constituting the emergency tenant protection
13 act of nineteen seventy-four, as added by chapter 253 of the laws of
14 1993, is amended to read as follows:

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

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

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

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

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

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

42 S 7. The opening paragraph of paragraph 13 of subdivision a of section
43 5 of section 4 of chapter 576 of the laws of 1974, constituting the
44 emergency tenant protection act of nineteen seventy-four is designated
45 subparagraph (i) and two new subparagraphs (ii) and (iii) are added to
46 read as follows:

47 (II) THE OWNER OF ANY HOUSING ACCOMMODATION THAT IS NOT SUBJECT TO
48 THIS ACT PURSUANT TO THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARA-
49 GRAPH OR PARAGRAPH (N) OF SUBDIVISION TWO OF SECTION TWO OF THE EMERGEN-
50 CY HOUSING RENT CONTROL LAW SHALL GIVE WRITTEN NOTICE CERTIFIED BY SUCH
51 OWNER TO THE FIRST TENANT OF THAT HOUSING ACCOMMODATION AFTER SUCH HOUS-
52 ING ACCOMMODATION BECOMES EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE
53 EMERGENCY HOUSING RENT CONTROL LAW. SUCH NOTICE SHALL CONTAIN THE LAST
54 REGULATED RENT, THE REASON THAT SUCH HOUSING ACCOMMODATION IS NOT
55 SUBJECT TO THIS ACT OR THE EMERGENCY HOUSING RENT CONTROL LAW, A CALCU-
56 LATION OF HOW EITHER THE RENTAL AMOUNT CHARGED WHEN THERE IS NO LEASE OR

1 THE RENTAL AMOUNT PROVIDED FOR IN THE LEASE HAS BEEN DERIVED SO AS TO
2 REACH TWO THOUSAND DOLLARS OR MORE PER MONTH, A STATEMENT THAT THE LAST
3 LEGAL REGULATED RENT OR THE MAXIMUM RENT MAY BE VERIFIED BY THE TENANT
4 BY CONTACTING THE STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, OR
5 ANY SUCCESSOR THERETO, AND THE ADDRESS AND TELEPHONE NUMBER OF SUCH
6 AGENCY, OR ANY SUCCESSOR THERETO. SUCH NOTICE SHALL BE SENT BY CERTIFIED
7 MAIL WITHIN THIRTY DAYS AFTER THE TENANCY COMMENCES OR AFTER THE SIGNING
8 OF THE LEASE BY BOTH PARTIES, WHICHEVER OCCURS FIRST OR SHALL BE DELIV-
9 ERED TO THE TENANT AT THE SIGNING OF THE LEASE. IN ADDITION, THE OWNER
10 SHALL SEND AND CERTIFY TO THE TENANT A COPY OF THE REGISTRATION STATE-
11 MENT FOR SUCH HOUSING ACCOMMODATION FILED WITH THE STATE DIVISION OF
12 HOUSING AND COMMUNITY RENEWAL INDICATING THAT SUCH HOUSING ACCOMMODATION
13 BECAME EXEMPT FROM THE PROVISIONS OF THIS ACT OR THE EMERGENCY HOUSING
14 RENT CONTROL LAW, WHICH FORM SHALL INCLUDE THE LAST REGULATED RENT, AND
15 SHALL BE SENT TO THE TENANT WITHIN THIRTY DAYS AFTER THE TENANCY
16 COMMENCES OR THE FILING OF SUCH REGISTRATION, WHICHEVER OCCURS LATER.

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

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

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

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

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

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

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

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