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

5940--A

2013-2014 Regular Sessions

I N S E N A T E

September 27, 2013

Introduced by Sens. MARCELLINO, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, in relation to clarifying the definition of "tenant" to exclude squatters

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

Section 1. Section 711 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, the section heading and opening paragraph as amended by chapter 739 of the laws of 1982, subdivision 1 as amended by chapter 305 of the laws of 1963 and subdivision 6 as added by chapter 699 of the laws of 1985, is amended to read as follows:

S 711. Grounds where landlord-tenant relationship exists. 1. (A) 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.

(B) FOR THE PURPOSES OF THIS ARTICLE, A TENANT SHALL NOT INCLUDE A PERSON WHO ENTERS ONTO PROPERTY WITH THE INTENT OF SQUATTING ON THE PROPERTY OR OTHERWISE SETTLES ON LAND OR OCCUPIES PROPERTY WITHOUT TITLE, RIGHT, PERMISSION OF THE RIGHTFUL OWNER, OR PAYMENT OF RENT.

2. A special proceeding may be maintained under this article upon the following grounds:

[1.] (A) The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover possession of real property by reason of the termination of the

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

LBD11833-02-3

term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable.

[2.] (B) The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a demand of the rent has been made, or at least three days' notice in writing requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section [735] SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE. The landlord may waive his 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 right to summary dispossess for nonpayment of rent 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 due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and no representative or person has taken possession of the premises and no 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.

[3.] (C) The tenant, in a city defaults in the payment, for sixty days after the same shall be payable, of any taxes or assessments levied on the premises which he has agreed in writing to pay pursuant to the agreement under which the premises are held, and a demand for payment has been made, or at least three days' notice in writing, requiring in the alternative the payment thereof and of any interest and penalty thereon, or the possession of the premises, has been served upon him, as prescribed in section [735] SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE. An acceptance of any rent shall not be construed as a waiver of the agreement to pay taxes or assessments.

[4.] (D) The tenant, under a lease for a term of three years or less, has during the term taken the benefit of an insolvency statute or has been adjudicated a bankrupt.

[5.] (E) The premises, or any part thereof, are used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business.

[6.] (F) The tenant, in a city having a population of one million or more, removes the batteries or otherwise disconnects or makes inoperable an installed smoke or fire detector which the tenant has not requested be moved from its location so as not to interfere with the reasonable use of kitchen facilities provided that the court, upon complaint thereof, has previously issued an order of violation of the provisions heretofore stated and, subsequent to the thirtieth day after service of such order upon the tenant, an official inspection report by the appropriate department of housing preservation and development is presented, in writing, indicating non-compliance herewith; provided further, that the tenant shall have the additional ten day period to cure such violation in accordance with the provisions of subdivision four of section seven hundred fifty-three of this [chapter] ARTICLE.

S 2. This act shall take effect immediately.