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

10166

I N A S S E M B L Y

June 18, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Farrell, Wright) -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to attorneys' fees and expenses in landlord-tenant disputes

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

Section 1. Section 234 of the real property law, as amended by chapter 297 of the laws of 1969, is amended to read as follows:

S 234. Tenants' right to recover attorneys' fees in actions or summary proceedings arising out of leases of residential property. 1. (A) 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 perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. Any waiver of this [section] SUBDIVISION shall be void as against public policy.

(B) THE COURT SHALL, IN ITS DISCRETION, ORDER THE LANDLORD TO PAY SUCH ATTORNEY'S FEES OR EXPENSES, OR BOTH, THAT ARE ACTUALLY AND REASONABLY INCURRED BY A TENANT WHO IS THE SUCCESSFUL PARTY IN SUCH ACTIONS OR PROCEEDINGS TO THE SAME EXTENT THE LANDLORD IS ENTITLED TO RECOVER ATTORNEY'S FEES AND EXPENSES, OR BOTH, AS PROVIDED IN THE LEASE. THE COURT SHALL HAVE DISCRETION WITH RESPECT TO AWARDS OF ATTORNEY'S FEES OR EXPENSES, OR BOTH, FOR TENANTS TO THE SAME DEGREE AS IT HAS WITH RESPECT

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

LBD15639-01-4

TO AWARDS OF ATTORNEY'S FEES OR EXPENSES, OR BOTH, FOR LANDLORDS AS PROVIDED UNDER THE LEASE EITHER EXPLICITLY OR IMPLICITLY.

(C) AN ORDER BASED ON THIS IMPLIED COVENANT SHALL REQUIRE THE LANDLORD TO PAY THE TENANT SUCH COSTS EITHER AS MONEY DAMAGES OR A CREDIT AGAINST FUTURE RENT, AS DETERMINED BY THE TENANT. NOTWITHSTANDING THE FOREGOING, IN AN ACTION OR SUMMARY PROCEEDING FOR NON-PAYMENT OF RENT A TENANT WHO PAYS ALL RENT CURRENTLY DUE AND OWING ON OR AFTER THE FILING OF THE COMPLAINT BUT PRIOR TO ENTRY OF A FINAL JUDGMENT, AND WHOM THE COURT FINDS PRESENTED NO MERITORIOUS DEFENSE TO THE COMPLAINT OTHER THAN SAID PAYMENT, SHALL NOT BE DEEMED TO HAVE SUCCESSFULLY DEFENDED AGAINST THE ACTION OR SUMMARY PROCEEDING FOR THE PURPOSES OF THE AWARD OF ATTORNEY'S FEES OR EXPENSES, OR BOTH.

AS USED IN THIS SECTION "EXPENSES" SHALL INCLUDE EXPENSES DIRECTLY RELATED TO THE LITIGATION INCLUDING, BUT NOT LIMITED TO, COURT COSTS AND EXPENSES FOR WITNESSES. "EXPENSES" SHALL NOT INCLUDE PERSONAL EXPENSES FOR TRAVEL, REIMBURSEMENT FOR MISSED WORK TIME, OR CHILD CARE.

2. IF A RESIDENTIAL LEASE AGREEMENT PROVIDES THAT THE LANDLORD IS OR MAY BE ENTITLED TO RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH, FROM THE TENANT FOR ANY ACTION OR SUMMARY PROCEEDING ARISING OUT OF THE LEASE, THE LEASE CLAUSE SHALL ALSO CONTAIN THE FOLLOWING PROVISION IN A BOLD TYPEFACE IN A FONT SIZE NO LESS THAN ONE POINT LARGER THAN THE POINT SIZE OF THE REST OF THE LEASE CLAUSE OR 11 POINTS, WHICHEVER IS LARGER:

IF THE TENANT IS SUCCESSFUL IN ANY ACTION OR SUMMARY PROCEEDING ARISING OUT OF THIS LEASE, THE TENANT SHALL RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH, FROM THE LANDLORD TO THE SAME EXTENT THE LANDLORD IS ENTITLED TO RECOVER ATTORNEY'S FEES OR EXPENSES, OR BOTH AS PROVIDED IN THIS LEASE.

S 2. This act shall take effect immediately, and shall apply to all new lease agreements for real property executed on and after the first of the month following such effective date.