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

9908--A

I N A S S E M B L Y

May 27, 2014

Introduced by M. of A. FARRELL -- read once and referred to the Committee on Housing -- 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 civil practice law and rules, in relation to rent overcharges

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

Section 1. Clause (i) of the opening paragraph of subdivision a of section 26-516 of the administrative code of the city of New York, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be the rent indicated in the annual registration statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. SUCH FOUR YEAR LOOK BACK PERIOD TO CHALLENGE A RENT OVERCHARGE SHALL BE DEEMED TOLLED WHERE THE TENANT CAN SHOW THAT THE TENANT WAS PREVENTED FROM ASSERTING HIS OR HER CLAIM BY SOME KIND OF WRONGFUL CONDUCT ON THE PART OF THE OWNER. FOR PURPOSES OF THIS SUBDIVISION SUCH WRONGFUL CONDUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, MISREPRESENTATION OR FRAUD. WHERE A TENANT IN A RENT OVERCHARGE ACTION ALLEGES MISREPRESENTATION OR FRAUD ON THE PART OF THE OWNER, THE OWNER SHALL BE REQUIRED TO PROVIDE THE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR RENOVATIONS MADE TO SUCH PREMISES DURING THE PERIOD FOUR YEARS PRIOR TO THE COMMENCEMENT OF THE OVERCHARGE ACTION. THE OWNER SHALL ALSO BE REQUIRED TO PROVIDE ANY NEW PROSPECTIVE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR IMPROVEMENTS

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

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MADE TO A PREMISES IN THE FOUR YEAR PERIOD PRIOR TO THE DATE OF THE TENANT SIGNING A LEASE FOR SUCH PREMISES.

S 2. The opening paragraph of paragraph 1 of subdivision a of section 12 of section 4 of chapter 576 of the laws of 1974 constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

Subject to the conditions and limitations of this paragraph, any owner of housing accommodations in a city having a population of less than one million or a town or village as to which an emergency has been declared pursuant to section three, who, upon complaint of a tenant or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this act shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. In no event shall such treble damage penalty be assessed against an owner based solely on said owner's failure to file a proper or timely initial or annual rent registration statement. If the owner establishes by a preponderance of the evidence that the overcharge was neither willful nor attributable to his negligence, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules. (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be deemed to be the rent indicated in the annual registration statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. (ii) As to complaints filed within ninety days of the initial registration of a housing accommodation, the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged on the date four years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this act for less than four years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date four years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division. Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. SUCH FOUR YEAR LOOK BACK PERIOD TO CHALLENGE A RENT OVERCHARGE SHALL BE DEEMED TOLLED WHERE THE TENANT CAN SHOW THAT THE TENANT WAS PREVENTED FROM ASSERTING HIS OR HER CLAIM BY SOME KIND OF WRONGFUL CONDUCT ON THE PART OF THE OWNER. FOR PURPOSES OF THIS SUBDIVISION SUCH WRONGFUL CONDUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, MISREPRESENTATION OR FRAUD. WHERE A TENANT IN A RENT OVERCHARGE ACTION ALLEGES MISREPRESENTATION OR FRAUD ON THE PART OF THE OWNER, THE OWNER SHALL BE REQUIRED TO PROVIDE THE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR RENOVATIONS MADE TO SUCH PREMISES DURING THE PERIOD FOUR

YEARS PRIOR TO THE COMMENCEMENT OF THE OVERCHARGE ACTION. THE OWNER SHALL ALSO BE REQUIRED TO PROVIDE ANY NEW PROSPECTIVE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR IMPROVEMENTS MADE TO A PREMISES IN THE FOUR YEAR PERIOD PRIOR TO THE DATE OF THE TENANT SIGNING A LEASE FOR SUCH PREMISES.

S 3. Section 213-a of the civil practice law and rules, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

S 213-a. Actions to be commenced within four years; residential rent overcharge. An action on a residential rent overcharge shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action. THE FOUR-YEAR PERIOD WITHIN WHICH AN ACTION MUST BE COMMENCED PURSUANT TO THIS SECTION SHALL BE DEEMED TOLLED WHERE THE CLAIMANT CAN SHOW THAT THE CLAIMANT WAS PREVENTED FROM ASSERTING HIS OR HER CLAIM BY SOME KIND OF WRONGFUL CONDUCT ON THE PART OF THE DEFENDANT. FOR PURPOSES OF THIS SECTION SUCH WRONGFUL CONDUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, MISREPRESENTATION OR FRAUD. WHERE A CLAIMANT IN A RENT OVERCHARGE ACTION ALLEGES MISREPRESENTATION OR FRAUD ON THE PART OF THE DEFENDANT, THE DEFENDANT SHALL BE REQUIRED TO PROVIDE THE CLAIMANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR RENOVATIONS MADE TO SUCH PREMISES DURING THE PERIOD FOUR YEARS PRIOR TO THE COMMENCEMENT OF THE OVERCHARGE ACTION.

S 4. This act shall take effect immediately, and shall apply to any action or proceeding pending in any court or any application, complaint or proceeding before an administrative agency on the effective date of this act, as well as any action or proceeding commenced thereafter; provided, however, that:

(a) the amendments to subdivision a of section 26-516 of the administrative code of the city of New York made by section one of this act shall expire on the same date as such law expires and shall not affect the expiration of such section as provided under section 26-520 of such code; and

(b) the amendments to the emergency tenant protection act of nineteen seventy-four made by section two of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 576 of the laws of 1974.