

9908--A

I N   A S S E M B L Y

May 27, 2014

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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:

1     Section 1. Clause (i) of the opening paragraph of subdivision a of  
2     section 26-516 of the administrative code of the city of New York, as  
3     amended by chapter 116 of the laws of 1997, is amended to read as  
4     follows:  
5     (i) Except as to complaints filed pursuant to clause (ii) of this  
6     paragraph, the legal regulated rent for purposes of determining an over-  
7     charge, shall be the rent indicated in the annual registration statement  
8     filed four years prior to the most recent registration statement, (or,  
9     if more recently filed, the initial registration statement) plus in each  
10    case any subsequent lawful increases and adjustments. Where the amount  
11    of rent set forth in the annual rent registration statement filed four  
12    years prior to the most recent registration statement is not challenged  
13    within four years of its filing, neither such rent nor service of any  
14    registration shall be subject to challenge at any time thereafter. SUCH  
15    FOUR YEAR LOOK BACK PERIOD TO CHALLENGE A RENT OVERCHARGE SHALL BE  
16    DEEMED TOLLED WHERE THE TENANT CAN SHOW THAT THE TENANT WAS PREVENTED  
17    FROM ASSERTING HIS OR HER CLAIM BY SOME KIND OF WRONGFUL CONDUCT ON THE  
18    PART OF THE OWNER. FOR PURPOSES OF THIS SUBDIVISION SUCH WRONGFUL  
19    CONDUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, MISREPRESENTATION OR  
20    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  
21    PROVIDE THE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS,  
22    UPGRADES OR RENOVATIONS MADE TO SUCH PREMISES DURING THE PERIOD FOUR  
23    YEARS PRIOR TO THE COMMENCEMENT OF THE OVERCHARGE ACTION. THE OWNER  
24    SHALL ALSO BE REQUIRED TO PROVIDE ANY NEW PROSPECTIVE TENANT WITH THE  
25    RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS, UPGRADES OR IMPROVEMENTS  
26

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

LBD15432-03-4

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

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

7 Subject to the conditions and limitations of this paragraph, any owner  
8 of housing accommodations in a city having a population of less than one  
9 million or a town or village as to which an emergency has been declared  
10 pursuant to section three, who, upon complaint of a tenant or of the  
11 state division of housing and community renewal, is found by the state  
12 division of housing and community renewal, after a reasonable opportu-  
13 nity to be heard, to have collected an overcharge above the rent author-  
14 ized for a housing accommodation subject to this act shall be liable to  
15 the tenant for a penalty equal to three times the amount of such over-  
16 charge. In no event shall such treble damage penalty be assessed against  
17 an owner based solely on said owner's failure to file a proper or timely  
18 initial or annual rent registration statement. If the owner establishes  
19 by a preponderance of the evidence that the overcharge was neither will-  
20 ful nor attributable to his negligence, the state division of housing  
21 and community renewal shall establish the penalty as the amount of the  
22 overcharge plus interest at the rate of interest payable on a judgment  
23 pursuant to section five thousand four of the civil practice law and  
24 rules. (i) Except as to complaints filed pursuant to clause (ii) of this  
25 paragraph, the legal regulated rent for purposes of determining an over-  
26 charge, shall be deemed to be the rent indicated in the annual registra-  
27 tion statement filed four years prior to the most recent registration  
28 statement, (or, if more recently filed, the initial registration state-  
29 ment) plus in each case any subsequent lawful increases and adjustments.  
30 Where the amount of rent set forth in the annual rent registration  
31 statement filed four years prior to the most recent registration state-  
32 ment is not challenged within four years of its filing, neither such  
33 rent nor service of any registration shall be subject to challenge at  
34 any time thereafter. (ii) As to complaints filed within ninety days of  
35 the initial registration of a housing accommodation, the legal regulated  
36 rent for purposes of determining an overcharge shall be deemed to be the  
37 rent charged on the date four years prior to the date of the initial  
38 registration of the housing accommodation (or, if the housing accommo-  
39 dation was subject to this act for less than four years, the initial  
40 legal regulated rent) plus in each case, any lawful increases and  
41 adjustments. Where the rent charged on the date four years prior to the  
42 date of the initial registration of the accommodation cannot be estab-  
43 lished, such rent shall be established by the division. Where the amount  
44 of rent set forth in the annual rent registration statement filed four  
45 years prior to the most recent registration statement is not challenged  
46 within four years of its filing, neither such rent nor service of any  
47 registration shall be subject to challenge at anytime thereafter. SUCH  
48 FOUR YEAR LOOK BACK PERIOD TO CHALLENGE A RENT OVERCHARGE SHALL BE  
49 DEEMED TOLLED WHERE THE TENANT CAN SHOW THAT THE TENANT WAS PREVENTED  
50 FROM ASSERTING HIS OR HER CLAIM BY SOME KIND OF WRONGFUL CONDUCT ON THE  
51 PART OF THE OWNER. FOR PURPOSES OF THIS SUBDIVISION SUCH WRONGFUL  
52 CONDUCT SHALL INCLUDE, BUT NOT BE LIMITED TO, MISREPRESENTATION OR  
53 FRAUD. WHERE A TENANT IN A RENT OVERCHARGE ACTION ALLEGES MISREPRESEN-  
54 TATION OR FRAUD ON THE PART OF THE OWNER, THE OWNER SHALL BE REQUIRED TO  
55 PROVIDE THE TENANT WITH THE RECEIPTS AND DISBURSEMENTS FOR ANY REPAIRS,  
56 UPGRADES OR RENOVATIONS MADE TO SUCH PREMISES DURING THE PERIOD FOUR

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

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

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

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

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

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