

2525

2015-2016 Regular Sessions

I N S E N A T E

January 26, 2015

Introduced by Sen. PARKER -- 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 real property actions and proceedings law, in relation to requiring that certain public housing authorities establish an innocent tenant protection act applicable to tenants of public and federally assisted housing

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

1 Section 1. Legislative intent. The legislature finds that it is imper-
2 ative that the forty-nine public housing authorities in the state
3 provide that any criminal activities that threaten the health, safety or
4 right to peaceful enjoyment of the premises, engaged in by a tenant of
5 public or federally assisted housing, and members of the tenants' house-
6 hold, or any guest or other person under the tenants' control, shall be
7 cause for termination of tenancy. The legislature further finds that law
8 abiding tenants are vulnerable to "One-Strike" evictions given the poli-
9 cy's breadth and the United States Supreme Court's decision in UNITED
10 STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT V. DAVIS. Anyone who
11 leases public or assisted housing is a potential target of "One-Strike"
12 evictions. It is of little consequence that a tenant may be law abiding,
13 despise drug activity or have made his or her home a drug-free environ-
14 ment. Any link to guest or family members involved in drug activity on
15 or off the public housing premises can trigger eviction. Therefore the
16 legislature finds the adoption of an innocent tenant protection act
17 vital to law abiding tenants of public and federally assisted housing in
18 New York state.

19 S 2. The real property actions and proceedings law is amended by
20 adding a new section 711-a to read as follows:

21 S 711-A. INNOCENT TENANT PROTECTION. 1. EACH PUBLIC HOUSING AUTHORITY
22 AND OWNERS OF FEDERALLY ASSISTED HOUSING SHALL UTILIZE LEASES WHICH

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

LBD06611-01-5

1 PROVIDE THAT ANY CRIMINAL ACTIVITY THAT THREATENS THE HEALTH, SAFETY OR
2 RIGHT TO PEACEFUL ENJOYMENT OF THE PREMISES, ENGAGED IN BY A PUBLIC
3 HOUSING OR FEDERALLY ASSISTED HOUSING TENANT OR ANY DRUG RELATED CRIMI-
4 NAL ACTIVITY ON OR OFF SUCH PREMISES ENGAGED IN BY A PUBLIC HOUSING OR
5 FEDERALLY ASSISTED HOUSING TENANT, ANY MEMBER OF THE TENANT'S HOUSEHOLD,
6 OR ANY GUEST OR OTHER PERSON UNDER THE TENANT'S CONTROL, SHALL BE CAUSE
7 FOR TERMINATION, EXCEPT THAT NO TENANCY OF AN INNOCENT LESSEE SHALL BE
8 TERMINATED PURSUANT TO THIS SECTION.

9 2. THE BURDEN OF PROOF SHALL BE ON THE GOVERNMENT TO ESTABLISH BY A
10 PREPONDERANCE OF THE EVIDENCE THAT SUCH TENANT ENGAGED IN CRIMINAL
11 ACTIVITY AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION.

12 3. FOR PURPOSES OF THIS SECTION THE TERM "INNOCENT LESSEE" MEANS A
13 LESSEE WHO:

14 (A) DID NOT KNOW OF THE CRIMINAL ACTIVITY GIVING RISE TO THE POSSIBLE
15 TERMINATION OF TENANCY; OR

16 (B) UPON HEARING OF THE CONDUCT GIVING RISE TO THE POSSIBLE TERMI-
17 NATION OF THE TENANCY, DID ALL THAT REASONABLY COULD BE EXPECTED UNDER
18 THE CIRCUMSTANCES TO TERMINATE THE CRIMINAL ACTIVITY. FOR PURPOSES OF
19 THIS SUBDIVISION, WAYS IN WHICH A PERSON MAY SHOW THAT SUCH PERSON DID
20 ALL THAT REASONABLY COULD BE EXPECTED MAY INCLUDE DEMONSTRATING THAT
21 SUCH PERSON, TO THE EXTENT ALLOWED BY LAW: (I) GAVE TIMELY NOTICE TO AN
22 APPROPRIATE LAW ENFORCEMENT AGENCY OF INFORMATION THAT LED THE TENANT TO
23 KNOW THE CONDUCT GIVING RISE TO A POSSIBLE TERMINATION OF TENANCY WOULD
24 OCCUR OR HAD OCCURRED; OR (II) IN A TIMELY FASHION REVOKED OR MADE A
25 GOOD FAITH ATTEMPT TO REVOKE PERMISSION FOR THOSE ENGAGING IN SUCH
26 CONDUCT TO USE THE PROPERTY, OR TOOK REASONABLE ACTIONS IN CONSULTATION
27 WITH A LAW ENFORCEMENT AGENCY TO DISCOURAGE OR PREVENT THE ILLEGAL USE
28 OF THE PROPERTY.

29 4. A TENANT IS NOT REQUIRED BY SUBDIVISION THREE OF THIS SECTION TO
30 TAKE STEPS THAT THE PERSON REASONABLY BELIEVES WOULD BE LIKELY TO
31 SUBJECT ANY PERSON, OTHER THAN THE PERSON WHOSE CONDUCT GAVE RISE TO THE
32 POSSIBLE TERMINATION OF TENANCY, TO PHYSICAL DANGER.

33 S 3. (a) Within six months of the effective date of this act and after
34 granting notice and an opportunity to comment to affected tenants, the
35 executive directors of the public housing authorities and owners of
36 federally assisted housing shall review the drug-related eviction proce-
37 dures of all jurisdictions having federally subsidized units for the
38 purpose of determining whether procedures meet state due process stand-
39 ards.

40 (b) Upon conclusion of the review mandated by subdivision (a) of this
41 section, if the executive directors of public housing authorities or the
42 owners of federally assisted housing determine that due process stand-
43 ards are met for a jurisdiction, such directors and owners shall issue
44 such jurisdiction a waiver of the procedure that mandates an administra-
45 tive grievance hearing.

46 (c) Within sixty days of the completion of the review mandated by
47 subdivision (a) of this section, the executive directors of the public
48 housing authorities and owners of federally assisted housing shall
49 report to the mayors in those cities where such housing authorities and
50 owners are under the auspices of that government body or county, or
51 state body of government, the findings of the review including all waiv-
52 ers granted in accordance with subdivision (b) of this section. The
53 tenancy of a tenant of a public housing authority or federally assisted
54 housing shall not be terminated without cause and without reason there-
55 for given to said tenant in writing prior to such housing authority

1 and/or federally assisted housing filing an action for summary process
2 or seeking an injunction.
3 S 4. This act shall take effect on the thirtieth day after it shall
4 have become a law.