STATE OF NEW YORK

10988

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. MOSLEY -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to the regulation of commercial rents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Title 26 of the administrative code of the city of New York is amended by adding a new chapter 21 to read as follows:

CHAPTER 21
COMMERCIAL RENT STABILIZATION

Section 26-2101 Scope.
26-2102 Definitions.
26-2103 Rental guidelines.
26-2104 Security deposits.
26-2105 Retaliation.
26-2106 Waiver.
26-2107 Manner of service.
26-2108 Inconsistency with other laws.

§ 26-2101 Scope. This chapter shall apply only to all commercial lease renewals for commercial premises. On any occasion wherein a landlord and tenant are required to negotiate the terms of a lease renewal for commercial uses the provisions of this chapter shall apply. The provisions of this chapter shall apply to any landlord and current tenant whose lease expired on or after July first, two thousand eighteen.

§ 26-2102 Definitions. As used in this chapter:

a. "Commercial premises" shall mean a building or space occupied for non-residential purposes including, but not limited to, manufacturing, retail, professional services, offices, assembling, processing, cultural and not-for-profit entities that are present in the city of New York, who have a valid commercial lease.

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

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b. "Landlord" shall mean any owner, lessor, sublessor or other person entitled to receive rent for the use or occupancy of any commercial premises, or an agent thereof.

c. "Rent" shall mean any and all consideration, including but not limited to pass-alongs, received by the landlord in connection with the use or occupancy of any commercial premises.

d. "Tenant" shall mean tenant, subtenant, lessee, sublessee, or any other persons lawfully entitled to use or occupancy of any commercial premises.

§ 26-2103 Rental guidelines. a. The rent guidelines board established pursuant to section 26-510 of this title shall establish annually guidelines for the maximum increase in rent for a renewal of a lease of commercial premises, and in determining such maximum rent increase shall consider, among other things (1) the economic condition of the commercial real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of commercial premises and over-all vacancy rates, (2) relevant data from the current and projected cost of operating indices for the affected area, (3) such other data as may be made available to it. Not later than July first of each year, the rent guidelines board shall file with the city clerk its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum increase in rent for a renewal of a lease, if any, for commercial premises subject to this law, authorized for leases or other rental agreements commencing on the next succeeding October first or within the twelve months thereafter. Such findings and statement shall be published in the City Record.

b. All leases of a commercial premises may be renewed at the option of a tenant who did not lose the right to renew a lease under the grounds described in subdivision c of this section.

c. A tenant shall lose the right of renewal and a landlord may refuse to renew a lease only on the following grounds:

(1) The tenant has persistently delayed rent payments without cause. For the purpose of this subdivision, "cause" is defined as the withholding of rental payments by the tenant due to the alleged violations of the rental agreement by the landlord. In order for the landlord to be excused from renewal on this ground, the landlord must have served the tenant at least three prior notices during the term of the lease to the tenant for demand of payment within thirty days, and then show that the lessee has not paid within such thirty day period. The landlord shall not serve such notice unless the rent payment was in arrears for a minimum of fifteen days;

(2) The tenant uses the commercial premises in a manner substantially different from that described in the lease;

(3) The tenant conducts or permits any form of illegal activity on the premises;

(4) The tenant has substantially breached any substantive obligation under the current lease and has failed to cure such breach within thirty days following written notice to cure by the landlord;

(5) Upon the termination of the current tenancy, the landlord intends, in good faith, to demolish or substantially reconstruct the premises or a substantial part thereof, or to carry out substantial work or construction on the commercial premises or substantial part thereof

which he or she could not reasonably do without obtaining possession of the commercial premises. The landlord shall notify the tenant of his or her decision to reoccupy the commercial premises at least one year prior to the termination of the lease. In the event that the lessor fraudulently invokes this justification for a refusal to renew a commercial lease, the defrauded tenant may collect treble damages for any loss suffered as a result of such action;

(6) The current tenancy was created by the subletting of the property, whereby the prime tenant did not notify the landlord by certified mail of the subtenant's existence and did not obtain the written consent of the landlord. This ground is void if the landlord and tenant had agreed in the lease to allow subleasing rights without the consent of the landlord and all obligations of the prime tenant on the issue, were in compliance;

(7) It has been determined by the rent guidelines board or by a civil court of competent jurisdiction that the tenant is a gross and persistent violator of New York city tax laws, of any license obligations related to the use of the premises or of any laws of the city of New York;

(8) Upon the termination of the current tenancy, the landlord intends to occupy the retail premises in order to carry out its own business, which cannot be the same type of business that the current tenant is operating, unless the landlord compensates the tenant at fair market value as determined by an arbitrator as restitution for the loss of such tenant's business. The landlord shall notify the tenant of his or her decision to reoccupy the premises at least one hundred eighty days prior to the termination of the lease. In the event that the landlord fraudulently invokes this justification for a refusal to renew a commercial lease, the defrauded tenant may collect treble damages for any loss suffered as a result of such action.

§ 26-2104 Security deposits. Security deposits shall not exceed an amount equal to two months rent. All security deposits shall be placed in escrow in an interest-bearing account at a federally insured bank located in New York state. The tenant shall be notified in writing of the location of such escrow account. Interest paid on the account shall be paid in full to the tenant upon termination of the lease. The amount of interest paid to the tenant shall equal the interest paid by such federally insured bank less one percent for the landlord's administrative costs.

§ 26-2105 Retaliation. No landlord shall in any way retaliate against any tenant for the tenant's assertion or exercise of any rights under this chapter. Any such retaliation may subject the landlord to a suit for actual and punitive damages, injunctive relief, and attorney's fees.

§ 26-2106 Waiver. No provision in any lease, rental agreement, or agreement made in connection therewith which waives or diminishes any right of tenant under this chapter is valid.

§ 26-2107 Manner of service. All papers and notices which, by the terms of this chapter are required to be served, shall be served by a process server, or shall be sent by first class mail and certified mail, return receipt requested or by any express mail service.

§ 26-2108 Inconsistency with other laws. In the event of any inconsistency with any other laws of the city of New York, this law shall take precedence.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the

judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.