STATE OF NEW YORK

4318

2017-2018 Regular Sessions

IN ASSEMBLY

February 2, 2017

Introduced by M. of A. KAVANAGH -- Multi-Sponsored by -- M. of A. FARRELL -- read once and referred to the Committee on Housing

AN ACT to amend the emergency housing rent control law, the administrative code of the city of New York, and the emergency tenant protection act of nineteen seventy-four, in relation to providing for a hearing before the division of housing and community renewal prior to issuance of an order of decontrol for failure to respond to income certification material; and in relation to excluding certain tenants from inclusion for annual income determination

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

Section 1. Paragraph 1 of subdivision (a) of section 2-a of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 32 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

1. For purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment**, excluding senior citizens and disabled persons,** and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered. **For the purposes of this subdivision, disabled person shall mean an individual (i) with a physical or mental impairment, including, but not limited to, those of neurological, emotional or sensory organs, which substantially limits one or more of the individual's major life activities, and (ii) who is regarded as having such an impairment as certified by a licensed physician of this state. For the purposes of**

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

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this subdivision, senior citizen shall mean any person who is sixty-two years of age or older.

§ 2. Subdivision (c) of section 2-a of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 32 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. The division's notification shall require the tenant or tenants to provide the information to the division within [~~sixty~~] ninety days of service upon such tenant or tenants and shall include a warning in bold faced type at the top of the page that failure to respond [~~will~~] may result in an order of decontrol being issued by the division for such housing accommodation following a hearing to be scheduled not more than ninety days from the date the division sent such tenant or tenants the notice provided in this paragraph, the notification shall advise such tenant or tenants that failure to appear at such hearing without good or just cause may result in an order of deregulation being issued by the division for such housing accommodation. Such tenant or tenants may authorize a person or persons to represent such tenant's or tenants' interest at the hearing.

2. If the department of taxation and finance determines that the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have [~~thirty~~] sixty days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order of deregulation providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the filing of the owner's petition with the division. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

3. In the event the tenant or tenants fail to [~~provide the information~~] appear without good or just cause at the hearing required pursuant to paragraph one of this subdivision, the division [~~shall~~] may issue, on or before December first of such year, an order of deregulation providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to [~~provide the information~~] appear at the hearing required by such paragraph. A copy of such order shall be mailed by regular and certified

mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

§ 3. Paragraph 1 of subdivision (a) of section 26-403.1 of the administrative code of the city of New York, as amended by section 34 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

1. For purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence other than on a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment**, excluding senior citizens and disabled persons,** and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. [~~In the case where a housing accommodation is sublet, the annual income of the sublessor shall be considered.~~] **For the purposes of this subdivision, disabled person shall mean an individual (i) with a physical or mental impairment, including, but not limited to, those of neurological, emotional or sensory organs, which substantially limits one or more of the individual's major life activities, and (ii) who is regarded as having such an impairment as certified by a licensed physician of this state. For the purposes of this subdivision, senior citizen shall mean any person who is sixty-two years of age or older.**

§ 4. Subdivision (c) of section 26-403.1 of the administrative code of the city of New York, as amended by section 34 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. The division's notification shall require the tenant or tenants to provide the information to the division within [~~sixty~~] **ninety** days of service upon such tenant or tenants and shall include a warning in bold faced type **at the top of the page** that failure to respond [~~will~~] **may result in an order of decontrol being issued by the division for such housing accommodation following a hearing to be scheduled not more than ninety days from the date the division sent such tenant or tenants the notice provided in this paragraph, the notification shall advise such tenant or tenants that failure to appear at such hearing without good or just cause may** result in an order of deregulation being issued by the division for such housing accommodation. **Such tenant or tenants may authorize a person or persons to represent such tenant's or tenants' interest at the hearing.**

2. If the department of taxation and finance determines that the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have [~~thirty~~] **sixty** days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order of deregulation providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the filing of the owner's petition with the division. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

3. In the event the tenant or tenants fail to [~~provide the information~~] **appear without good or just cause at the hearing** required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order of deregulation providing that such housing accommodation shall not be subject to the provisions of this law as of the first day of March in the year next succeeding the last day on which the tenant or tenants were required to [~~provide the information~~] **appear at the hearing** required by such paragraph. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

§ 5. Paragraph 1 of subdivision (a) of section 26-504.3 of the administrative code of the city of New York, as amended by section 36 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

1. For purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment**, excluding senior citizens and disabled persons,** and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. [~~In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.~~] **For the purposes of this subdivision, disabled person shall mean an individual (i) with a physical or mental impairment, including, but not limited to, those of neurological, emotional or sensory organs, which substantially limits one or more of the individual's major life activities, and (ii) who is regarded as having such an impairment as certified by a licensed physician of this state. For the purposes of this subdivision, senior citizen shall mean any person who is sixty-two years of age or older.**

§ 6. Subdivision (c) of section 26-504.3 of the administrative code of the city of New York, as amended by section 36 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. The division's notification shall require the tenant or tenants to provide the information to the division within [~~sixty~~] **ninety** days of service upon such tenant or tenants and shall include a warning in bold faced type **at the top of the page** that failure to respond [~~will~~] **may result in an order of decontrol being issued by the division for such housing accommodation following a hearing to be scheduled not more than ninety days from the date the division sent such tenant or tenants the notice provided in this paragraph, the notification shall advise such tenant or tenants that failure to appear at such hearing without good or just cause may** result in an order being issued by the division providing that such housing accommodation shall not be subject to the provisions of this law. **Such tenant or tenants may authorize a person or persons to represent such tenant's or tenants' interest at the hearing.**

2. If the department of taxation and finance determines that the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have [~~thirty~~] **sixty** days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

3. In the event the tenant or tenants fail to [~~provide the information~~] **appear without good or just cause at the hearing** required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this law upon the expiration of the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

§ 7. Paragraph 1 of subdivision (a) of section 5-a of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by section 30 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

1. For purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in connection with such employment**, excluding senior citizens and disabled persons,** and excluding bona fide subtenants in occupancy pursuant to the provisions of section two hundred twenty-six-b of the real property law. [~~In the case where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.~~] **For the purposes of this subdivision, disabled person shall mean an individual (i) with a physical or mental impairment, including, but not limited to, those of neurological, emotional or sensory organs, which substantially limits one or more of the individual's major life activities, and (ii) who is regarded as having such an impairment as certified by a licensed physician of this state. For the purposes of this subdivision, senior citizen shall mean any person who is sixty-two years of age or older.**

§ 8. Subdivision (c) of section 5-a of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by section 30 of part B of chapter 97 of the laws of 2011, is amended to read as follows:

(c) 1. In the event that the tenant or tenants either fail to return the completed certification to the owner on or before the date required by subdivision (b) of this section or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June thirtieth of such year, petition the state division of housing and community renewal to verify, pursuant to section one hundred seventy-one-b of the tax law, whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. Within twenty days after the filing of such request with the division, the division shall notify the tenant or tenants that such tenant or tenants named on the lease must provide the division with such information as the division and the department of taxation and finance shall require to verify whether the total annual income exceeds the deregulation income threshold in each of the two preceding calendar years. The division's notification shall require the tenant or tenants to provide the information to the division within [~~sixty~~] **ninety** days of service upon such tenant or tenants and shall include a warning in bold faced type **at the top of the page** that failure to respond [~~will~~] **may result in an order of decontrol being issued by the division for such housing accommodation following a hearing to be scheduled not more than ninety days from the date the division sent such tenant or tenants the notice provided in this paragraph, the notification shall advise such tenant or tenants that failure to appear at such hearing without good or just cause may** result in an order being issued by the division providing that such housing accommodations shall not be subject to the provisions of this act. **Such tenant or tenants may authorize a person or persons to represent such tenant's or tenants' interest at the hearing.**

2. If the department of taxation and finance determines that the total annual income is in excess of the deregulation income threshold in each of the two preceding calendar years, the division shall, on or before November fifteenth of such year, notify the owner and tenants of the

results of such verification. Both the owner and the tenants shall have [~~thirty~~] **sixty** days within which to comment on such verification results. Within forty-five days after the expiration of the comment period, the division shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of this act upon expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

3. In the event the tenant or tenants fail to [~~provide the information~~] **appear without good or just cause at the hearing** required pursuant to paragraph one of this subdivision, the division [~~shall~~] **may** issue, on or before December first of such year, an order providing that such housing accommodation shall not be subject to the provisions of this act upon the expiration of the current lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

4. The provisions of the state freedom of information act shall not apply to any income information obtained by the division pursuant to this section.

§ 9. This act shall take effect immediately; provided that the amendments to section 2-a of the emergency housing rent control law made by sections one and two of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided in subdivision 2 of section 1 of chapter 274 of the laws of 1946; provided further that the amendments to section 26-403.1 of the city rent and rehabilitation law made by sections three and four of this act shall remain in full force and effect only so long as the public emergency requiring the regulation and control of residential rents and evictions continues, as provided in subdivision 3 of section 1 of the local emergency housing rent control act; provided further that the amendments to section 26-504.3 of the rent stabilization law of nineteen hundred sixty-nine made by sections five and six of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law; and provided further that the amendments to section 5-a of the emergency tenant protection act of nineteen seventy-four made by sections seven and eight 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.