

STATE OF NEW YORK

10963

IN ASSEMBLY

May 29, 2018

Introduced by M. of A. BARNWELL -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to requiring landlords to return security deposits within a reasonable time

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

1 Section 1. The general obligations law is amended by adding a new
2 section 7-104 to read as follows:

3 § 7-104. Money deposited or advanced for use or rental of any dwell-
4 ing; retention. 1. Definitions. For the purpose of this section:

5 (a) The term "security deposit" shall mean any advance or deposit of
6 money that is subject to the provisions of section 7-103 of this title,
7 and the primary function of which is to secure the performance of a
8 rental agreement for the use or rental of any dwelling or any part ther-
9 eof.

10 (b) The term "landlord" shall mean any person who receives payment
11 from a tenant for the rental or use of any dwelling or any portion ther-
12 eof and has received a security deposit in connection with such rental.

13 (c) The term "tenant" shall mean any person who occupies any dwelling
14 or any portion thereof for which he or she pays rent and who, in
15 connection with such rental, has furnished a security deposit.

16 2. No security deposit for a dwelling shall exceed more than two
17 months' rent.

18 3. A month prior to the expiration of the lease, the landlord shall
19 notify all tenants that they have the option to conduct a pre-exit walk-
20 through with the landlord to document any and all damages, as well as a
21 post-exit walk-through with the landlord to document any damages caused
22 while moving out that may impact the value of the security deposit. The
23 post-exit walk-through cannot be after the last day of the lease.

24 4. A landlord shall, within twenty-one days of the end of the lease,
25 return to the tenant the full security deposit and any accrued interest
26 to which the tenant is entitled less any amount retained by the landlord
27 under subdivision five of this section.

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

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1 5. (a) A landlord may retain all or a part of a security deposit for
2 nonpayment of rent, use and occupancy, unjustifiable abandonment of the
3 premises prior to the expiration of the lease term, nonpayment of utili-
4 ty charges, repair work or cleaning contracted by the tenant or damages
5 caused by the tenant to the premises.

6 (b) (i) In the event that the landlord retains any portion of the
7 security deposit, he or she shall provide the tenant with a written
8 statement listing the reasons for the retention of such portion of the
9 security deposit within twenty-one calendar days after the lease
10 expired.

11 (ii) The written statement shall include photographic documentation
12 for all reasons for retention regarding damages by the tenant to the
13 dwelling and a detailed itemized receipt of repair for such damage. The
14 itemized receipt shall include proof of the cost for the repair of any
15 listed damage on said receipt. The itemized receipt shall also include
16 proof of the payment in full by the landlord for the cost of the repair.
17 If the landlord or landlord's employee did not do the repair work, the
18 landlord shall provide the tenant a copy of the paid bill, paid invoice,
19 or receipt showing payment in full, supplied by the person or entity
20 performing the work. The itemized receipt shall provide the tenant with
21 the name, address, and telephone number of the person or entity who
22 performed the repair work. If the landlord and/or his or her employee
23 performed the repair work, the itemized receipt shall reasonably
24 describe the work performed and any hourly rate charged for the landlord
25 and any employee.

26 (c) When the statement is delivered, it shall be signed by the land-
27 lord attesting to the accuracy of the statement. All tenants whose secu-
28 rity deposit is being retained shall sign the written statement and
29 return a signed copy to the landlord if the tenant agrees to the accura-
30 cy of the statement.

31 (d) When the statement is signed by the tenant and returned to the
32 landlord, the landlord shall return to the tenant their security deposit
33 and any accrued interest to which the tenant is entitled less any amount
34 retained by the landlord under this subdivision as agreed to in the
35 statement signed by the tenant.

36 (e) If the tenant does not believe the statement is accurate and thus
37 does not sign, the statement was not signed by the landlord, the remain-
38 der of the security deposit is not returned within twenty-one calendar
39 days after the lease expired, or repairs cannot reasonably be completed
40 within twenty-one calendar days after the lease expired, the tenant may
41 invoke the use of the New York state attorney general's mediation proc-
42 ess and, if the mediation process fails or is not used, bring an action
43 in small claims court.

44 6. The willful retention of a security deposit in violation of this
45 section shall render a landlord liable for treble the amount of that
46 portion of the security deposit wrongfully withheld from the tenant,
47 together with reasonable attorneys' fees, court costs, and the last two
48 months' rent paid by the tenant. In any action brought by a tenant under
49 this section, the landlord shall bear the burden of proving that his or
50 her withholding of the security deposit or any portion thereof was not
51 willful. This section shall not limit any other penalties the landlord
52 could be subjected to.

53 7. Any provision of a contract or agreement whereby a person who so
54 deposits or advances money waives any provision of this section is abso-
55 lutely void.

1 8. Any landlord found in violation of this section shall have each
2 refraction reported to the department of homes and community renewal,
3 who shall compile a list of landlords who have violated the provisions
4 of this section including, but not limited to, which provisions were
5 violated. The department of homes and community renewal shall post such
6 list on their website, and such information can be requested in paper
7 format by members of the public.

8 § 2. This act shall take effect on the sixtieth day after it shall
9 have become a law.