STATE OF NEW YORK

3190

2017-2018 Regular Sessions

IN SENATE

January 20, 2017

Introduced by Sens. KRUEGER, AVELLA, BAILEY, HAMILTON, HOYLMAN, LATIMER, MONTGOMERY, PARKER, PERALTA, PERKINS, SERRANO, SQUADRON, STAVISKY, STEWART-COUSINS -- 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 administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency housing rent control law, in relation to extending the length of time over which major capital improvement expenses may be recovered

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

Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by section 31 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(g) **(i) Collection of surcharges to the maximum rent authorized pursuant to item (ii) of this subparagraph shall cease when the owner has recovered the cost of the major capital improvement;**

(ii) There has been since July first, nineteen hundred seventy, a major capital improvement [~~required for the operation, preservation or maintenance of the structure. An adjustment under this subparagraph (g) for any order of the commissioner issued after the effective date of the rent act of 2015 shall be in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph (g) over an eight-year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than thiry-five units,~~]**; provided that the commissioner finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation, preservation or maintenance of the structure. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the maximum rent. It shall be separately designated**

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

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and billed as such and shall not be compounded by any other adjustment to the maximum rent. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply; or

§ 2. Subparagraph (k) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, as amended by chapter 749 of the laws of 1990, is amended to read as follows:

(k) The landlord has incurred, since January first, nineteen hundred seventy, in connection with and in addition to a concurrent major capital improvement pursuant to subparagraph (g) of this paragraph, other expenditures to improve, restore or preserve the quality of the structure. An adjustment under this subparagraph shall be granted only if such improvements represent an expenditure equal to at least ten per centum of the total operating and maintenance expenses for the preceding year. An adjustment under this subparagraph shall be in addition to any adjustment granted for the concurrent major capital improvement and shall be [~~in an amount sufficient to amortize the cost of the improvements pursuant to this subparagraph over a seven-year period~~] implemented in the same manner as such major capital improvement as a further surcharge to the maximum rent.

§ 3. Paragraph 6 of subdivision c of section 26-511 of the administrative code of the city of New York, as amended by section 29 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

(6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide [~~(a)~~] as to hardship applications, for a finding that the level of fair rent increase is not sufficient to enable the owner to maintain approximately the same average annual net income (which shall be computed without regard to debt service, financing costs or management fees) for the three year period ending on or within six months of the date of an application pursuant to such criteria as compared with annual net income, which prevailed on the average over the period nineteen hundred sixty-eight through nineteen hundred seventy, or for the first three years of operation if the building was completed since nineteen hundred sixty-eight or for the first three fiscal years after a transfer of title to a new owner provided the new owner can establish to the satisfaction of the commissioner that he or she acquired title to the building as a result of a bona fide sale of the entire building and that the new owner is unable to obtain requisite records for the fiscal years nineteen hundred sixty-eight through nineteen hundred seventy despite diligent efforts to obtain same from predecessors in title and further provided that the new owner can provide financial data covering a minimum of six years under his or her continuous and uninterrupted operation of the building to meet the three year to three year comparative test periods herein provided[~~; and (b) as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the Internal Revenue Code and that the cost~~

~~is to be amortized over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015, based upon cash purchase price exclusive of interest or service charges~~]. Notwithstanding anything to the contrary contained herein, no hardship increase granted pursuant to this paragraph shall, when added to the annual gross rents, as determined by the commissioner, exceed the sum of, (i) the annual operating expenses, (ii) an allowance for management services as determined by the commissioner, (iii) actual annual mortgage debt service (interest and amortization) on its indebtedness to a lending institution, an insurance company, a retirement fund or welfare fund which is operated under the supervision of the banking or insurance laws of the state of New York or the United States, and (iv) eight and one-half percent of that portion of the fair market value of the property which exceeds the unpaid principal amount of the mortgage indebtedness referred to in subparagraph (iii) of this paragraph. Fair market value for the purposes of this paragraph shall be six times the annual gross rent. The collection of any increase in the stabilized rent for any apartment pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the stabilized rent as established or set in future years;

§ 4. Subdivision c of section 26-511 of the administrative code of the city of New York is amended by adding two new paragraphs 6-b and 6-c to read as follows:

(6-b) provides criteria whereby the commissioner may act upon application by owners for increases in excess of the level of fair rent increase established under this law provided, however, that such criteria shall provide as to completed building-wide major capital improvements, for a finding that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation, preservation or maintenance of the structure. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the legal regulated rent. It shall be separately designated and billed as such and shall not be compounded by any annual adjustment of the level of fair rent provided for under subdivision b of section 26-510 of this law. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment, in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply.

(6-c) collection of surcharges in excess of the level of fair rent authorized pursuant to paragraph six-b of this subdivision shall cease when the owner has recovered the cost of the major capital improvement.

§ 5. Paragraph 3 of subdivision d of section 6 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 A of chapter 20 of the laws of 2015, is amended to read as follows:

(3) _(i) collection of surcharges in addition to the legal regulated rent authorized pursuant to subparagraph (ii) of this paragraph shall cease when the owner has recovered the cost of the major capital improvement;_

_(ii)_ there has been since January first, nineteen hundred seventy-four a major capital improvement [~~required for the operation, preservation or maintenance of the structure. An adjustment under this paragraph shall be in an amount sufficient to amortize the cost of the improvements pursuant to this paragraph over an eight-year period for a building with thirty-five or fewer housing accommodations, or a nine-year period for a building with more than thirty-five housing accommodations, for any determination issued by the division of housing and community renewal after the effective date of the rent act of 2015,~~]_; provided that the commissioner finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation, preservation or maintenance of the structure. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the legal regulated rent. It shall be separately designated and billed as such and shall not be compounded by any annual rent adjustment authorized by the rent guidelines board under this act. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply,_ or

§ 6. The second undesignated paragraph of paragraph (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by section 25 of part B of chapter 97 of the laws of 2011, subparagraph 7 as amended by section 32 of part A of chapter 20 of the laws of 2015, is amended to read as follows:

No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale. Where, however, the assessed valuation of the land exceeds four times the assessed valuation of the buildings thereon, the commission may determine a valuation of the property equal to five times the equalized assessed valuation of the buildings, for the purposes of this subparagraph. The commission may make a determination that the valuation of the property is an amount different from such equalized assessed valuation where there is a request for a reduction in such assessed valuation currently pending; or where there has been a reduction in the assessed valuation for the year next preceding the effective date of the current assessed valuation in effect at the time of the filing of the application. Net annual return shall be the amount by which the earned income exceeds the operating expenses of the property, excluding mortgage interest and amortization, and excluding allowances for obsolescence and reserves, but including an allowance for depreciation of two per centum of the value of the buildings exclusive of the land, or the amount shown for depreciation of the buildings in the latest required federal income tax return, whichever is lower; provided, however, that (1) no allowance for depreciation of the buildings shall be included where the buildings have been fully depreciated for federal income tax purposes or on the books of the owner; or (2) the landlord who owns no more than four rental units within the state has not been fully compensated by increases in rental income sufficient to offset unavoidable increases in property taxes, fuel, utilities, insurance and repairs and maintenance, excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the property was acquired by the present owner, whichever is later; or (3) the landlord operates a hotel or rooming house or owns a cooperative apartment and has not been fully compensated by increases in rental income from the controlled housing accommodations sufficient to offset unavoidable increases in property taxes and other costs as are allocable to such controlled housing accommodations, including costs of operation of such hotel or rooming house, but excluding mortgage interest and amortization, and excluding allowances for depreciation, obsolescence and reserves, which have occurred since the federal date determining the maximum rent or the date the landlord commenced the operation of the property, whichever is later; or (4) the landlord and tenant voluntarily enter into a valid written lease in good faith with respect to any housing accommodation, which lease provides for an increase in the maximum rent not in excess of fifteen per centum and for a term of not less than two years, except that where such lease provides for an increase in excess of fifteen per centum, the increase shall be automatically reduced to fifteen per centum; or (5) the landlord and tenant by mutual voluntary written agreement agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations; provided that an owner shall be entitled to a rent increase where there has been a substantial modification or increase of dwelling space or an increase in the services, or installation of new equipment or improvements or new furniture or furnishings provided in or to a tenant's housing accommodation. The permanent increase in the maximum rent for the affected housing accommodation shall be one-fortieth, in the case of a building with thirty-five or fewer housing accommodations, or one-sixtieth, in the case of a building with more than thirty-five housing accommodations where such permanent increase takes effect on or after September twenty-fourth, two thousand eleven, of the total cost incurred by the landlord in providing such modification or increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges provided further that an owner who is entitled to a rent increase pursuant to this clause shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The owner shall give written notice to the commission of any such adjustment pursuant to this clause; or (6) there has been, since March first, nineteen hundred fifty, an increase in the rental value of the housing accommodations as a result of a substantial rehabilitation of the building or housing accommodation therein which materially adds to the value of the property or appreciably prolongs its life, excluding ordinary repairs, maintenance and replacements; or (7) (i) collection of surcharges to the maximum rent authorized pursuant to item (ii) of this clause shall cease when the owner has recovered the cost of the major capital improvement; (ii) there has been since March first, nineteen hundred fifty, a major capital improvement [~~required for the operation, preservation or maintenance of the structure; which for any order of the commissioner issued after the effective date of the rent act of 2015 the cost of such improvement shall be amortized over an eight-year period for buildings with thirty-five or fewer units or a nine year period for buildings with more than thiry-five units,~~]; provided that the commissioner finds that such improvements are deemed depreciable under the internal revenue code and such improvements are required for the operation, preservation or maintenance of the structure. The increase permitted for such capital improvement shall be collected as a monthly surcharge to the maximum rent. It shall be separately designated and billed as such and shall not be compounded by any other adjustment to the maximum rent. The surcharge allocable to each apartment shall be an amount equal to the cost of the improvement divided by eighty-four, divided by the number of rooms in the building, and then multiplied by the number of rooms in such apartment; provided that the surcharge allocable to any apartment in any one year may not exceed an amount equal to six percent of the monthly rent collected by the owner for such apartment as set forth in the schedule of gross rents. Any excess above said six percent shall be carried forward and collected in future years as a further surcharge not to exceed an additional six percent in any one year period until the total surcharge equals the amount it would have been if the aforementioned six percent limitation did not apply; or (8) there has been since March first, nineteen hundred fifty, in structures containing more than four housing accommodations, other improvements made with the express consent of the tenants in occupancy of at least seventy-five per centum of the housing accommodations, provided, however, that no adjustment granted hereunder shall exceed fifteen per centum unless the tenants have agreed to a higher percentage of increase, as herein provided; or (9) there has been, since March first, nineteen hundred fifty, a subletting without written consent from the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant, and the landlord has not been compensated therefor by adjustment of the maximum rent by lease or order of the commission or pursuant to the federal act; or (10) the presence of unique or peculiar circumstances materially affecting the maximum rent has resulted in a maximum rent which is substantially lower than the rents generally prevailing in the same area for substantially similar housing accommodations.

§ 7. This act shall take effect immediately; provided that the amendments to section 26-405 of the city rent and rehabilitation law made by sections one and two 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; and provided further that the amendments to section 26-511 of the rent stabilization law of nineteen hundred sixty-nine made by sections three and four 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, as from time to time amended; and provided further that the amendment to section 6 of the emergency tenant protection act of nineteen seventy-four made by section five 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, as from time to time amended; and further provided that the amendment to section 4 of the emergency housing rent control law made by section 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 in subdivision 2 of section 1 of chapter 274 of the laws of 1946.