STATE OF NEW YORK

9175

IN SENATE

October 10, 2018

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four, the emergency housing rent control law and the civil practice law and rules, in relation to the statute of limitations on rent overcharges for regulated units; in relation to requiring owners to keep rent records for six years; and in relation to deregulated units as a result of overcharges

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

Section 1. Subdivisions a and g of section 26-516 of the administrative code of the city of New York, subdivision a as amended by chapter 116 of the laws of 1997, are amended to read as follows:

a. Subject to the conditions and limitations of this subdivision, any owner of housing accommodations who, upon complaint of a tenant, or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this chapter shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. [~~In no event shall such~~] **Except as provided for in section 26-504.4 of this chapter,** treble damage [~~penalty~~] **penalties shall not** be assessed against an owner based solely on said owner's failure to file a timely or proper initial or annual rent registration statement. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest. (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be the rent indicated in the annual registration statement filed [~~four~~] **six** years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and

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

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adjustments. Where the amount of rent set forth in the annual rent registration statement filed [~~four~~] **six** years prior to the most recent registration statement is not challenged within [~~four~~] **six** years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. (ii) As to complaints filed within ninety days of the initial registration of a housing accommodation, the legal regulated rent shall be deemed to be the rent charged on the date [~~four~~] **six** years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this chapter for less than [~~four~~] **six** years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date [~~four~~] **six** years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division.

Where the rent charged on the date [~~four~~] **six** years prior to the date of initial registration of the housing accommodation cannot be established, such rent shall be established by the division provided that where a rent is established based on rentals determined under the provisions of the local emergency housing rent control act such rent must be adjusted to account for no less than the minimum increases which would be permitted if the housing accommodation were covered under the provisions of this chapter. Where the amount of rent set forth in the annual rent registration statement filed [~~four~~] **six** years prior to the most recent registration statement is not challenged within [~~four~~] **six** years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.

(1) The order of the state division of housing and community renewal shall apportion the owner's liability between or among two or more tenants found to have been overcharged by such owner during their particular tenancy of a unit.

(2) Except as provided under clauses (i) and (ii) of this paragraph, a complaint under this subdivision shall be filed with the state division of housing and community renewal within [~~four~~] **six** years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than [~~four~~] **six** years before the complaint is filed. (i) No penalty of three times the overcharge may be based upon an overcharge having occurred more than [~~two~~] **six** years before the complaint is filed or upon an overcharge which occurred prior to April first, nineteen hundred eighty-four. (ii) Any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration as provided in section 26-517 of this chapter shall be filed within ninety days of the mailing of notice to the tenant of such registration. This paragraph shall preclude examination of the rental history of the housing accommodation prior to the [~~four-year~~] **six-year** period preceding the filing of a complaint pursuant to this subdivision.

(3) Any affected tenant shall be notified of and given an opportunity to join in any complaint filed by an officer or employee of the state division of housing and community renewal.

(4) An owner found to have overcharged may be assessed the reasonable costs and attorney's fees of the proceeding and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules.

(5) The order of the state division of housing and community renewal awarding penalties may, upon the expiration of the period in which the owner may institute a proceeding pursuant to article seventy-eight of

the civil practice law and rules, be filed and enforced by a tenant in the same manner as a judgment or not in excess of twenty percent thereof per month may be offset against any rent thereafter due the owner.

g. Any owner who has duly registered a housing accommodation pursuant to section 26-517 of this chapter shall not be required to maintain or produce any records relating to rentals of such accommodation for more than [~~four~~] six years prior to the most recent registration or annual statement for such accommodation.

§ 2. Subdivision b and subparagraph (g) of paragraph 1 of subdivision g of section 26-405 of the administrative code of the city of New York, subparagraph (g) of paragraph 1 of subdivision g as amended by section 31 of part A of chapter 20 of the laws of 2015, are amended to read as follows:

b. Such agency, to effectuate the purposes of this chapter, and in accordance with the standards set forth in paragraph two of subdivision c of this section, may set aside and correct any maximum rent resulting from illegality, irregularity in vital matters [~~or~~], fraud, or rent overcharges regardless of whether there was fraud or illegality, occurring prior to or after May first, nineteen hundred sixty-two.

(g) 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~~] thirty-five units, or

§ 3. Section 26-504.2 of the administrative code of the city of New York is amended by adding a new subdivision c to read as follows:

c. Notwithstanding section 26-516 of this chapter and section two hundred thirteen-a of the civil practice law and rules, the periods provided for therein for examination of the rental history of the accommodation for the determination of an overcharge and whether the accommodation is subject to this law are extended by the period during which the owner is not in compliance with the requirements of subdivision b of this section.

§ 4. The administrative code of the city of New York is amended by adding a new section 26-504.4 to read as follows:

§ 26-504.4 Deregulation. Notwithstanding any provision of law to the contrary, where a unit is deregulated as a result of overcharges, the unit shall be returned to rent stabilization under the applicable sections of law, within six months. Where an owner fails to register such unit as rent stabilized pursuant to section 26-517 of this chapter, the state division of housing and community renewal shall impose a penalty equal to the amount of such overcharge, plus accrued interest. For each year an owner fails to register such unit pursuant to section 26-517 of this chapter, penalties imposed by the state division of housing and community renewal shall be at least two thousand dollars and shall not exceed ten thousand dollars.

§ 5. Paragraph 1 of subdivision a of section 12 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 403 of the laws of 1983, the opening paragraph and clause (i) of subparagraph (b) as amended by chapter 116 of the laws of 1997, is amended to read as follows:

(1) Subject to the conditions and limitations of this paragraph, any owner of housing accommodations in a city having a population of less than one million or a town or village as to which an emergency has been declared pursuant to section three, who, upon complaint of a tenant or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this act shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. [~~In no event shall such~~] **Except as provided for in section five-b of this section,** treble damage [~~penalty~~] **penalties shall not** be assessed against an owner based solely on said owner's failure to file a proper or timely initial or annual rent registration statement. If the owner establishes by a preponderance of the evidence that the overcharge was neither willful nor attributable to his negligence, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules. (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be deemed to be the rent indicated in the annual registration statement filed [~~four~~] **six** years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed [~~four~~] **six** years prior to the most recent registration statement is not challenged within [~~four~~] **six** years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter. (ii) As to complaints filed within ninety days of the initial registration of a housing accommodation, the legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged on the date [~~four~~] **six** years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this act for less than [~~four~~] **six** years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date [~~four~~] **six** years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division. Where the amount of rent set forth in the annual rent registration statement filed [~~four~~] **six** years prior to the most recent registration statement is not challenged within [~~four~~] **six** years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.

(a) The order of the state division of housing and community renewal shall apportion the owner's liability between or among two or more tenants found to have been overcharged by such owner during their particular tenancy of a unit.

(b) (i) Except as provided under clauses (ii) and (iii) of this subparagraph, a complaint under this subdivision shall be filed with the state division of housing and community renewal within [~~four~~] **six** years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than [~~four~~] **six** years before the complaint is filed. This paragraph shall preclude examination of the rental history of the housing accommodation prior to the

[~~four-year~~] **six-year** period preceding the filing of a complaint pursuant to this subdivision.

(ii) No penalty of three times the overcharge may be based upon an overcharge having occurred more than [~~two~~] **six** years before the complaint is filed or upon an overcharge which occurred prior to April first, nineteen hundred eighty-four.

(iii) Any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration as provided in subdivision b of section twelve-a of this act shall be filed within ninety days of the mailing of notice to the tenant of such registration.

(c) Any affected tenant shall be notified of and given an opportunity to join in any complaint filed by an officer or employee of the state division of housing and community renewal.

(d) An owner found to have overcharged shall, in all cases, be assessed the reasonable costs and attorney's fees of the proceeding, and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules.

(e) The order of the state division of housing and community renewal awarding penalties may, upon the expiration of the period in which the owner may institute a proceeding pursuant to article seventy-eight of the civil practice law and rules, be filed and enforced by a tenant in the same manner as a judgment or, in the alternative, not in excess of twenty percent thereof per month may be offset against any rent thereafter due the owner.

(f) Unless a tenant shall have filed a complaint of overcharge with the division which complaint has not been withdrawn, nothing contained in this section shall be deemed to prevent a tenant or tenants, claiming to have been overcharged, from commencing an action or interposing a counterclaim in a court of competent jurisdiction for damages equal to the overcharge and the penalty provided for in this section, including interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules, plus the statutory costs and allowable disbursements in connection with the proceeding. Such action must be commenced or counterclaim interposed within [~~four~~] **six** years of the date of the alleged overcharge but no recovery of three times the amount of the overcharge may be awarded with respect to any overcharge which had occurred more than [~~two~~] **six** years before the action is commenced or counterclaim is interposed.

§ 6. Paragraph 8 of subdivision a of section 12 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 403 of the laws of 1983, is amended to read as follows:

(8) Any owner who has duly registered a housing accommodation pursuant to section twelve-a of this act shall not be required to maintain or produce any records relating to rentals of such accommodation more than [~~four~~] **six** years prior to the most recent registration or annual statement for such accommodation.

§ 7. Subdivision c of section 12 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as added by chapter 102 of the laws of 1984, is amended to read as follows:

c. The state division of housing and community renewal may, by regulation, provide for administrative review of all orders and determinations issued by it pursuant to this act. Any such regulation shall

provide that if a petition for such review is not determined within ninety days after it is filed, it shall be deemed to be denied. However, the division may grant one extension not to exceed thirty days with the consent of the party filing such petition; any further extension may only be granted with the consent of all parties to the petition. No proceeding may be brought pursuant to article seventy-eight of the civil practice law and rules to [~~challange~~] challenge any order or determination which is subject to such administrative review unless such review has been sought and either (1) a determination thereon has been made or (2) the ninety-day period provided for determination of the petition for review (or any extension thereof) has expired.

§ 8. Section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding a new section 5-b to read as follows:

§ 5-b. Deregulation. Notwithstanding any provision of law to the contrary, where a unit is deregulated as a result of overcharges, the unit shall be re-regulated pursuant to this chapter within six months. Where an owner fails to register such unit as rent stabilized pursuant to section twelve-a of this section, the state division of housing and community renewal shall impose a penalty equal to the amount of such overcharge, plus accrued interest. For each year an owner fails to register such unit pursuant to section twelve-a of this section, penalties imposed by the state division of housing and community renewal shall be at least two thousand dollars and shall not exceed ten thousand dollars.

§ 9. Subdivision 3 of section 5 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 337 of the laws of 1961, is amended to read as follows:

3. The commission may from time to time to effectuate the purposes of this act adopt, promulgate, amend or rescind such rules, regulations or orders as it may deem necessary or proper for the control of evictions. It may require that an order granting a certificate of eviction be obtained from it prior to the institution of any action or proceeding for the recovery of possession of any housing accommodation subject to a maximum rent under this act upon the grounds specified in subdivision two of this section or where it finds that the requested removal or eviction is not inconsistent with the purposes of this act and would not be likely to result in the circumvention or evasion thereof; provided, however, that no such order shall be required in any action or proceeding brought pursuant to the provisions of subdivision one of this section.

The commission on its own initiative or on application of a tenant may revoke or cancel an order granting such certificate of eviction at any time prior to the execution of a warrant in a summary proceeding to recover possession of real property by a court whenever it finds that:

(a) the certificate of eviction was obtained by fraud or illegality; [~~or~~]

(b) the landlord's intentions or circumstances have so changed that the premises, possession of which is sought, will not be used for the purpose specified in the certificate[~~.~~]**; or**

(c) the certificate of eviction was obtained as a result of overcharges, regardless of whether there was fraud or illegality.

The commencement of a proceeding by the commission to revoke or cancel an order granting a certificate of eviction shall stay such order until the final determination of the proceeding regardless of whether the waiting period in the order has already expired. In the event the

commission cancels or revokes such an order, the court having jurisdiction of any summary proceeding instituted in such case shall take appropriate action to dismiss the application for removal of the tenant from the real property and to vacate and annul any final order or warrant granted or issued by the court in the matter.

§ 10. Subdivision 5 of section 11 of chapter 274 of the laws of 1946, constituting the emergency housing rent control law, as amended by chapter 706 of the laws of 1966, is amended to read as follows:

5. If any landlord who receives rent from a tenant violates a regulation or order prescribing the maximum rent with respect to the housing accommodations for which such rent is received from such tenant, the tenant paying such rent may, within [~~two~~] **six** years from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the landlord on account of the overcharge as hereinafter defined. In such action, the landlord shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (a) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (b) an amount not less than twenty-five dollars nor more than fifty dollars, as the court in its discretion may determine; provided, however, that such amount shall be the amount of the overcharge or overcharges or twenty-five dollars, whichever is greater, if the defendant proves that the violation of the regulation or order in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. As used in this section, the word "overcharge" shall mean the amount by which the consideration paid by a tenant to a landlord exceeds the applicable maximum rent. If any landlord who receives rent from a tenant violates a regulation or order prescribing maximum rent with respect to the housing accommodations for which such rent is received from such tenant, and such tenant either fails to institute an action under this subdivision within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the commission may institute an action on behalf of the state within such [~~two-year~~] **six-year** period. If such action is instituted by the commission, the tenant affected shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subdivision by either the tenant or the commission, as the case may be, may be brought in any court of competent jurisdiction. Recovery, by judgment or otherwise, in an action for damages under this subdivision shall be a bar to the recovery under this subdivision of any recovery, by judgment or otherwise, in any other action against the same landlord on account of the same overcharge or overcharges prior to the institution of the action in which such recovery of damages was obtained. Where recovery by judgment or otherwise is obtained in an action instituted by the commission under this subdivision, there shall be paid over to the tenant from the moneys recovered, one-third of such recovery, exclusive of costs and disbursement or the amount of the overcharge or overcharges, whichever is the greater.

§ 11. Section 213-a of the civil practice law and rules, as amended by chapter 116 of the laws of 1997, is amended to read as follows:

§ 213-a. Actions to be commenced within [~~four~~] **six** years; residential rent overcharge. An action on a residential rent overcharge shall be commenced within [~~four~~] **six** years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award

of the amount of any overcharge may be based upon an overcharge having occurred more than [~~four~~] **six** years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the [~~four-year~~] **six-year** period immediately preceding the commencement of the action.

§ 12. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to chapter 4 of title 26 of the administrative code of the city of New York made by sections one, 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; provided, however, that the amendments to section 26-405 of the city rent and rehabilitation law made by section two of this act shall remain in full force and effect only as 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, however, that the amendments to the emergency tenant protection act of nineteen seventy-four made by sections five, six, 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; provided, further, that the amendments to section 4 of the emergency housing rent control law made by sections nine and ten 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.