STATE OF NEW YORK

10290--A

IN ASSEMBLY

April 8, 2020

Introduced by M. of A. DINOWITZ, SEAWRIGHT, EPSTEIN, LENTOL, SIMOTAS, JAFFEE, GOTTFRIED, ORTIZ, RAMOS, SIMON -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the real property actions and proceedings law, the real property law, and the civil practice law and rules, in relation to proceedings related to a tenant's default in the payment of rent between March 7, 2020 and a date six months after the expiration of the state COVID-19 disaster emergency

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

Section 1. This act shall be known and may be cited as the "tenant safe harbor act".

§ 2. Subdivision 2 of section 711 of the real property actions and proceedings law, as amended by section 12 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him **or her** as prescribed in section seven hundred thirty-five of this article. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his **or her** predecessor in interest if he **or she** has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants. **This subdivision shall not apply where a tenant has defaulted in the payment of rent due between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as such term is defined in section twenty of**

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

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the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended.

§ 3. Subdivision 2 of section 747 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

2. The judgment shall not bar an action to recover the possession of real property. The judgment shall not bar an action, proceeding or counterclaim, commenced or interposed within sixty days of entry of the judgment, for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court. **No judgment for possession shall be entered from rent owed between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as such term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended.**

§ 4. The real property actions and proceedings law is amended by adding a new section 712 to read as follows:

§ 712. Grounds where landlord-tenant relationship exists; special proceedings for rent due during the COVID-19 pandemic. A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. No tenant or lawful occupant of a premises shall be removed from possession in a special proceeding maintained under this article upon the grounds of this section. A special proceeding for a judgment of rent due may be maintained where the tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, where such rent was due between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as that term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended, and a written demand of the rent has been made with at least fourteen days' notice requiring the payment of the rent, served upon the tenant as prescribed in section seven hundred thirty-five of this article. Any person succeeding to the landlord's interest in the premises may proceed under this section for rent due his or her predecessor in interest for the time period specified above if he or she has a right thereto.

§ 5. Subdivisions 1, 2, 4, 5 and 6 of section 223-b of the real property law, as amended by section 2 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

1. No landlord of premises or units to which this section is applicable shall serve a notice to quit upon any tenant or commence any action to recover real property or summary proceeding to recover possession of real property in retaliation for:

a. A good faith complaint, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's alleged violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. Actions taken in good faith, by or in behalf of the tenant, to secure or enforce any rights under the lease or rental agreement, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or under any other law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; [~~or~~]

c. The tenant's participation in the activities of a tenant's organization**; or**

d. The tenant's failure to pay all or a portion of rent due between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as that term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended.

2. No landlord of premises or units to which this section is applicable or such landlord's agent shall substantially alter the terms of the tenancy in retaliation for any actions set forth in paragraphs a, b, [~~and~~] c**, and d** of subdivision one of this section. Substantial alteration shall include, but is not limited to, the refusal to continue a tenancy of the tenant, upon expiration of the tenant's lease, to renew the lease or offer a new lease, or offering a new lease with an unreasonable rent increase; provided, however, that a landlord shall not be required under this section to offer a new lease or a lease renewal for a term greater than one year.

4. In any action to recover real property or summary proceeding to recover possession of real property, judgment shall be entered for the tenant if the court finds that the landlord is acting in retaliation for any action set forth in paragraphs a, b, [~~and~~] c**, and d** of subdivision one of this section. Retaliation shall be asserted as an affirmative defense in such action or proceeding. The tenant shall not be relieved of the obligation to pay any rent for which he is otherwise liable.

5. In an action or proceeding instituted against a tenant of premises or a unit to which this section is applicable, a rebuttable presumption that the landlord is acting in retaliation shall be created if the tenant establishes that the landlord served a notice to quit, or instituted an action or proceeding to recover possession, or attempted to substantially alter the terms of the tenancy, within one year after:

a. A good faith complaint was made, by or in behalf of the tenant, to the landlord, the landlord's agent or a governmental authority of the landlord's violation of any health or safety law, regulation, code, or ordinance, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree; or

b. The tenant in good faith took action to secure or enforce against the landlord or his agents any rights under the lease or rental agreement, the warranty of habitability under section two hundred thirty-five-b of this article, the duty to repair under sections seventy-eight, seventy-nine, and eighty of the multiple dwelling law or section one hundred seventy-four of the multiple residence law, or under any other

law of the state of New York, or of its governmental subdivisions, or of the United States which has as its objective the regulation of premises used for dwelling purposes or which pertains to the offense of rent gouging in the third, second or first degree.

c. Judgment under subdivision three or four of this section was entered for the tenant in a previous action between the parties; or an inspection was made, an order was entered, or other action was taken as a result of a complaint or act described in paragraph a or b of this subdivision.

d. The tenant failed to pay all or a portion of rent due between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as that term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended.

The effect of the presumption shall be to require the landlord to establish a non-retaliatory motive for his acts by a preponderance of the evidence.

6. This section shall apply to all rental residential premises except owner-occupied dwellings with less than four units. However, its provisions**, other than paragraph d of subdivision one of this section,** shall not be given effect in any case in which it is established that the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant. Nor shall it apply in a case where a tenancy was terminated pursuant to the terms of a lease as a result of a bona fide transfer of ownership.

§ 6. Subdivision (b) of section 5231 of the civil practice law and rules, as amended by chapter 575 of the laws of 2008, is amended to read as follows:

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) **except as provided in paragraph (iii) of this subdivision,** the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) **where the income execution is for a judgment of residential rent due between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as that term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended, the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed ten percent of**

the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iv) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.

§ 7. This act shall take effect immediately.