STATE OF NEW YORK

6576

2019-2020 Regular Sessions

IN ASSEMBLY

March 12, 2019

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

AN ACT to amend the real property actions and proceedings law, in relation to summary proceedings to recover possession of real property; and to repeal certain provisions of such law relating to judgments in non-payment proceedings in the city of New York

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

Section 1. Subdivision 2 of section 745 of the real property actions and proceedings law, as amended by chapter 116 of the laws of 1997, subparagraph (i) of paragraph (b) as amended by chapter 601 of the laws of 2007, is amended to read as follows:

2. In the city of New York:

(a) In a summary proceeding upon the second of two adjournments **granted solely** at the request of the respondent, or, upon the [~~thirtieth~~] **sixtieth** day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner**, counting only days attributable to adjournment requests made solely at the request of the respondent and not counting an initial adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel**, whichever occurs sooner, the court [~~shall~~] **may, upon consideration of the equities,** direct that the respondent, upon [~~an application~~] **a motion on notice made** by the petitioner, deposit with the court [~~within five days~~] sums of rent or use and occupancy [~~accrued from the date the petition and notice of petition are served upon the respondent, and all sums as they become due for rent and use and occupancy~~] **that shall accrue subsequent to the date of the court's order**, which may be established without the use of expert testimony[~~, unless~~]**. The court shall not order deposit or payment of use and occupancy where** the respondent can establish[~~, at an immediate hearing~~], to

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

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the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds:

(i) the petitioner is not a proper party to the proceeding pursuant to section seven hundred twenty-one of this article; or

(ii) (A) actual eviction, or (B) actual partial eviction, or (C) constructive eviction; and respondent has quit the premises; or

(iii) a defense pursuant to section one hundred forty-three-b of the social services law; or

(iv) **a defense based upon the existence of "B" or "C" class violations in the subject apartment or common areas; or**

(v) a colorable defense of rent overcharge; or

(vi) a defense that the unit is in violation of the building's certificate of occupancy or is otherwise illegal under the multiple dwelling law or the New York city housing maintenance code; or

(vii) the court lacks **personal** jurisdiction **over the respondent**.

[~~**When the rental unit that is the subject of the petition is located in a building containing twelve or fewer units, the court shall inquire of the respondent as to whether there is any undisputed amount of the rent or use and occupancy due to the petitioner. Any such undisputed amount shall be paid directly to the petitioner, and any disputed amount shall be deposited to the court by the respondent as provided in this subdivision.**~~]

Two adjournments shall **not** include an adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel made on a return date of the proceeding. Such rent or use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner or an agent designated by the division of housing and community renewal, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

(b) **In establishing the monthly amount to be deposited, the court shall not exceed the amount of the regulated rent for the unit under any state, local or federal regulatory scheme, or the amount of the tenant's rent share under a state, local or federal subsidy program, or the amount of the tenant's share under an expired subsidy, unless the tenant has entered into an enforceable new agreement to pay the full lease rent.**

(c) (i) The court shall not require the respondent to deposit the portion of rent or use and occupancy, if any, which is payable by direct government housing subsidy, any currently effective senior citizen increase exemption authorized pursuant to sections four hundred sixty-seven-b and four hundred sixty-seven-c of the real property tax law, direct payment of rent or a two-party check issued by a social services district or the office of temporary and disability assistance, or rental assistance that is payable pursuant to court orders issued in litigation commenced in nineteen hundred eighty-seven in a proceeding in which the amount of shelter allowance is at issue on behalf of recipients of family assistance. In the event the respondent or other adult member of the respondent's household receives public assistance pursuant to title three or title ten of article five of the social services law, the respondent shall, when directed by the court to deposit rent and use or occupancy, only be required to deposit with the court the amount of the shelter allowance portion of the public assistance grant issued by the office of temporary and disability assistance or a social services district. In the event the respondent receives **a fixed income, including but not limited to, social security income,** supplemental security income

pursuant to title sixteen of the federal social security act and title six of article five of the social services law, **or pension income,** the respondent shall [~~only~~] **not** be required to deposit [~~one-third~~] **more than thirty percent** of the monthly [~~supplemental security income payment~~] **payments**.

(ii) Any sum required to be deposited with the court pursuant to this subdivision shall be offset by payment, if any, made by the respondent pursuant to section two hundred thirty-five-a of the real property law or section three hundred two-c of the multiple dwelling law.

[~~(c) (i) If the respondent shall fail to comply with the court's directions with respect to direct payment to the petitioner or making a deposit as directed by the court of the full amount of the rent or use and occupancy required to be deposited, the court upon an application by the petitioner shall dismiss without prejudice the defenses and counterclaims interposed by the respondent and grant judgment for petitioner unless respondent has interposed the defense of payment and shows that the amount required to be deposited has previously been paid to the petitioner.~~

~~(ii)~~] **(d) (i)** In the event that the respondent [~~makes a deposit required by this subdivision but~~] fails to deposit with the court or pay, as the case may be, upon the due date, all rent or use and occupancy which may become due [~~up to the time of the entry of judgment~~] **subsequent to the issuance of the court's deposit order**, the court upon an application of the petitioner [~~shall~~] **may** order an immediate trial of the issues raised in the respondent's answer. An "immediate trial" shall mean that no further adjournments of the proceeding [~~without petitioner consent~~] **upon respondent's sole request** shall be granted, the case shall be assigned by the administrative judge to a trial ready part and such trial shall commence **as soon as practicable** and continue day to day until completed. [~~There shall be no stay granted of such trial without an order to respondent to pay rent or use and occupancy due pursuant to this subdivision and rent or use and occupancy as it becomes due.~~

~~(iii)~~] **(ii)** The court [~~shall not~~] **may** extend any time provided for such deposit under this subdivision [~~without the consent of the petitioner~~] **for good cause shown**.

[~~(iv)~~] **(iii)** Upon the entry of the final judgment in the proceeding such deposits shall be credited against any judgment amount awarded and, without further order of the court, be paid in accordance with the judgment.

[~~(v) The provisions of this paragraph requiring the deposit of rent or use and occupancy as it becomes due shall not be waived by the court.~~

~~(d)~~] **(e)** The court may dismiss any summary proceeding without prejudice and with costs to the respondent by reason of excessive adjournments requested by the petitioner.

[~~(e) The provisions of this subdivision shall not be construed as to deprive a respondent of a trial of any defenses or counterclaims in a separate action if such defenses or counterclaims are dismissed without prejudice.~~]

(f) Under no circumstances shall the respondent's failure or inability to pay use and occupancy as ordered by the court constitute a basis to dismiss any of the respondent's defenses or counterclaims, with or without prejudice to their assertion in another forum.

§ 2. Section 747-a of the real property actions and proceedings law is REPEALED.

§ 3. This act shall take effect immediately.