

# STATE OF NEW YORK

4169--A

2019-2020 Regular Sessions

## IN SENATE

March 4, 2019

Introduced by Sens. MYRIE, BAILEY, HOYLMAN, KRUEGER, RIVERA, SALAZAR, SANDERS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the civil practice law and rules, in relation to investigation of rent overcharge complaints

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

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

7 (1) Subject to the conditions and limitations of this paragraph, any  
8 owner of housing accommodations in a city having a population of less  
9 than one million or a town or village as to which an emergency has been  
10 declared pursuant to section three, who, upon complaint of a tenant or  
11 of the state division of housing and community renewal, is found by the  
12 state division of housing and community renewal, after a reasonable  
13 opportunity to be heard, to have collected an overcharge above the rent  
14 authorized for a housing accommodation subject to this act shall be  
15 liable to the tenant for a penalty equal to three times the amount of  
16 such overcharge. [~~In no event shall such treble damage penalty be  
17 assessed against an owner based solely on said owner's failure to file a  
18 proper or timely initial or annual rent registration statement.~~] If the  
19 owner establishes by a preponderance of the evidence that the overcharge  
20 was neither willful nor attributable to his negligence, the state divi-

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

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1 sion of housing and community renewal shall establish the penalty as the  
2 amount of the overcharge plus interest at the rate of interest payable  
3 on a judgment pursuant to section five thousand four of the civil prac-  
4 tice law and rules. After a complaint of rent overcharge has been filed  
5 and served on an owner, the voluntary adjustment of the rent and/or the  
6 voluntary tender of a refund of rent overcharges shall not be considered  
7 by the division of housing and community renewal or a court of competent  
8 jurisdiction as evidence that the overcharge was not willful. (i) Except

9 as to complaints filed pursuant to clause (ii) of this paragraph, the  
10 legal regulated rent for purposes of determining an overcharge, shall be  
11 deemed to be the rent indicated in the most recent reliable annual  
12 registration statement for a rent stabilized tenant filed [~~four~~] and  
13 served upon the tenant six or more years prior to the most recent regis-  
14 tration statement, (or, if more recently filed, the initial registration  
15 statement) plus in each case any subsequent lawful increases and adjust-  
16 ments. [~~Where the amount of rent set forth in the annual rent registra-~~  
17 ~~tion statement filed four years prior to the most recent registration~~  
18 ~~statement is not challenged within four years of its filing, neither~~  
19 ~~such rent nor service of any registration shall be subject to challenge~~  
20 ~~at any time thereafter.] The division of housing and community renewal  
21 or a court of competent jurisdiction, in investigating complaints of  
22 overcharge and in determining legal regulated rent, shall consider all  
23 available rent history which is reasonably necessary to make such deter-  
24 minations. (ii) As to complaints filed within ninety days of the initial~~

25 registration of a housing accommodation, the legal regulated rent for  
26 purposes of determining an overcharge shall be deemed to be the rent  
27 charged on the date [~~four~~] six years prior to the date of the initial  
28 registration of the housing accommodation (or, if the housing accommo-  
29 dation was subject to this act for less than [~~four~~] six years, the  
30 initial legal regulated rent) plus in each case, any lawful increases  
31 and adjustments. Where the rent charged on the date [~~four~~] six years  
32 prior to the date of the initial registration of the accommodation  
33 cannot be established, such rent shall be established by the division.  
34 [~~Where the amount of rent set forth in the annual rent registration~~  
35 ~~statement filed four years prior to the most recent registration state-~~  
36 ~~ment is not challenged within four years of its filing, neither such~~  
37 ~~rent nor service of any registration shall be subject to challenge at~~  
38 ~~any time thereafter,]~~

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

43 (b) (i) Except as provided under clauses (ii) and (iii) of this  
44 subparagraph, a complaint under this subdivision [~~shall~~] may be filed  
45 with the state division of housing and community renewal [~~within four~~  
46 ~~years of the first overcharge alleged and no determination of an over-~~  
47 ~~charge and no award or calculation of an award of the amount of an over-~~  
48 ~~charge may be based upon an overcharge having occurred more than four~~  
49 ~~years before the complaint is filed. This paragraph shall preclude exam-~~  
50 ~~ination of the rental history of the housing accommodation prior to the~~  
51 ~~four year period preceding the filing of a complaint pursuant to this~~  
52 ~~subdivision] in a court of competent jurisdiction at any time, however  
53 any recovery of overcharge penalties shall be limited to the six years  
54 preceding the complaint.~~

55 (ii) [~~No~~] A penalty of three times the overcharge [~~may be based upon~~  
56 ~~an overcharge having occurred more than two years before the complaint~~

1 ~~is filed or upon an overcharge which occurred prior to April first,~~  
2 ~~nineteen hundred eighty four]~~ shall be assessed upon all overcharges  
3 willfully collected by the owner starting six years before the complaint  
4 is filed.

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

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

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

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

24 (f) Unless a tenant shall have filed a complaint of overcharge with  
25 the division which complaint has not been withdrawn, nothing contained  
26 in this section shall be deemed to prevent a tenant or tenants, claiming  
27 to have been overcharged, from commencing an action or interposing a  
28 counterclaim in a court of competent jurisdiction for damages equal to  
29 the overcharge and the penalty provided for in this section, including  
30 interest from the date of the overcharge at the rate of interest payable  
31 on a judgment pursuant to section five thousand four of the civil prac-  
32 tice law and rules, plus the statutory costs and allowable disbursements  
33 in connection with the proceeding. [~~Such action must be commenced or~~  
34 ~~counterclaim interposed within four years of the date of the alleged~~  
35 ~~overcharge but no recovery of three times the amount of the overcharge~~  
36 ~~may be awarded with respect to any overcharge which had occurred more~~  
37 ~~than two years before the action is commenced or counterclaim is inter-~~  
38 ~~posed.] The courts and the division shall have concurrent jurisdiction,  
39 subject to the tenant's choice of forum.~~

40 § 2. Paragraph 8 of subdivision a of section 12 of section 4 of chap-  
41 ter 576 of the laws of 1974, constituting the emergency tenant  
42 protection act of nineteen seventy-four, as amended by chapter 403 of  
43 the laws of 1983, is amended and a new paragraph 9 is added to read as  
44 follows:

45 (8) [~~Any~~] Except where a specific provision of this law requires the  
46 maintenance of rent records for a longer period, including records of  
47 the useful life of improvements made to any housing accommodation or any  
48 building, any owner who has duly registered a housing accommodation  
49 pursuant to section twelve-a of this act shall not be required to main-  
50 tain or produce any records relating to rentals of such accommodation  
51 more than four years prior to the most recent registration or annual  
52 statement for such accommodation. However, an owner's election not to  
53 maintain records shall not limit the authority of the division of hous-  
54 ing and community renewal and the courts to examine the rental history  
55 and determine legal regulated rents pursuant to this subdivision.

1 (9) The division of housing and community renewal and the courts, in  
2 investigating complaints of overcharge and in determining legal regu-  
3 lated rents, shall consider all available rent history which is reason-  
4 ably necessary to make such determinations, including but not limited to  
5 (a) any rent registration or other records filed with the state division  
6 of housing and community renewal, or any other state, municipal or  
7 federal agency, regardless of the date to which the information on such  
8 registration refers; (b) any order issued by any state, municipal or  
9 federal agency; (c) any records maintained by the owner or tenants; and  
10 (d) any public record kept in the regular course of business by any  
11 state, municipal or federal agency. Nothing contained in this paragraph  
12 shall limit the examination of rent history relevant to a determination  
13 as to:

14 (i) whether the legality of a rental amount charged or registered is  
15 reliable in light of all available evidence including, but not limited  
16 to, whether an unexplained increase in the registered or lease rents, or  
17 a fraudulent scheme to destabilize the housing accommodation, rendered  
18 such rent or registration unreliable;

19 (ii) whether an accommodation is subject to the emergency tenant  
20 protection act;

21 (iii) whether an order issued by the division of housing and community  
22 renewal or a court of competent jurisdiction, including, but not limited  
23 to an order issued pursuant to section 26-514 of the administrative code  
24 of the city of New York, or any regulatory agreement or other contract  
25 with any governmental agency, and remaining in effect within six years  
26 of the filing of a complaint pursuant to this section, affects or limits  
27 the amount of rent that may be charged or collected;

28 (iv) whether an overcharge was or was not willful;

29 (v) whether a rent adjustment that requires information regarding the  
30 length of occupancy by a present or prior tenant was lawful;

31 (vi) the existence or terms and conditions of a preferential rent, or  
32 the propriety of a legal registered rent during a period when the  
33 tenants were charged a preferential rent;

34 (vii) the legality of a rent charged or registered immediately prior  
35 to the registration of a preferential rent; or

36 (viii) the amount of the legal regulated rent where the apartment was  
37 vacant or temporarily exempt on the date six years prior to a tenant's  
38 complaint.

39 § 3. Subdivision b of section 12 of section 4 of chapter 576 of the  
40 laws of 1974, constituting the emergency tenant protection act of nine-  
41 teen seventy-four, as amended by chapter 403 of the laws of 1983, is  
42 amended to read as follows:

43 b. Within a city having a population of one million or more, the state  
44 division of housing and community renewal shall have such powers to  
45 enforce this act as shall be provided in the New York city rent stabili-  
46 zation law of nineteen hundred sixty-nine, as amended, or as shall  
47 otherwise be provided by law. Unless a tenant shall have filed a  
48 complaint of overcharge with the division which complaint has not been  
49 withdrawn, nothing contained in this section shall be deemed to prevent  
50 a tenant or tenants, claiming to have been overcharged, from commencing  
51 an action or interposing a counterclaim in a court of competent juris-  
52 isdiction for damages equal to the overcharge and the penalty provided for  
53 in this section, including interest from the date of the overcharge at  
54 the rate of interest payable on a judgment pursuant to section five  
55 thousand four of the civil practice law and rules, plus the statutory  
56 costs and allowable disbursements in connection with the proceeding. The

1 courts and the division shall have concurrent jurisdiction, subject to  
2 the tenant's choice of forum.

3 § 4. Subdivision a of section 26-516 of the administrative code of the  
4 city of New York, as amended by chapter 116 of the laws of 1997, is  
5 amended to read as follows:

6 a. Subject to the conditions and limitations of this subdivision, any  
7 owner of housing accommodations who, upon complaint of a tenant, or of  
8 the state division of housing and community renewal, is found by the  
9 state division of housing and community renewal, after a reasonable  
10 opportunity to be heard, to have collected an overcharge above the rent  
11 authorized for a housing accommodation subject to this chapter shall be  
12 liable to the tenant for a penalty equal to three times the amount of  
13 such overcharge. [~~In no event shall such treble damage penalty be~~  
14 ~~assessed against an owner based solely on said owner's failure to file a~~  
15 ~~timely or proper initial or annual rent registration statement.~~] If the  
16 owner establishes by a preponderance of the evidence that the overcharge  
17 was not willful, the state division of housing and community renewal  
18 shall establish the penalty as the amount of the overcharge plus inter-  
19 est. After a complaint of rent overcharge has been filed and served on

20 an owner, the voluntary adjustment of the rent and/or the voluntary  
21 tender of a refund of rent overcharges shall not be considered by the  
22 division of housing and community renewal or a court of competent juris-  
23 isdiction as evidence that the overcharge was not willful. (i) Except as

24 to complaints filed pursuant to clause (ii) of this paragraph, the legal  
25 regulated rent for purposes of determining an overcharge, shall be the  
26 rent indicated in the most recent reliable annual registration statement  
27 filed [~~four~~] and served upon the tenant six or more years prior to the  
28 most recent registration statement, (or, if more recently filed, the  
29 initial registration statement) plus in each case any subsequent lawful  
30 increases and adjustments. [~~Where the amount of rent set forth in the~~  
31 ~~annual rent registration statement filed four years prior to the most~~  
32 ~~recent registration statement is not challenged within four years of its~~  
33 ~~filing, neither such rent nor service of any registration shall be~~  
34 ~~subject to challenge at any time thereafter.~~] The division of housing

35 and community renewal or a court of competent jurisdiction, in investi-  
36 gating complaints of overcharge and in determining legal regulated rent,  
37 shall consider all available rent history which is reasonably necessary  
38 to make such determinations. (ii) As to complaints filed within ninety

39 days of the initial registration of a housing accommodation, the legal  
40 regulated rent shall be deemed to be the rent charged on the date [~~four~~]  
41 six years prior to the date of the initial registration of the housing  
42 accommodation (or, if the housing accommodation was subject to this  
43 chapter for less than [~~four~~] six years, the initial legal regulated  
44 rent) plus in each case, any lawful increases and adjustments. Where the  
45 rent charged on the date [~~four~~] six years prior to the date of the  
46 initial registration of the accommodation cannot be established, such  
47 rent shall be established by the division.

48 Where the prior rent charged [~~on the date four years prior to the date~~  
49 ~~of initial registration of~~] for the housing accommodation cannot be  
50 established, such rent shall be established by the division provided  
51 that where a rent is established based on rentals determined under the  
52 provisions of the local emergency housing rent control act such rent  
53 must be adjusted to account for no less than the minimum increases which  
54 would be permitted if the housing accommodation were covered under the  
55 provisions of this chapter, less any appropriate penalties. [~~Where the~~  
56 ~~amount of rent set forth in the annual rent registration statement filed~~

~~four years prior to the most recent registration statement is not challenged within four 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]~~ may be filed with the state division of housing and community renewal ~~[within four 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 years before the complaint is filed]~~ in a court of competent jurisdiction at any time, however any recovery of overcharge penalties shall be limited to the six years preceding the complaint. (i) ~~[No]~~ A penalty of three times the overcharge ~~[may be based upon an overcharge having occurred more than two years]~~ shall be assessed upon all overcharges willfully collected by the owner starting 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 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.

§ 5. Subdivision g of section 26-516 of the administrative code of the city of New York is amended, subdivision h is relettered subdivision i and a new subdivision h is added to read as follows:

g. ~~[Any]~~ Except where a specific provision of this law requires the maintenance of rent records for a longer period, including records of the useful life of improvements made to any housing accommodation or any building, 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. However, an owner's election not to maintain records shall not limit the authority of the division of housing and community renewal and the courts to examine the rental history and determine legal regulated rents pursuant to this section.

1 h. The division of housing and community renewal, and the courts, in  
2 investigating complaints of overcharge and in determining legal regu-  
3 lated rents, shall consider all available rent history which is reason-  
4 ably necessary to make such determinations, including but not limited to  
5 (i) any rent registration or other records filed with the state division  
6 of housing and community renewal, or any other state, municipal or  
7 federal agency, regardless of the date to which the information on such  
8 registration refers; (ii) any order issued by any state, municipal or  
9 federal agency; (iii) any records maintained by the owner or tenants;  
10 and (iv) any public record kept in the regular course of business by any  
11 state, municipal or federal agency. Nothing contained in this subdivi-  
12 sion shall limit the examination of rent history relevant to a determi-  
13 nation as to:

14 (i) whether the legality of a rental amount charged or registered is  
15 reliable in light of all available evidence including but not limited to  
16 whether an unexplained increase in the registered or lease rents, or a  
17 fraudulent scheme to destabilize the housing accommodation, rendered  
18 such rent or registration unreliable;

19 (ii) whether an accommodation is subject to the emergency tenant  
20 protection act or the rent stabilization law;

21 (iii) whether an order issued by the division of housing and community  
22 renewal or by a court, including, but not limited to an order issued  
23 pursuant to section 26-514 of this chapter, or any regulatory agreement  
24 or other contract with any governmental agency, and remaining in effect  
25 within six years of the filing of a complaint pursuant to this section,  
26 affects or limits the amount of rent that may be charged or collected;

27 (iv) whether an overcharge was or was not willful;

28 (v) whether a rent adjustment that requires information regarding the  
29 length of occupancy by a present or prior tenant was lawful;

30 (vi) the existence or terms and conditions of a preferential rent, or  
31 the propriety of a legal registered rent during a period when the  
32 tenants were charged a preferential rent;

33 (vii) the legality of a rent charged or registered immediately prior  
34 to the registration of a preferential rent; or

35 (viii) the amount of the legal regulated rent where the apartment was  
36 vacant or temporarily exempt on the date six years prior to a tenant's  
37 complaint.

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

40 § 213-a. [~~Actions to be commenced within four years; residential~~]  
41 Residential rent overcharge. [~~An action on a residential rent overcharge~~  
42 ~~shall be commenced within four years of the first overcharge alleged and~~  
43 ~~no determination of an overcharge and no award or calculation of an~~  
44 ~~award of the amount of any overcharge may be based upon an overcharge~~  
45 ~~having occurred more than four years before the action is commenced.~~  
46 ~~This section shall preclude examination of the rental history of the~~  
47 ~~housing accommodation prior to the four-year period immediately preced-~~  
48 ~~ing the commencement of the action.] No overcharge penalties or damages  
49 may be awarded for a period more than six years before the action is  
50 commenced or complaint is filed, however, an overcharge claim may be  
51 filed at any time, and the calculation and determination of the legal  
52 rent and the amount of the overcharge shall be made in accordance with  
53 the provisions of law governing the determination and calculation of  
54 overcharges.~~

55 § 7. This act shall take effect immediately and shall apply to any  
56 claims pending or filed on and after such date; provided that:

1 a. the amendments to section 12 of the emergency tenant protection act  
2 of nineteen seventy-four made by sections one, two and three of this act  
3 shall expire on the same date as such act expires and shall not affect  
4 the expiration of such act as provided in section 17 of chapter 567 of  
5 the laws of 1974; and  
6 b. the amendments to section 26-516 of chapter 4 of title 26 of the  
7 administrative code of the city of New York made by sections four and  
8 five of this act shall expire on the same date as such law expires and  
9 shall not affect the expiration of such law as provided under section  
10 26-520 of such law.