

# STATE OF NEW YORK

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5251

2019-2020 Regular Sessions

## IN ASSEMBLY

February 8, 2019

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

AN ACT to amend the administrative code of the city of New York and the emergency tenant protection act of nineteen seventy-four, 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 division of housing and community renewal shall establish the penalty as the  
21 amount of the overcharge plus interest at the rate of interest payable  
22 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  
24

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

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(ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be deemed to be the rent indicated in ~~[the prior annual registration [statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement)]~~ statements plus in each case any subsequent lawful increases and adjustments, less any appropriate penalties. ~~[Where the 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.]~~ The division of housing and community renewal, in investigating complaints of overcharge and in determining legal regulated rent, shall consider all available rent history which is reasonably necessary to make such determinations. (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 years prior to]~~ as of the date of the initial registration of the housing accommodation (or, if the housing accommodation was not previously subject to this act ~~[for less than four years]~~, the initial legal regulated rent) plus in each case, any lawful increases and adjustments, less any appropriate penalties. Where the rent charged ~~[on the date four 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 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.]~~

(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]~~ 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. 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]~~ at any time.

(ii) ~~[No]~~ A penalty of three times the overcharge may be based upon an overcharge having occurred ~~[more than two years]~~ at any time 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

1 on a judgment pursuant to section five thousand four of the civil prac-  
2 tice law and rules.

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

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

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

28 a. Subject to the conditions and limitations of this subdivision, any  
29 owner of housing accommodations who, upon complaint of a tenant, or of  
30 the state division of housing and community renewal, is found by the  
31 state division of housing and community renewal, after a reasonable  
32 opportunity to be heard, to have collected an overcharge above the rent  
33 authorized for a housing accommodation subject to this chapter shall be  
34 liable to the tenant for a penalty equal to three times the amount of  
35 such overcharge. In no event shall such treble damage penalty be  
36 assessed against an owner based solely on said owner's failure to file a  
37 timely or proper initial or annual rent registration statement. If the  
38 owner establishes by a preponderance of the evidence that the overcharge  
39 was not willful, the state division of housing and community renewal  
40 shall establish the penalty as the amount of the overcharge plus inter-  
41 est. (i) Except as to complaints filed pursuant to clause (ii) of this  
42 paragraph, the legal regulated rent for purposes of determining an over-  
43 charge, shall be the amount of rent indicated in [~~the~~] prior annual  
44 registration [~~statement filed four years prior to the most recent regis-~~  
45 ~~tration statement, (or, if more recently filed, the initial registration~~  
46 ~~statement)] statements plus in each case any subsequent lawful increases~~  
47 ~~and adjustments, less any appropriate penalties. [Where the amount of~~  
48 ~~rent set forth in the annual rent registration statement filed four~~  
49 ~~years prior to the most recent registration statement is not challenged~~  
50 ~~within four years of its filing, neither such rent nor service of any~~  
51 ~~registration shall be subject to challenge at any time thereafter.] The~~  
52 ~~division of housing and community renewal, in investigating complaints~~  
53 ~~of overcharge and in determining legal regulated rent, shall consider~~  
54 ~~all available rent history which is reasonably necessary to make such~~  
55 ~~determinations.~~ (ii) As to complaints filed within ninety days of the  
56 initial registration of a housing accommodation, the legal regulated

rent shall be deemed to be the rent charged ~~[on the date four years prior to]~~ as of the date of the initial registration of the housing accommodation (or, if the housing accommodation was not previously subject to this chapter ~~[for less than four years]~~, the initial legal regulated rent) plus in each case, any lawful increases and adjustments, less any appropriate penalties. Where the rent charged ~~[on the date four years prior to]~~ as of the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division.

Where the prior rent charged ~~[on the date four years prior to the date of initial registration of]~~ for 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, less any appropriate penalties. ~~[Where the 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]~~ at any time. (i) ~~[No]~~ A penalty of three times the overcharge may be based upon an overcharge having occurred ~~[more than two years]~~ at any time 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.

§ 3. This act shall take effect immediately; provided that:

1     a. the amendments to paragraph 1 of subdivision a of section 12 of the  
2 emergency tenant protection act of nineteen seventy-four made by section  
3 one of this act shall expire on the same date as such act expires and  
4 shall not affect the expiration of such act as provided in section 17 of  
5 chapter 567 of 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 section two of this  
8 act shall expire on the same date as such law expires and shall not  
9 affect the expiration of such law as provided under section 26-520 of  
10 such law.