

# 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:

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

5 2. In the city of New York:

6 (a) In a summary proceeding upon the second of two adjournments grant-  
7 ed solely at the request of the respondent, or, upon the [~~thirtieth~~  
8 ~~sixtieth~~ day after the first appearance of the parties in court less any  
9 days that the proceeding has been adjourned upon the request of the  
10 petitioner, counting only days attributable to adjournment requests made  
11 solely at the request of the respondent and not counting an initial  
12 adjournment requested by a respondent unrepresented by counsel for the  
13 purpose of securing counsel, whichever occurs sooner, the court [~~shall~~  
14 ~~may, upon consideration of the equities,~~ direct that the respondent,  
15 upon [~~an application~~] a motion on notice made by the petitioner, deposit  
16 with the court [~~within five days~~] sums of rent or use and occupancy  
17 [~~accrued from the date the petition and notice of petition are served~~  
18 ~~upon the respondent, and all sums as they become due for rent and use~~  
19 ~~and occupancy~~] that shall accrue subsequent to the date of the court's  
20 order, which may be established without the use of expert testimony[~~, unless~~  
21 ~~]. The court shall not order deposit or payment of use and occu-  
22 pancy 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.

LBD09959-01-9

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

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

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

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

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

11 (v) a colorable defense of rent overcharge; or

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

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

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

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

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

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

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

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

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

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

33 ~~(iii)]~~ (ii) The court ~~[shall not]~~ may extend any time provided for  
34 such deposit under this subdivision ~~[without the consent of the peti-~~  
35 ~~tioner]~~ for good cause shown.

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

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

42 ~~(d)]~~ (e) The court may dismiss any summary proceeding without preju-  
43 dice and with costs to the respondent by reason of excessive adjourn-  
44 ments requested by the petitioner.

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

49 (f) Under no circumstances shall the respondent's failure or inability  
50 to pay use and occupancy as ordered by the court constitute a basis to  
51 dismiss any of the respondent's defenses or counterclaims, with or with-  
52 out prejudice to their assertion in another forum.

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

55 § 3. This act shall take effect immediately.