STATE OF NEW YORK

7221

2019-2020 Regular Sessions

IN ASSEMBLY

April 12, 2019

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

AN ACT to amend the public housing law, the emergency tenant protection act of nineteen seventy-four and the administrative code of the city of New York, in relation to penalties for owners of property who fail to file a proper or timely rent registration statement

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

Section 1. The commissioner of housing and community renewal shall distribute to each unit rent controlled or rent stabilized at any point since 1971 a copy of such unit's rent history, regardless of the current rent regulation status of the unit, as well as literature describing how a tenant can identify a possible rent overcharge.

§ 2. Section 14 of the public housing law is amended by adding a new subdivision 8 to read as follows:

8. The commissioner shall generate and distribute literature explaining how to identify a possible rent overcharge. The commissioner shall conduct geographic language studies to ensure that such literature is available to all residents, not just those who speak and read English.

§ 3. Paragraph 1 of subdivision a of section 12 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, as amended by chapter 403 of the laws of 1983, the opening paragraph and clause (i) of subparagraph (b) as amended by chapter 116 of the laws of 1997, is amended and a new paragraph 9 is added to read as follows:

(1) Subject to the conditions and limitations of this paragraph, any owner of housing accommodations in a city having a population of less than one million or a town or village as to which an emergency has been declared pursuant to section three, who, upon complaint of a tenant or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable

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

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opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this act shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. [~~In no event shall such treble damage penalty be assessed against an owner based solely on said owner's failure to file a proper or timely initial or annual rent registration statement.~~] If the owner establishes by a preponderance of the evidence that the overcharge was neither willful nor attributable to his negligence, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest at the rate of interest payable 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 (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 on a judgment pursuant to section five thousand four of the civil practice law and rules.

(e) 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, in the alternative, not in excess of twenty percent thereof per month may be offset against any rent thereafter due the owner.

(f) Unless a tenant shall have filed a complaint of overcharge with the division which complaint has not been withdrawn, nothing contained in this section shall be deemed to prevent a tenant or tenants, claiming to have been overcharged, from commencing an action or interposing a counterclaim in a court of competent jurisdiction for damages equal to the overcharge and the penalty provided for in this section, including 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, plus the statutory costs and allowable disbursements in connection with the proceeding. [~~Such action must be commenced or counterclaim interposed within four years of the date of the alleged overcharge but no recovery of three times the amount of the overcharge may be awarded with respect to any overcharge which had occurred more than two years before the action is commenced or counterclaim is interposed.~~]

(9) A penalty shall be assessed against an owner who fails to file a timely or proper initial, annual or supplemental rent registration statement or fails to supply the unit's rent history with a lease under section 12-a of this act of two thousand dollars per unit for buildings with less than fifteen units and of five thousand dollars per unit for buildings with fifteen units or more. Such penalty shall be paid to the tenant of the unit, either as cash, check or a credit toward their monthly rent. Should the tenant's lease expire before the credit toward their monthly rent is paid, then the remainder of the credit will be paid out as a cash award. The choice of cash, check, or rent credit shall be determined by the tenant.

§ 4. Section 12-a of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, is amended by adding two new subdivisions i and j to read as follows:

i. A supplemental statement shall be filed containing the current rent for each unit and such other information contained in subdivision a of this section as shall be required by the division of housing and community renewal within ninety days of the rent on a unit being raised. The

owner shall provide each tenant then in occupancy with a copy of that portion of such statement as pertains to the tenant's unit.

j. The owner shall supply with each lease (1) literature on rent history produced by the division of housing and community renewal and (2) a copy of such unit's entire rent history.

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

a. Subject to the conditions and limitations of this subdivision, any owner of housing accommodations who, upon complaint of a tenant, or of the state division of housing and community renewal, is found by the state division of housing and community renewal, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a housing accommodation subject to this chapter shall be liable to the tenant for a penalty equal to three times the amount of such overcharge. [~~In no event shall such treble damage penalty be assessed against an owner based solely on said owner's failure to file a timely or proper initial or annual rent registration statement.~~] If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the state division of housing and community renewal shall establish the penalty as the amount of the overcharge plus interest. (i) Except as to complaints filed pursuant to clause (ii) of this paragraph, the legal regulated rent for purposes of determining an overcharge, shall be the amount of 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 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 chal-~~

~~lenged 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.

i. A penalty shall be assessed against an owner who fails to file a timely or proper initial, annual or supplemental rent registration statement or fails to supply the unit's rent history with a lease under section 26-517 of this chapter of two thousand dollars per unit for buildings with less than fifteen units and of five thousand dollars per unit for buildings with fifteen units or more. Such penalty shall be paid to the tenant of the unit, either as cash, check or a credit toward their monthly rent. Should the tenant's lease expire before the credit toward their monthly rent is paid, then the remainder of the credit will be paid out as a cash award. The choice of cash, check, or rent credit shall be determined by the tenant.

§ 6. Section 26-517 of the administrative code of the city of New York is amended by adding two new subdivisions h and i to read as follows:

h. A supplemental statement shall be filed containing the current rent for each unit and such other information contained in subdivision a of this section as shall be required by the division of housing and community renewal within ninety days of the rent on a unit being raised. The owner shall provide each tenant then in occupancy with a copy of that portion of such statement as pertains to the tenant's unit.

i. The owner shall supply with each lease (1) literature on rent history produced by the state division of housing and community renewal and (2) a copy of such unit's entire rent history.

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

a. the amendments to section 12 and section 12-a of the emergency tenant protection act of nineteen seventy-four made by sections three and four of this act shall expire on the same date as such act expires and shall not affect the expiration of such act as provided in section 17 of chapter 567 of the laws of 1974; and

b. the amendments to sections 26-516 and 26-517 of chapter 4 of title 26 of the administrative code of the city of New York made by sections five and six of this act shall expire on the same date as such law expires and shall not affect the expiration of such law as provided under section 26-520 of such law.