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:

Section 1. 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 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 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 divi-

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

LBD06209-07-9

sion 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. **After a complaint of rent overcharge has been filed and served on an owner, the voluntary adjustment of the rent and/or the voluntary tender of a refund of rent overcharges shall not be considered by the division of housing and community renewal or a court of competent jurisdiction as evidence that the overcharge was not willful.** (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 **most recent reliable** annual registration statement **for a rent stabilized tenant** filed [~~four~~] **and served upon the tenant six or more** years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. [~~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 or a court of competent jurisdiction, 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~~] **six** years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this act for less than [~~four~~] **six** years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date [~~four~~] **six** 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~~] **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**.

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

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

(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.~~] **The courts and the division shall have concurrent jurisdiction, subject to the tenant's choice of forum.**

§ 2. Paragraph 8 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, is amended and a new paragraph 9 is added to read as follows:

(8) [~~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 twelve-a of this act shall not be required to maintain or produce any records relating to rentals of such accommodation more than four 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 subdivision.**

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

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

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

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

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

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

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

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

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

§ 3. Subdivision b 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, is amended to read as follows:

b. Within a city having a population of one million or more, the state division of housing and community renewal shall have such powers to enforce this act as shall be provided in the New York city rent stabilization law of nineteen hundred sixty-nine, as amended, or as shall otherwise be provided by law. 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. The

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

§ 4. 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 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. After a complaint of rent overcharge has been filed and served on an owner, the voluntary adjustment of the rent and/or the voluntary tender of a refund of rent overcharges shall not be considered by the division of housing and community renewal or a court of competent jurisdiction as evidence that the overcharge was not willful. (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 rent indicated in the most recent reliable annual registration statement filed [~~four~~] and served upon the tenant six or more years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. [~~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 or a court of competent jurisdiction, 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~~] six years prior to the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this chapter for less than [~~four~~] six years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. Where the rent charged on the date [~~four~~] six 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 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~~] 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.

h. The division of housing and community renewal, and the courts, in investigating complaints of overcharge and in determining legal regulated rents, shall consider all available rent history which is reasonably necessary to make such determinations, including but not limited to (i) any rent registration or other records filed with the state division of housing and community renewal, or any other state, municipal or federal agency, regardless of the date to which the information on such registration refers; (ii) any order issued by any state, municipal or federal agency; (iii) any records maintained by the owner or tenants; and (iv) any public record kept in the regular course of business by any state, municipal or federal agency. Nothing contained in this subdivision shall limit the examination of rent history relevant to a determination as to:

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

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

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

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

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

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

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

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

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

§ 213-a. [~~Actions to be commenced within four years; residential~~] Residential rent overcharge. [~~An action on a residential rent overcharge shall be commenced 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 any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action.~~] No overcharge penalties or damages may be awarded for a period more than six years before the action is commenced or complaint is filed, however, an overcharge claim may be filed at any time, and the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges.

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

a. the amendments to section 12 of the emergency tenant protection act of nineteen seventy-four made by sections one, two and three 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 section 26-516 of chapter 4 of title 26 of the administrative code of the city of New York made by sections four and five 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.