STATE OF NEW YORK

5862

2019-2020 Regular Sessions

IN SENATE

May 15, 2019

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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 the determination of whether an overcharge of rent is willful

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

Section 1. The opening paragraph of 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:

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. **Neither the adjustment of the rent or a refund by an owner after the service of an overcharge complaint shall be a basis upon which the state division of housing and community renewal may determine 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 annual registration statement filed four years prior to the most recent regis-

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

LBD11538-01-9

tration 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. (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 the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this chapter for less than four years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. 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.

§ 2. The opening paragraph of 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 116 of the laws of 1997, is amended to read as follows:

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 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. **Neither the adjustment of the rent or a refund by an owner after the service of an overcharge complaint shall be a basis upon which the state division of housing and community renewal may determine 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 annual registration statement filed four 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. (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 the date of the initial registration of the housing accommodation (or, if the housing accommodation was subject to this act for

less than four years, the initial legal regulated rent) plus in each case, any lawful increases and adjustments. 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.

§ 3. This act shall take effect immediately; provided that the amendments to section 26-516 of chapter 4 of title 26 of the administrative code of the city of New York made by section one 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; and provided that the amendments to section 12 of section 4 of the emergency tenant protection act of nineteen seventy-four made by section two 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 576 of the laws of 1974.