STATE OF NEW YORK

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IN ASSEMBLY

January 14, 2021

Introduced by M. of A. BARNWELL, DE LA ROSA, PICHARDO, REYES, FRONTUS, QUART, DAVILA, GOODELL, BYRNES, FERNANDEZ, WEPRIN, ABINANTI, SEAWRIGHT -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to requiring landlords to return security deposits within a reasonable time

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

Section 1. The general obligations law is amended by adding a new section 7-104 to read as follows:

§ 7-104. Money deposited or advanced for use or rental of any dwelling; retention. 1. Definitions. For the purpose of this section:

(a) The term "security deposit" shall mean any advance or deposit of money that is subject to the provisions of section 7-103 of this title, and the primary function of which is to secure the performance of a rental agreement for the use or rental of any dwelling or any part thereof.

(b) The term "landlord" shall mean any person who receives payment from a tenant for the rental or use of any dwelling or any portion thereof and has received a security deposit in connection with such rental.

(c) The term "tenant" shall mean any person who occupies any dwelling or any portion thereof for which he or she pays rent and who, in connection with such rental, has furnished a security deposit.

2. No security deposit for a dwelling shall exceed more than one month's rent.

3. A month prior to the expiration of the lease, the landlord shall notify all tenants that they have the option to conduct a pre-exit walk-through with the landlord to document any and all damages, as well as a post-exit walk-through with the landlord to document any damages caused while moving out that may impact the value of the security deposit. The post-exit walk-through cannot be after the last day of the lease.

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

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4. A landlord shall, within twenty-one days of the end of the lease, return to the tenant the full security deposit and any accrued interest to which the tenant is entitled less any amount retained by the landlord under subdivision five of this section.

5. (a) A landlord may retain all or a part of a security deposit for nonpayment of rent, use and occupancy, unjustifiable abandonment of the premises prior to the expiration of the lease term, nonpayment of utility charges, repair work or cleaning contracted by the tenant or damages caused by the tenant to the premises.

(b) (i) In the event that the landlord retains any portion of the security deposit, he or she shall provide the tenant with a written statement listing the reasons for the retention of such portion of the security deposit within twenty-one calendar days after the lease expired.

(ii) The written statement shall include photographic documentation for all reasons for retention regarding damages by the tenant to the dwelling and a detailed itemized receipt of repair for such damage. The itemized receipt shall include proof of the cost for the repair of any listed damage on said receipt. The itemized receipt shall also include proof of the payment in full by the landlord for the cost of the repair. If the landlord or landlord's employee did not do the repair work, the landlord shall provide the tenant a copy of the paid bill, paid invoice, or receipt showing payment in full, supplied by the person or entity performing the work. The itemized receipt shall provide the tenant with the name, address, and telephone number of the person or entity who performed the repair work. If the landlord and/or his or her employee performed the repair work, the itemized receipt shall reasonably describe the work performed and any hourly rate charged for the landlord and any employee.

(c) When the statement is delivered, it shall be signed by the landlord attesting to the accuracy of the statement. All tenants whose security deposit is being retained shall sign the written statement and return a signed copy to the landlord if the tenant agrees to the accuracy of the statement.

(d) When the statement is signed by the tenant and returned to the landlord, the landlord shall return to the tenant their security deposit and any accrued interest to which the tenant is entitled less any amount retained by the landlord under this subdivision as agreed to in the statement signed by the tenant.

(e) If the tenant does not believe the statement is accurate and thus does not sign, the statement was not signed by the landlord, the remainder of the security deposit is not returned within twenty-one calendar days after the lease expired, or repairs cannot reasonably be completed within twenty-one calendar days after the lease expired, the tenant may invoke the use of the New York state attorney general's mediation process and, if the mediation process fails or is not used, bring an action in small claims court.

6. The willful retention of a security deposit in violation of this section shall render a landlord liable for treble the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorneys' fees, court costs, and the last two months' rent paid by the tenant. In any action brought by a tenant under this section, the landlord shall bear the burden of proving that his or her withholding of the security deposit or any portion thereof was not willful. This section shall not limit any other penalties the landlord could be subjected to.

7. Any provision of a contract or agreement whereby a person who so deposits or advances money waives any provision of this section is absolutely void.

8. Any landlord found in violation of this section shall have each infraction reported to the department of homes and community renewal, who shall compile a list of landlords who have violated the provisions of this section including, but not limited to, which provisions were violated. The department of homes and community renewal shall post such list on their website, and such information can be requested in paper format by members of the public.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.