STATE OF NEW YORK

2208

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

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 section 1 of part F of chapter 36 of the laws of 2019, is amended and a new paragraph 10 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 opportunity to be heard, to have collected an overcharge above the rent

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

LBD07059-01-1

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. 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. 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~~] **prior** annual registration [~~statement for a rent stabilized tenant filed 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)~~] **statements** plus in each case any subsequent lawful increases and adjustments**, less any appropriate penalties**. 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 six 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 six 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 six years prior to the date of the initial registration of the accommodation cannot be established, such rent shall be established by the division.

(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 [~~may~~] **shall** be filed with the state division of housing and community renewal or 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) A penalty of three times the overcharge shall be assessed upon all overcharges willfully collected by the owner starting [~~six years~~] **at any time** 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. The courts and the division shall have concurrent jurisdiction, subject to the tenant's choice of forum.

(10) 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 section 4 of part F of chapter 36 of the laws of 2019, is amended and a new subdivision j 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. 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 **amount of** rent indicated in [~~the most recent reliable~~] **prior** annual registration [~~statement filed 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)~~] **statements** plus in each case any subsequent lawful increases and adjustments**, less any appropriate penalties**. 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 six 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 six 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 six 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 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.

(1) The order of the state division of housing and community renewal or court of competent jurisdiction 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) A complaint under this subdivision may be filed with the state division of housing and community renewal or 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~~]. A penalty of three times the overcharge shall be assessed upon all overcharges willfully collected by the owner [~~starting six years~~] **at any time** before the complaint is filed.

(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 shall 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.

j. 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 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.