

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:

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

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

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

12 § 3. Paragraph 1 of subdivision a of section 12 of section 4 of chap-
13 ter 576 of the laws of 1974, constituting the emergency tenant
14 protection act of nineteen seventy-four, as amended by section 1 of part
15 F of chapter 36 of the laws of 2019, is amended and a new paragraph 10
16 is added to read as follows:

17 (1) Subject to the conditions and limitations of this paragraph, any
18 owner of housing accommodations in a city having a population of less
19 than one million or a town or village as to which an emergency has been
20 declared pursuant to section three, who, upon complaint of a tenant or
21 of the state division of housing and community renewal, is found by the
22 state division of housing and community renewal, after a reasonable
23 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.

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1 authorized for a housing accommodation subject to this act shall be
2 liable to the tenant for a penalty equal to three times the amount of
3 such overcharge. If the owner establishes by a preponderance of the
4 evidence that the overcharge was neither willful nor attributable to his
5 negligence, the state division of housing and community renewal shall
6 establish the penalty as the amount of the overcharge plus interest at
7 the rate of interest payable on a judgment pursuant to section five
8 thousand four of the civil practice law and rules. After a complaint of
9 rent overcharge has been filed and served on an owner, the voluntary
10 adjustment of the rent and/or the voluntary tender of a refund of rent
11 overcharges shall not be considered by the division of housing and
12 community renewal or a court of competent jurisdiction as evidence that
13 the overcharge was not willful. (i) Except as to complaints filed
14 pursuant to clause (ii) of this paragraph, the legal regulated rent for
15 purposes of determining an overcharge, shall be deemed to be the rent
16 indicated in [~~the most recent reliable~~] prior annual registration
17 [~~statement for a rent stabilized tenant filed and served upon the tenant~~
18 ~~six or more years prior to the most recent registration statement, (or,~~
19 ~~if more recently filed, the initial registration statement)] statements
20 plus in each case any subsequent lawful increases and adjustments, less
21 any appropriate penalties. The division of housing and community
22 renewal or a court of competent jurisdiction, in investigating
23 complaints of overcharge and in determining legal regulated rent, shall
24 consider all available rent history which is reasonably necessary to
25 make such determinations. (ii) As to complaints filed within ninety
26 days of the initial registration of a housing accommodation, the legal
27 regulated rent for purposes of determining an overcharge shall be deemed
28 to be the rent charged [~~on the date six years prior to~~] as of the date
29 of the initial registration of the housing accommodation (or, if the
30 housing accommodation was not previously subject to this act [~~for less~~
31 ~~than six years~~], the initial legal regulated rent) plus in each case,
32 any lawful increases and adjustments, less any appropriate penalties.
33 Where the rent charged on the date six years prior to the date of the
34 initial registration of the accommodation cannot be established, such
35 rent shall be established by the division.~~

36 (a) The order of the state division of housing and community renewal
37 shall apportion the owner's liability between or among two or more
38 tenants found to have been overcharged by such owner during their
39 particular tenancy of a unit.

40 (b) (i) Except as provided under clauses (ii) and (iii) of this
41 subparagraph, a complaint under this subdivision [~~may~~] shall be filed
42 with the state division of housing and community renewal or in a court
43 of competent jurisdiction at any time, however any recovery of over-
44 charge penalties shall be limited to the six years preceding the
45 complaint.

46 (ii) A penalty of three times the overcharge shall be assessed upon
47 all overcharges willfully collected by the owner starting [~~six years~~] at
48 any time before the complaint is filed.

49 [~~(iii) Any complaint based upon overcharges occurring prior to the~~
50 ~~date of filing of the initial rent registration as provided in subdivi-~~
51 ~~sion b of section twelve-a of this act shall be filed within ninety days~~
52 ~~of the mailing of notice to the tenant of such registration.]~~

53 (c) Any affected tenant shall be notified of and given an opportunity
54 to join in any complaint filed by an officer or employee of the state
55 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

1 authorized for a housing accommodation subject to this chapter shall be
2 liable to the tenant for a penalty equal to three times the amount of
3 such overcharge. If the owner establishes by a preponderance of the
4 evidence that the overcharge was not willful, the state division of
5 housing and community renewal shall establish the penalty as the amount
6 of the overcharge plus interest. After a complaint of rent overcharge
7 has been filed and served on an owner, the voluntary adjustment of the
8 rent and/or the voluntary tender of a refund of rent overcharges shall
9 not be considered by the division of housing and community renewal or a
10 court of competent jurisdiction as evidence that the overcharge was not
11 willful. (i) Except as to complaints filed pursuant to clause (ii) of
12 this paragraph, the legal regulated rent for purposes of determining an
13 overcharge, shall be the amount of rent indicated in [~~the most recent~~
14 ~~reliable~~] prior annual registration [~~statement filed and served upon the~~
15 ~~tenant six or more years prior to the most recent registration state-~~
16 ~~ment, (or, if more recently filed, the initial registration statement)]~~
17 statements plus in each case any subsequent lawful increases and adjust-
18 ments, less any appropriate penalties. The division of housing and
19 community renewal or a court of competent jurisdiction, in investigating
20 complaints of overcharge and in determining legal regulated rent, shall
21 consider all available rent history which is reasonably necessary to
22 make such determinations. (ii) As to complaints filed within ninety days
23 of the initial registration of a housing accommodation, the legal regu-
24 lated rent shall be deemed to be the rent charged [~~on the date six years~~
25 ~~prior to~~] as of the date of the initial registration of the housing
26 accommodation (or, if the housing accommodation was not previously
27 subject to this chapter [~~for less than six years~~], the initial legal
28 regulated rent) plus in each case, any lawful increases and adjustments,
29 less any appropriate penalties. Where the rent charged [~~on the date six~~
30 ~~years prior to~~] as of the date of the initial registration of the accom-
31 modation cannot be established, such rent shall be established by the
32 division.

33 Where the prior rent charged for the housing accommodation cannot be
34 established, such rent shall be established by the division provided
35 that where a rent is established based on rentals determined under the
36 provisions of the local emergency housing rent control act such rent
37 must be adjusted to account for no less than the minimum increases which
38 would be permitted if the housing accommodation were covered under the
39 provisions of this chapter, less any appropriate penalties.

40 (1) The order of the state division of housing and community renewal
41 or court of competent jurisdiction shall apportion the owner's liability
42 between or among two or more tenants found to have been overcharged by
43 such owner during their particular tenancy of a unit.

44 (2) A complaint under this subdivision may be filed with the state
45 division of housing and community renewal or in a court of competent
46 jurisdiction at any time[, ~~however any recovery of overcharge penalties~~
47 ~~shall be limited to the six years preceding the complaint~~]. A penalty of
48 three times the overcharge shall be assessed upon all overcharges will-
49 fully collected by the owner [~~starting six years~~] at any time before the
50 complaint is filed.

51 (3) Any affected tenant shall be notified of and given an opportunity
52 to join in any complaint filed by an officer or employee of the state
53 division of housing and community renewal.

54 (4) An owner found to have overcharged shall be assessed the reason-
55 able costs and attorney's fees of the proceeding and interest from the
56 date of the overcharge at the rate of interest payable on a judgment

1 pursuant to section five thousand four of the civil practice law and
2 rules.

3 (5) The order of the state division of housing and community renewal
4 awarding penalties may, upon the expiration of the period in which the
5 owner may institute a proceeding pursuant to article seventy-eight of
6 the civil practice law and rules, be filed and enforced by a tenant in
7 the same manner as a judgment or not in excess of twenty percent thereof
8 per month may be offset against any rent thereafter due the owner.

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

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

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

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

31 § 7. This act shall take effect immediately; provided that the amend-
32 ments to sections 26-516 and 26-517 of chapter 4 of title 26 of the
33 administrative code of the city of New York made by sections five and
34 six of this act shall expire on the same date as such law expires and
35 shall not affect the expiration of such law as provided under section
36 26-520 of such law.