STATE OF NEW YORK

3190

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN, GOTTFRIED, SIMON, CARROLL, STECK, FRONTUS, SEAWRIGHT, BARRON, PERRY, DICKENS, TAYLOR, BRONSON, RICHARDSON, HUNTER, DE LA ROSA, KIM, BARNWELL, ANDERSON, ROZIC, KELLES -- read once and referred to the Committee on Small Business

AN ACT to suspend rent payments for certain tenants in response to the outbreak of coronavirus

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

Section 1. For the purposes of this act:

(a) "actual income" means for a not-for-profit corporation employing twenty-five or less full-time employees or full-time equivalent employees or for a small business incorporated and resident in this state, independently owned and operated, not dominant in its field, and employs twenty-five or less full-time employees or full-time equivalent employees, all revenue, including emergency federal, state or local assistance, or any other form of income that may be used to pay rent, but excluding restricted grants;

(b) "landlord" means the person or entity to whom a covered tenant owes rent;

(c) "rent" means the amount charged in consideration for the use and occupancy of real property pursuant to a written or oral rental agreement or statute;

(d) "state of emergency" means the state of emergency declared by executive order 202 that began on March 7, 2020 and any further amendments or modifications, and as may be further extended pursuant to section 28 of the executive law;

(e) "covered tenant" includes a tenant that is a not-for-profit corporation employing twenty-five or less full-time employees or full-time equivalent employees, or a tenant that is a small business incorporated and resident in this state, independently owned and operated, not domi-

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

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nant in its field, and employs twenty-five or less full-time employees or full-time equivalent employees; and

(f) "covered period" means March 7, 2020 until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size, for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county in which the covered tenant is located.

§ 2. (a) (i) Notwithstanding any other provision of law, rule or regulation to the contrary, any covered tenant in the state that has been forced to close their place of business, or whose business activities have been substantially curtailed resulting in a loss of income as a result of government ordered restrictions in response to the outbreak of coronavirus disease 2019 (COVID-19), shall be responsible for rent payments up to twenty percent of the covered tenant's actual income for the thirty days prior to the date such rent was due or one-third of their contractual rent, whichever is less, per month for the duration of the covered period through one hundred eighty days following the final day of the covered period. A landlord of a covered tenant shall waive twenty percent of the contractual rent per month for the duration of one hundred eighty days following the final day of the covered period.

(ii) Where a covered tenant is authorized to pay an amount that is less than their contractual or statutory rent pursuant to this act, the covered tenant shall provide the landlord and the department of economic development with a sworn affidavit affirming the covered tenant's actual income for the thirty days prior to the date such rent was due for each month for which the tenant is seeking a reduced payment of rent due to loss of income as a result of government ordered restrictions in response to the outbreak of coronavirus disease 2019 (COVID-19). Upon the verification of such statement by the commissioner of the department of economic development or his or her agent, such payment shall absolve the covered tenant of any further obligation to pay rent and any difference between the rent that would have been contractually or statutorily owed and the amount paid pursuant to this paragraph shall be waived, except where a covered tenant later receives additional income, such rent obligations shall be recalculated.

(iii) In a summary proceeding for the non-payment of rent under article 7 of the real property actions and proceedings law, a covered tenant may raise a payment made pursuant to this act as a defense to non-payment. If the amount of the covered tenant's actual income is in dispute, the court shall review documentation of the covered tenant's income in camera, unless otherwise deemed necessary by the court. Notwithstanding any other provision of law to the contrary customary documentation of income shall constitute prima facie evidence of the covered tenant's actual income and shall be presumptively admissible in such summary proceeding.

(b) Any covered tenant whose lease expires during the covered period shall have the option of extending such lease under the terms existing prior to the expiration of the lease for a period of up to one hundred eighty days after the expiration of the state of emergency.

(c) Late fees, interest or other penalties shall not be collectable for rent accrued during the existence of the state of emergency.

§ 3. (a) The commissioner of the department of economic development is hereby authorized and directed to establish and implement an interim commercial rent relief program to support covered tenants and landlords impacted by the COVID-19 pandemic. Such program shall be provided at least $500,000,000, including but not limited to monies that have been allocated to the state of New York by the federal government.

(b) Notwithstanding any other law to the contrary, a landlord that has lost rental income pursuant to this act and has not been fully compensated by emergency federal, state or local assistance, may apply to the department of economic development for relief. The commissioner of the department of economic development may, upon satisfaction of the veracity of the landlord's application and to the extent possible, authorize the distribution of funds, including but not limited to any unrestricted federal emergency assistance monies provided to the state that have not otherwise been obligated, to any such landlord in the amount of the balance of rental income lost after the twenty percent of the contractual rent waived by the landlord and any amount paid by a covered tenant pursuant to section two of this act.

(c) The commissioner of the department of economic development shall promulgate rules and regulations to effectuate the provisions of this act. The regulations promulgated pursuant to this subdivision shall include provisions designed to ensure full access to the services and financial assistance required under this section by individuals for whom English is not the primary language.

§ 4. Notwithstanding any other law to the contrary, no court shall accept for filing a petition to commence a new summary proceeding to recover possession of real property under article 7 of the real property actions and proceedings law for non-payment of rent due to loss of income as a result of government ordered restrictions in response to the outbreak of coronavirus disease 2019 (COVID-19) for at least thirty days following the expiration of the state of emergency; provided any statute of limitations applicable to such summary proceedings shall be tolled for thirty days; provided further, however, that the tenant shall provide a sworn affidavit affirming the covered tenant's loss of income as a result of government ordered restrictions in response to the outbreak of coronavirus disease 2019 (COVID-19). In no event shall late or reduced rent payments during the state of emergency constitute the basis for a summary holdover proceeding for the chronic nonpayment of rent.

§ 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after March 7, 2020.