STATE OF NEW YORK

5105

2021-2022 Regular Sessions

IN SENATE

February 23, 2021

Introduced by Sens. LIU, BIAGGI, COMRIE, KAPLAN, KRUEGER, MAYER, PERSAUD, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, the real property law, and the real property actions and proceedings law, in relation to excluding tenant-shareholders in cooperative housing corporations from certain housing provisions

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

Section 1. Paragraph (a) of subdivision 1-a of section 7-108 of the general obligations law, as added by section 25 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

(a) No deposit or advance shall exceed the amount of one month's rent under such contract**, except in dwelling units which are a cooperative housing corporation and where the tenant would become a shareholder of such dwelling unit**.

§ 2. Section 227-f of the real property law is amended by adding a new subdivision 3 to read as follows:

3. This section shall not apply to a prospective tenant of a cooperative housing corporation, where such prospective tenant would become a shareholder of such cooperative housing corporation.

§ 3. Subdivisions 1 and 2 of section 238-a of the real property law, as added by section 10 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

1. (a) Except in instances where statutes or regulations provide for a payment, fee or charge, no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except background checks and credit checks as provided by paragraph (b) of this subdivision, provided that this subdivision shall not apply to entrance fees charged by

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

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continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents. **Nothing in this paragraph shall prohibit a cooperative housing corporation from demanding from a prospective tenant any payment, fee or charge which is necessary to compensate a managing agent for the processing, review or acceptance of such prospective tenant's application where such prospective tenant would become a shareholder of such cooperative housing corporation.**

(b) A landlord, lessor, sub-lessor or grantor may charge a fee or fees to reimburse costs associated with conducting a background check and credit check, provided the cumulative fee or fees for such checks is no more than the actual cost of the background check and credit check or twenty dollars, whichever is less, and the landlord, lessor, sub-lessor or grantor shall waive the fee or fees if the potential tenant provides a copy of a background check or credit check conducted within the past thirty days. The landlord, lessor, sub-lessor or grantor may not collect the fee or fees unless the landlord, lessor, sub-lessor or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check. **Notwithstanding the provisions of this paragraph, a cooperative housing corporation shall be permitted to charge a fee or fees to reimburse costs associated with conducting a background check and credit check in excess of twenty dollars, where the potential tenant would become a shareholder of such cooperative housing corporation, provided the cumulative fee or fees for such checks is no more than the actual cost of such background check and/or credit check.**

2. No landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the late payment of rent unless the payment of rent has not been made within five days of the date it was due, and such payment, fee, or charge shall not exceed fifty dollars or five percent of the monthly rent, whichever is less**, except that this subdivision shall not apply to a tenant of a cooperative housing corporation, where such tenant is also a shareholder of such cooperative housing corporation**.

§ 4. Section 702 of the real property actions and proceedings law, as added by section 11 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

§ 702. Rent in a residential dwelling. In a proceeding relating to a residential dwelling or housing accommodation, the term "rent" shall mean the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding pursuant to this article, notwithstanding any language to the contrary in any lease or rental agreement**, except that such additional fees, charges or penalties may be sought in a summary proceeding brought by a cooperative housing corporation against a tenant who is a shareholder of such cooperative housing corporation**.

§ 5. Section 234 of the real property law, as amended by section 8 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

§ 234. Right to recover attorneys' fees in actions or summary proceedings arising out of leases of residential property. Whenever a lease of residential property shall provide that in any action or summary proceeding the landlord may recover attorneys' fees and/or expenses incurred as the result of the failure of the tenant to perform any covenant or agreement contained in such lease, or that amounts paid by the landlord therefor shall be paid by the tenant as additional rent, there shall be implied in such lease a covenant by the landlord to pay to the tenant the reasonable attorneys' fees and/or expenses incurred by the tenant as the result of the failure of the landlord to perform any covenant or agreement on its part to be performed under the lease or in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease, and an agreement that such fees and expenses may be recovered as provided by law in an action commenced against the landlord or by way of counterclaim in any action or summary proceeding commenced by the landlord against the tenant. A landlord may not recover attorneys' fees upon a default judgment. Any waiver of this section shall be void as against public policy. **Nothing in this section shall prohibit a cooperative housing corporation from recovering attorneys' fees in an action against a tenant where such tenant is also a shareholder of such cooperative housing corporation.**

§ 6. Subdivision (d) of section 235-e of the real property law, as added by section 9 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

(d) If a lessor, or an agent of a lessor authorized to receive rent, fails to receive payment for rent within five days of the date specified in a lease agreement, such lessor or agent shall send the lessee, by certified mail, a written notice stating the failure to receive such rent payment. The failure of a lessor, or any agent of the lessor authorized to receive rent, to provide a lessee with a written notice of the non-payment of rent may be used as an affirmative defense by such lessee in an eviction proceeding based on the non-payment of rent. **Notwithstanding the provisions of this subdivision, a lessor which is a cooperative housing corporation may provide for a deadline in excess of five days and a method of sending notice other than by certified mail, as long as such deadline and method of sending notice is provided for in the proprietary lease, and the lessee is a shareholder of such cooperative housing corporation.**

§ 7. This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date.