

STATE OF NEW YORK

3092

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN, FRONTUS, BARRON, DE LA ROSA -- read once and referred to the Committee on Judiciary

AN ACT to amend the administrative code of the city of New York, in relation to prohibiting the eviction of small commercial tenants in the city of New York without good cause

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

1 Section 1. This act shall be known and may be cited as the "Stop The
2 Outrageous Retail Evictions Act" or the "STORE Act".

3 § 2. Title 22 of the administrative code of the city of New York is
4 amended by adding a new chapter 12 to read as follows:

CHAPTER 12

EVICTION PROTECTIONS FOR SMALL COMMERCIAL PREMISES

7 § 22-1201 Definitions. As used in this chapter, the following terms
8 shall have the following meanings:

9 1. "Landlord" shall mean any owner, lessor, sublessor, assignor, or
10 other person receiving or entitled to receive rent for the occupancy of
11 any small commercial premises, or an agent of any of the foregoing.

12 2. "Rent" shall mean any consideration, including any bonus, benefit
13 or gratuity demanded or received by a landlord for or in connection with
14 the possession, use or occupancy of a small commercial premises or the
15 execution or transfer of a lease for such small commercial premises.

16 3. "Small commercial premises" shall mean a premises that is occupied
17 or used, or could be occupied or used, for the purpose of offering or
18 selling goods at retail and has no more than one thousand square feet of
19 retail space.

20 4. "Tenant" shall mean a person or entity lawfully occupying a small
21 commercial premises pursuant to a lease or other rental agreement.

22 § 22-1202 Scope. This chapter shall apply only to all small commercial
23 premises in the city of New York.

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

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1 § 22-1203 Necessity for good cause. No landlord shall, by action to
2 evict or to recover possession, by exclusion from possession, by failure
3 to renew any lease, or otherwise, remove any tenant from any small
4 commercial premises covered by this chapter except for good cause pursu-
5 ant to section 22-1204 of this chapter.

6 § 22-1204 Grounds for removal of tenants. 1. No landlord shall remove
7 a tenant from any small commercial premises, or attempt such removal or
8 exclusion from possession, notwithstanding that the tenant has no writ-
9 ten lease or that the lease or other rental agreement has expired or
10 otherwise terminated, except upon order of a court of competent juris-
11 isdiction entered in an appropriate judicial action or proceeding in which
12 the petitioner or plaintiff has established one of the following grounds
13 as good cause for removal or eviction:

14 (a) The tenant has failed to pay rent due and owing, provided that the
15 rent due and owing, or any part thereof, is not the result of:

16 (i) a rent increase which is unconscionable or imposed for the purpose
17 of circumventing the intent of this chapter. In determining whether all
18 or part of the rent due and owing is the result of an unconscionable
19 rent increase, it shall be a rebuttable presumption that the rent for a
20 small commercial premises is unconscionable if said rent has been
21 increased in any calendar year by a percentage exceeding one and one-
22 half times the annual percentage change in the Consumer Price Index for
23 the city of New York, as established in the August preceding the calen-
24 dar year in question; or

25 (ii) the withholding of rental payments by the tenant due to the
26 alleged violations of the lease or rental agreement by the landlord.

27 (b) The tenant is violating a substantial obligation of his or her
28 tenancy, other than the obligation to surrender possession, and has
29 failed to cure such violation within thirty days following written
30 notice to cure the violation by the landlord, provided however, that the
31 obligation of tenancy for which a violation is claimed was not imposed
32 for the purpose of circumventing the intent of this chapter.

33 (c) The tenant is committing or permitting a nuisance in the small
34 commercial premises, or is maliciously or by reason of negligence damag-
35 ing the small commercial premises; or the tenant's conduct is such as to
36 interfere with the comfort of other tenants or occupants of the same or
37 adjacent buildings or structures.

38 (d) Occupancy of the small commercial premises by the tenant is in
39 violation of or causes a violation of law and the landlord is subject to
40 civil or criminal penalties therefor; provided however that an agency of
41 the state or municipality having jurisdiction has issued an order
42 requiring the tenant to vacate the small commercial premises. No tenant
43 shall be removed from possession of a small commercial premises on such
44 ground unless the court finds that the cure of the violation of law
45 requires the removal of the tenant and that the landlord did not through
46 neglect or deliberate action or failure to act create the condition
47 necessitating the vacate order. In instances where the landlord does not
48 undertake to cure conditions of the small commercial premises causing
49 such violation of the law, the tenant shall have the right to pay or
50 secure payment in a manner satisfactory to the court, to cure such
51 violation provided that any tenant expenditures shall be applied against
52 rent to which the landlord is entitled. In instances where removal of a
53 tenant is absolutely essential to the tenant's health and safety, the
54 removal of the tenant shall be without prejudice to any leasehold inter-
55 est or other right of occupancy the tenant may have and the tenant shall
56 be entitled to resume possession at such time as the dangerous condi-

1 tions have been removed. Nothing herein shall abrogate or otherwise
2 limit the right of a tenant to bring an action for monetary damages
3 against the landlord to compel compliance by the landlord with all
4 applicable state or municipal laws or housing codes.

5 (e) The tenant conducts or permits any form of illegal activity on the
6 premises.

7 (f) The tenant has unreasonably refused the landlord access to the
8 small commercial premises for the purpose of making necessary repairs or
9 improvements required by law or for the purpose of showing the small
10 commercial premises to a prospective purchaser, mortgagee or other
11 person having a legitimate interest therein.

12 (g) The current tenancy was created by the subletting of the small
13 commercial premises, whereby the prime tenant did not notify the land-
14 lord of the subtenant's existence and did not obtain the written consent
15 of the landlord to sublet the small commercial premises. This ground is
16 void if the landlord and tenant had agreed in the lease to allow
17 subleasing rights without the consent of the landlord and all obli-
18 gations of the prime tenant on the issue were in compliance.

19 (h) It has been determined by an agency of the state or municipality
20 having jurisdiction or by a civil court of competent jurisdiction that
21 the tenant is a gross and persistent violator of New York city tax laws,
22 of any license obligations related to the use of the small commercial
23 premises or of any laws of the city of New York.

24 (i) Upon the termination of the current tenancy, the landlord intends,
25 in good faith, to demolish or substantially reconstruct the small
26 commercial premises or a substantial part thereof, or to carry out
27 substantial work or construction on the commercial premises or substan-
28 tial part thereof which he or she could not reasonably do without
29 obtaining possession of the small commercial premises. The landlord
30 shall notify the tenant of his or her decision to reoccupy the commer-
31 cial premises at least one year prior to the termination of the tenant's
32 current lease or rental agreement.

33 (j) Upon the termination of the current tenancy, the landlord intends
34 to occupy the small commercial premises in order to carry out his or her
35 own business, which cannot be the same type of business that the current
36 tenant is operating, unless the landlord compensates the tenant at fair
37 market value as determined by an arbitrator as restitution for the loss
38 of such tenant's business. The landlord shall notify the tenant of his
39 or her decision to reoccupy the premises at least one hundred eighty
40 days prior to the termination of the tenant's current lease.

41 2. A tenant required to surrender a small commercial premises by
42 virtue of the operation of paragraph (i) or (j) of subdivision one of
43 this section shall have a cause of action in any court of competent
44 jurisdiction for damages and declaratory and injunctive relief against a
45 landlord or purchaser of the premises who makes a fraudulent statement
46 regarding a proposed use of the premises. In any action or proceeding
47 brought pursuant to this provision a prevailing tenant shall be entitled
48 to recovery of actual damages, and reasonable attorneys' fees.

49 § 22-1205 Preservation of existing requirements of law. No action
50 shall be maintainable and no judgment of possession shall be entered for
51 small commercial premises pursuant to section 22-1204 of this chapter,
52 unless the landlord has complied with any and all applicable laws
53 governing such action or proceeding.

54 § 22-1206 Waiver of rights void. Any agreement by a tenant heretofore
55 or hereinafter entered into in a written lease or other rental agreement

1 waiving or modifying his or her rights as set forth in this chapter
2 shall be void as contrary to public policy.
3 § 3. Severability. If any provision of this act, or any application of
4 any provision of this act, is held to be invalid, that shall not affect
5 the validity and effectiveness of any other provision of this act, or of
6 any other application of any provision of this act, which can be given
7 effect without that provision or application; and to that end, the
8 provisions and applications of this act are severable.
9 § 4. This act shall take effect immediately and shall apply to actions
10 and proceedings commenced on or after such effective date.