

STATE OF NEW YORK

3110

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Cities

AN ACT to amend the administrative code of the city of New York, in relation to establishing commercial rent regulation

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

1 Section 1. Title 22 of the administrative code of the city of New York
2 is amended by adding a new chapter 12 to read as follows:

3 CHAPTER 12

4 COMMERCIAL RENT REGULATION

5 § 22-1201 Scope. This chapter shall apply to all leases for commercial
6 premises. On any occasion wherein a landlord and tenant are required to
7 negotiate the terms of a lease for commercial uses the provisions of
8 this chapter shall apply. The provisions of this chapter shall apply to
9 any commercial lease entered into on or after October first, two thou-
10 sand twenty-two.

11 § 22-1202 Definitions. a. "Commercial premises" shall mean a building
12 or space occupied for non-residential purposes including, but not limit-
13 ed to, manufacturing, retail, professional services, offices, assembl-
14 ing, processing, cultural and not-for-profit entities that are present
15 in the city of New York, who have a valid commercial lease.

16 b. "Landlord" shall mean any owner, lessor, sublessor or other person
17 entitled to receive rent for the use or occupancy of any commercial
18 premises, or an agent thereof.

19 c. "Negotiation" shall mean the process of conferring with one another
20 through conferences, discussions and compromise, to arrive at a mutually
21 agreeable settlement.

22 d. "Rent" shall mean any and all consideration, including but not
23 limited to pass-alongs, received by the landlord in connection with the
24 use or occupancy of any commercial premises.

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

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1 e. "Tenant" shall mean tenant, subtenant, lessee, sublessee, or any
2 other persons lawfully entitled to use or occupancy of any commercial
3 premises.

4 § 22-1203 Rental guidelines. a. The legal regulated rent for any
5 vacancy lease of a commercial premises shall be established and may be
6 increased by an amount promulgated by the rent guidelines board pursuant
7 to section 22-104 of this chapter. Such leases shall be for a minimum
8 term of ten years, provided however, that at the tenant's option, and
9 with the written approval of the landlord, a lease of shorter or longer
10 duration may be selected.

11 b. All leases of a commercial premises may be renewed at the option of
12 a tenant who did not lose the right to renew a lease under the grounds
13 described in subdivision d of this section. The legal regulated rent to
14 be paid for any lease renewal of a commercial premises may be increased
15 by an amount promulgated by the rent guidelines board pursuant to
16 section 22-104 of this chapter. Such lease renewals shall be for a mini-
17 imum term of ten years, provided however, that at the tenant's option,
18 and with the written approval of the landlord, a lease of shorter or
19 longer duration may be selected.

20 c. No period of lease extension required by this chapter shall extend
21 beyond the landlord's lawful ability to rent the premises to the tenant,
22 where such ability is limited by:

23 (1) the obligation to rent the premises to a third party pursuant to a
24 bona fide lease entered into prior to the effective date of this chap-
25 ter;

26 (2) the exercise by a third party of a bona fide option to rent the
27 premises provided that such option was given prior to the effective date
28 of this chapter; or

29 (3) any other lawful reason arising prior to such effective date.

30 d. A tenant shall lose the right of renewal and a landlord may refuse
31 to renew a lease only on the following grounds:

32 (1) The tenant has persistently delayed rent payments without cause.
33 For the purpose of this subdivision, "cause" is defined as the withhold-
34 ing of rental payments by the tenant due to the alleged violations of
35 the rental agreement by the landlord. In order for the landlord to be
36 excused from renewal on this ground, the landlord must have served the
37 tenant at least three prior notices during the term of the lease to the
38 tenant for demand of payment within thirty days, and then show that the
39 lessee has not paid within such thirty day period. The landlord shall
40 not serve such notice unless the rent payment was in arrears for a mini-
41 imum of fifteen days;

42 (2) The tenant uses the commercial premises in a manner substantially
43 different from that described in the lease;

44 (3) The tenant conducts or permits any form of illegal activity on the
45 premises;

46 (4) The tenant has substantially breached any substantive obligation
47 under the current lease and has failed to cure such breach within thirty
48 days following written notice to cure by the landlord;

49 (5) Upon the termination of the current tenancy, the landlord intends,
50 in good faith, to demolish or substantially reconstruct the premises or
51 a substantial part thereof, or to carry out substantial work or
52 construction on the commercial premises or substantial part thereof
53 which he or she could not reasonably do without obtaining possession of
54 the commercial premises. The landlord shall notify the tenant of his or
55 her decision to reoccupy the commercial premises at least one year prior
56 to the termination of the lease. In the event that the lessor fraudu-

1 lently invokes this justification for a refusal to renew a commercial
2 lease, the defrauded tenant may collect treble damages for any loss
3 suffered as a result of such action;

4 (6) The current tenancy was created by the subletting of the property,
5 whereby the prime tenant did not notify the landlord by certified mail
6 of the subtenant's existence and did not obtain the written consent of
7 the landlord. This ground is void if the landlord and tenant had agreed
8 in the lease to allow subleasing rights without the consent of the land-
9 lord and all obligations of the prime tenant on the issue were in
10 compliance;

11 (7) It has been determined by an agency with jurisdiction or by a
12 civil court of competent jurisdiction that the tenant is a gross and
13 persistent violator of New York city tax laws, of any license obli-
14 gations related to the use of the premises or of any laws of the city of
15 New York;

16 (8) Upon the termination of the current tenancy, the landlord intends
17 to occupy the retail premises in order to carry out its own business,
18 which cannot be the same type of business that the current tenant is
19 operating, unless the landlord compensates the tenant at fair market
20 value. The landlord shall notify the tenant of his or her decision to
21 reoccupy the premises at least one hundred eighty days prior to the
22 termination of the lease. In the event that the landlord fraudulently
23 invokes this justification for a refusal to renew a commercial lease,
24 the defrauded tenant may collect treble damages for any loss suffered as
25 a result of such action.

26 e. Where the landlord agrees to renew the lease of the current tenant,
27 such landlord shall notify the tenant at least one hundred eighty days
28 prior to the expiration of the lease of his or her willingness to nego-
29 tiate the renewal of the commercial lease agreement. If the landlord and
30 tenant agree, they may at any time renegotiate a new lease, with any
31 agreed to terms and conditions, not inconsistent with the provisions of
32 this chapter.

33 § 22-1204 Rent guidelines board. a. The rent guidelines board, estab-
34 lished pursuant to section 26-510 of this code, shall establish annual
35 guidelines for legal regulated rent for vacancy and renewal leases, and
36 in determining such amounts shall consider, among other things (1) the
37 economic condition of the commercial real estate industry in the
38 affected area including such factors as the prevailing and projected (i)
39 real estate taxes and sewer and water rates, (ii) gross operating main-
40 tenance costs (including insurance rates, governmental fees, cost of
41 fuel and labor costs), (iii) costs and availability of financing
42 (including effective rates of interest), (iv) over-all supply of commer-
43 cial premises and over-all vacancy rates, (2) relevant data from the
44 current and projected cost of leasing for the affected area, (3) such
45 other data as may be made available to it.

46 b. Beginning July first, two thousand twenty-two, and annually there-
47 after, the rent guidelines board shall file with the city clerk its
48 findings for the preceding calendar year, and shall accompany such find-
49 ings with a statement of the maximum rate or rates of rent for commer-
50 cial premises subject to this law, authorized for leases or commencing
51 on the next succeeding October first or within the twelve months there-
52 after. Such findings and statement shall be published in the City
53 Record.

54 c. The rent guidelines board prior to the annual adjustment of the
55 level of fair rents provided for under this section for commercial prem-
56 ises covered by this law, shall hold a public hearing or hearings for

1 the purpose of collecting information relating to all factors set forth
2 in subdivision a of this section. Notice of the date, time, location
3 and summary of subject matter for the public hearing or hearings shall
4 be published in the City Record daily for a period of not less than
5 eight days and at least once in one or more newspapers of general circu-
6 lation at least eight days immediately preceding each hearing date, at
7 the expense of the city of New York, and the hearing shall be open for
8 testimony from any individual, group, association or representative
9 thereof who wants to testify.

10 d. Maximum rates of rent shall not be established more than once annu-
11 ally for any commercial premises within the board's jurisdiction. Once
12 established, no such rate shall, within the one-year period, be adjusted
13 by any surcharge, supplementary adjustment or other modification.

14 § 22-1205 Security deposits. Security deposits shall not exceed an
15 amount equal to two months rent. All security deposits shall be placed
16 in escrow in an interest-bearing account at a federally insured bank
17 located in New York state. The tenant shall be notified in writing of
18 the location of such escrow account. Interest paid on the account shall
19 be paid in full to the tenant upon termination of the lease. The amount
20 of interest paid to the tenant shall equal the interest paid by such
21 federally insured bank less one percent for the landlord's administra-
22 tive costs.

23 § 22-1206 Retaliation. No landlord shall in any way retaliate against
24 any tenant for the tenant's assertion or exercise of any rights under
25 this chapter. Any such retaliation may subject the landlord to a suit
26 for actual and punitive damages, injunctive relief, and attorney's fees.

27 § 22-1207 Waiver. No provision in any lease, rental agreement, or
28 agreement made in connection therewith which waives or diminishes any
29 right of tenant under this chapter is valid.

30 § 22-1208 Inconsistency with other laws. In the event of any incon-
31 sistency with any other laws of the city of New York, this law shall
32 take precedence.

33 § 2. Severability. If any clause, sentence, paragraph, section or part
34 of this act shall be adjudged by any court of competent jurisdiction to
35 be invalid and after exhaustion of all further judicial review, the
36 judgment shall not affect, impair or invalidate the remainder thereof,
37 but shall be confined in its operation to the clause, sentence, para-
38 graph, section or part of this act directly involved in the controversy
39 in which the judgment shall have been rendered.

40 § 3. This act shall take effect on the ninetieth day after it shall
41 have become a law. Effective immediately the addition, amendment and/or
42 repeal of any rule or regulation necessary for the implementation of
43 this act on its effective date are authorized to be made and completed
44 on or before such effective date.