STATE OF NEW YORK

5105--C

2021-2022 Regular Sessions

IN SENATE

February 23, 2021

Introduced by Sens. LIU, BIAGGI, COMRIE, KAPLAN, KRUEGER, MAYER, PERSAUD, REICHLIN-MELNICK, SEPULVEDA, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 and a new subdivision 4 is added to read as follows:

(a) No deposit or advance shall exceed the amount of one month's rent under such contract**, unless the deposit or advance is for an owner-occupied cooperative apartment as provided for in subdivision four of this section**.

4. A dwelling unit shall qualify as an owner-occupied cooperative apartment for the purpose of paragraph (a) of subdivision one-a of this section if it meets all of the following conditions:

(a) the tenant is the dwelling unit owner, purchaser or shareholder of such a cooperative housing corporation;

(b) such tenant has or will have after purchase exclusive occupancy of such dwelling unit individually and with the permitted occupants pursuant to a proprietary lease or occupancy agreement and established and delimited rights under such lease or agreement; and

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

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(c) such dwelling unit is not subject to the provisions of article two, article four, article five, or article eleven of the private housing finance law.

§ 2. Subdivision 1 of section 226-c of the real property law, as added by section 3 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

1. **(a)** Whenever a landlord intends to offer to renew the tenancy of an occupant in a residential dwelling unit with a rent increase equal to or greater than five percent above the current rent, or the landlord does not intend to renew the tenancy, the landlord shall provide written notice as required in subdivision two of this section. If the landlord fails to provide timely notice, the occupant's lawful tenancy shall continue under the existing terms of the tenancy from the date on which the landlord gave actual written notice until the notice period has expired, notwithstanding any provision of a lease or other tenancy agreement to the contrary.

(b) Notwithstanding paragraph (a) of this subdivision, notice shall not be required under this section to be provided by a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, to a tenant who is a dwelling unit owner or shareholder of such corporation. Nothing in this paragraph shall relieve such cooperative housing corporation of any otherwise applicable obligation to provide notice to such tenant pursuant to any other law or any agreement between the parties.

§ 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 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, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, from demanding from a prospective tenant any payment, fee or charge which is necessary to compensate a managing agent and/or transfer agent for the processing, review or acceptance of such prospective tenant's application where such prospective tenant would become a dwelling unit owner or 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, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, 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 dwelling unit owner or 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**; provided a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, shall be permitted to charge a tenant that is a dwelling unit owner or shareholder of such cooperative housing corporation a fee of up to eight percent of the monthly maintenance fee for the late payment of the monthly maintenance fee if the proprietary lease or occupancy agreement provides for such fee**.

§ 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. **1.** 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.

2. This section shall not apply to a summary proceeding in which the parties are a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, and a tenant who is a dwelling unit owner or shareholder of such corporation, provided that the proprietary lease or occupancy agreement between the cooperative housing corporation and the tenant provides for fees, charges, penalties or assessments other than rent to be recoverable in such a proceeding.

§ 5. 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, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, may provide for a method of sending notice by mail other than by certified mail, as long as such method of sending notice is provided for in the proprietary lease or occupancy agreement, and the lessee is a dwelling unit owner or shareholder of such cooperative housing corporation.**

§ 6. The opening paragraph of section 234 of the real property law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. Notwithstanding the provisions of subdivision one of this section, where a tenant is a dwelling unit owner or shareholder of a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, attorney's fees may be awarded to either party in the event of default judgment if recovery of attorney's fees is provided for in the proprietary lease or occupancy agreement.

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