

STATE OF NEW YORK

2459

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

Introduced by M. of A. EPSTEIN, COLTON, DINOWITZ -- 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:

Section 1. Title 22 of the administrative code of the city of New York is amended by adding a new chapter 13 to read as follows:

CHAPTER 13

COMMERCIAL RENT REGULATION

§ 22-1301 Scope. This chapter shall apply to all leases for commercial premises. On any occasion wherein a landlord and tenant are required to negotiate the terms of a lease for commercial uses the provisions of this chapter shall apply. The provisions of this chapter shall apply to any commercial lease entered into on or after October first, two thousand twenty-four.

§ 22-1302 Definitions. a. "Commercial premises" shall mean a building or space occupied for non-residential purposes including, but not limited to, manufacturing, retail, professional services, offices, assembling, processing, cultural and not-for-profit entities that are present in the city of New York, who have a valid commercial lease.

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

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

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

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

4 e. "Tenant" shall mean tenant, subtenant, lessee, sublessee, or any
5 other persons lawfully entitled to use or occupancy of any commercial
6 premises.

7 § 22-1303 Rental guidelines. a. The legal regulated rent for any
8 vacancy lease of a commercial premises shall be established and may be
9 increased by an amount promulgated by the rent guidelines board pursuant
10 to section 22-1304 of this chapter. Such leases shall be for a minimum
11 term of ten years, provided however, that at the tenant's option, and
12 with the written approval of the landlord, a lease of shorter or longer
13 duration may be selected.

14 b. All leases of a commercial premises may be renewed at the option of
15 a tenant who did not lose the right to renew a lease under the grounds
16 described in subdivision d of this section. The legal regulated rent to
17 be paid for any lease renewal of a commercial premises may be increased
18 by an amount promulgated by the rent guidelines board pursuant to
19 section 22-1304 of this chapter. Such lease renewals shall be for a
20 minimum term of ten years, provided however, that at the tenant's
21 option, and with the written approval of the landlord, a lease of short-
22 er or longer duration may be selected.

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

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

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

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

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

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

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

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

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

52 (5) Upon the termination of the current tenancy, the landlord intends,
53 in good faith, to demolish or substantially reconstruct the premises or
54 a substantial part thereof, or to carry out substantial work or
55 construction on the commercial premises or substantial part thereof
56 which he or she could not reasonably do without obtaining possession of

1 the commercial premises. The landlord shall notify the tenant of his or
2 her decision to reoccupy the commercial premises at least one year prior
3 to the termination of the lease. In the event that the lessor fraudu-
4 lently invokes this justification for a refusal to renew a commercial
5 lease, the defrauded tenant may collect treble damages for any loss
6 suffered as a result of such action;

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

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

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

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

36 § 22-1304 Rent guidelines board. a. The rent guidelines board, estab-
37 lished pursuant to section 26-510 of this code, shall establish annual
38 guidelines for legal regulated rent for vacancy and renewal leases, and
39 in determining such amounts shall consider, among other things (1) the
40 economic condition of the commercial real estate industry in the
41 affected area including such factors as the prevailing and projected (i)
42 real estate taxes and sewer and water rates, (ii) gross operating main-
43 tenance costs (including insurance rates, governmental fees, cost of
44 fuel and labor costs), (iii) costs and availability of financing
45 (including effective rates of interest), (iv) over-all supply of commer-
46 cial premises and over-all vacancy rates, (2) relevant data from the
47 current and projected cost of leasing for the affected area, (3) such
48 other data as may be made available to it.

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

1 c. The rent guidelines board prior to the annual adjustment of the
2 level of fair rents provided for under this section for commercial prem-
3 ises covered by this law, shall hold a public hearing or hearings for
4 the purpose of collecting information relating to all factors set forth
5 in subdivision a of this section. Notice of the date, time, location
6 and summary of subject matter for the public hearing or hearings shall
7 be published in the City Record daily for a period of not less than
8 eight days and at least once in one or more newspapers of general circu-
9 lation at least eight days immediately preceding each hearing date, at
10 the expense of the city of New York, and the hearing shall be open for
11 testimony from any individual, group, association or representative
12 thereof who wants to testify.

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

17 § 22-1305 Security deposits. Security deposits shall not exceed an
18 amount equal to two months rent. All security deposits shall be placed
19 in escrow in an interest-bearing account at a federally insured bank
20 located in New York state. The tenant shall be notified in writing of
21 the location of such escrow account. Interest paid on the account shall
22 be paid in full to the tenant upon termination of the lease. The amount
23 of interest paid to the tenant shall equal the interest paid by such
24 federally insured bank less one percent for the landlord's administra-
25 tive costs.

26 § 22-1306 Retaliation. No landlord shall in any way retaliate against
27 any tenant for the tenant's assertion or exercise of any rights under
28 this chapter. Any such retaliation may subject the landlord to a suit
29 for actual and punitive damages, injunctive relief, and attorney's fees.

30 § 22-1307 Waiver. No provision in any lease, rental agreement, or
31 agreement made in connection therewith which waives or diminishes any
32 right of tenant under this chapter is valid.

33 § 22-1308 Inconsistency with other laws. In the event of any incon-
34 sistency with any other laws of the city of New York, this law shall
35 take precedence.

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

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