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

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

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

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

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

(1) the obligation to rent the premises to a third party pursuant to a bona fide lease entered into prior to the effective date of this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Beginning July first, two thousand twenty-four, and annually thereafter, the rent guidelines board shall file with the city clerk its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent for commercial premises subject to this law, authorized for leases or commencing on the next succeeding October first or within the twelve months thereafter. Such findings and statement shall be published in the City Record.

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

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

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

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

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

§ 22-1308 Inconsistency with other laws. In the event of any inconsistency with any other laws of the city of New York, this law shall take precedence.

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

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