

STATE OF NEW YORK

6772

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. BURGOS, CUNNINGHAM, GIBBS, ALVAREZ, FALL, HYNDMAN, BENEDETTO -- read once and referred to the Committee on Housing

AN ACT to amend the administrative code of the city of New York, in relation to certain housing accommodations; and to amend chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four, in relation to certain hardship provisions

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

1 Section 1. Subdivision c of section 26-511 of the administrative code
2 of the city of New York is amended by adding a new paragraph 15 to read
3 as follows:

4 (15) provides that, notwithstanding any other provision of this chap-
5 ter to the contrary, when a housing accommodation subject to this chap-
6 ter has been vacated after continuous tenancy or occupancy of ten years
7 or more prior to vacancy, and the owner has submitted documentation to
8 the division demonstrating restoration of the unit as set forth in
9 section 26-511.2 of this chapter, the new legal regulated rent shall be
10 the rent agreed to by the owner and first tenant after such restoration
11 and reserved in a lease or other rental agreement; provided that such
12 new legal regulated rent may be adjusted on audit by the division under
13 section 26-511.2 of this chapter, or on application of a tenant under
14 section 26-513.1 of this chapter. The legal regulated rent adjustment
15 set forth in this paragraph shall be known as the local regulated hous-
16 ing restoration adjustment.

17 § 2. The administrative code of the city of New York is amended by
18 adding a new section 26-511.2 to read as follows:

19 § 26-511.2 The local regulated housing restoration adjustment. a. The
20 division of housing and community renewal, the "division" shall estab-
21 lish a notification procedure and documentation submission guidelines
22 for the local regulated housing restoration adjustment. Documentation

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

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1 to qualify for the local regulated housing restoration adjustment shall
2 be limited to:

3 (1) XRF test results demonstrating a lead-free housing accommodation
4 under applicable local definitions;

5 (2) any required tenant protection plans or similar submission in
6 connection with such restoration;

7 (3) any required contractor licenses;

8 (4) list and specifications of new electric appliances installed;

9 (5) before and after photos;

10 (6) lease or rental agreement listing new legal regulated rent; and

11 (7) legal regulated rent amount or amounts for substantially similar
12 unit or units as defined by section 26-513.1 of this chapter.

13 b. The local regulated housing restoration adjustment shall not be
14 permitted:

15 (1) for units that are rented within a twenty-four-month period after
16 an arm's length transfer of ownership;

17 (2) for units that are rented within a thirty-six-month period after
18 determination by the division that the owner has engaged in unlawful
19 harassment with respect to the unit; or

20 (3) after an eviction, unless the eviction was pursuant to order,
21 judgment, or other decree by court or governmental or legal authority
22 for reasons including nonpayment of rent, expiration or termination of
23 the lease term or license or other occupancy right, violation of a
24 substantial obligation of the tenancy, or any other grounds permitted
25 under this chapter.

26 c. The division shall establish an audit process to review a percent-
27 age, as established by the division, of housing accommodations that
28 register adjusted legal regulated rents under the local regulated hous-
29 ing restoration adjustment. The division's established audit process
30 shall be subject to the following requirements:

31 (1) any audit shall be limited to: (i) confirmation that documentation
32 set forth in subdivision a of this section has been submitted; (ii)
33 visual inspection of the subject unit; and (iii) review of the unit's
34 registered rent in comparison to the legal regulated rents of substan-
35 tially similar housing accommodations in the same geographic area
36 considering the same factors set forth in section 26-513.1 of this chap-
37 ter, including the owner's right to submit the legal regulated rent of a
38 substantially similar unit or units. Such audit shall be initiated with-
39 in one year of the filing of an annual apartment registration indicating
40 an adjustment to the legal regulated rent under the local regulated
41 housing restoration adjustment.

42 (2) if an audit under this subdivision determines that an owner has
43 failed to submit documentation set forth in subdivision a of this
44 section and the owner then fails to submit any missing documentation
45 after sixty days' written notice from the division, the division may
46 then set the subject unit's legal regulated rent based upon an evalu-
47 ation of documentation provided but in no event shall the legal regu-
48 lated rent be set at an amount less than HUD fair market value for the
49 statistical metropolitan area or the small area fair market rent as
50 determined by the local housing authority provided that applicable hous-
51 ing quality standards have been confirmed by inspection as set forth in
52 this section.

53 (3) if an audit under this subdivision determines that the owner
54 submitted documentation set forth in subdivision a of this section but
55 that the registered rent exceeds the level permitted under section
56 26-513.1 of this chapter, the division may set the legal regulated rent

1 at the greater of the legal regulated rent for a substantially similar
2 housing accommodation in the same geographic area or the HUD fair market
3 value for the statistical metropolitan area or the small area fair
4 market rent as determined by the local housing authority. Any required
5 refunds shall be made in accordance with section 26-513.1 of this chap-
6 ter.

7 d. Access to the documentation submitted as part of the local regu-
8 lated housing restoration adjustment shall be governed by the same laws
9 governing access to building and apartment registrations filed with the
10 division.

11 § 3. The administrative code of the city of New York is amended by
12 adding a new section 26-513.1 to read as follows:

13 § 26-513.1 Application for adjustment of local regulated housing
14 restoration adjustment. a. The tenant of a housing accommodation that
15 was vacant on, or became vacant after, June 14, 2019, and has been
16 subject to the local regulated housing restoration adjustment, may file
17 with the commissioner of housing and community renewal within 120 days
18 after notice has been received under subdivision c of this section an
19 application for the adjustment of the rent for such housing accommo-
20 dation. Such applications shall be subject to the following:

21 (1) in the application, the tenant must allege that the local regu-
22 lated housing restoration adjustment rent exceeds the rent for substan-
23 tially similar units within the same geographic area.

24 (2) in determining an application filed pursuant to this section, the
25 commissioner shall only consider legal regulated rents for substantially
26 similar housing accommodations within a one-mile radius of the subject
27 unit in the same borough or applicable municipal subdivision. Substan-
28 tially similar housing accommodations are those rent-stabilized units
29 with similar room counts and square footage, similar levels of code
30 compliance, including state laws, local laws and codes for health, safe-
31 ty, and environmental sustainability, similar regulatory status, similar
32 apartment conditions and quality of fixtures and finishes, similar unit
33 and building amenities, similar quality and condition of the building
34 and common areas, and with vacancy or renewal leases starting within
35 twelve months from the start date of the complaining tenant's vacancy
36 lease. For purposes of considering legal regulated rents of similar
37 housing accommodations, the geographic area may be expanded by incre-
38 ments of one-quarter mile radii as many times as necessary to find a
39 substantially similar housing accommodation located in the same borough
40 or applicable municipal subdivision. Notwithstanding the foregoing, any
41 local regulated housing restoration adjustment rent amount that does not
42 exceed the HUD fair market value for the statistical metropolitan area
43 or the small area fair market rent as determined by the local housing
44 authority shall be determined to be fair.

45 (3) the owner of the housing accommodation subject to an application
46 under this section shall be given an opportunity to submit proof of
47 legal regulated rents for up to three substantially similar housing
48 accommodations, in addition to any already submitted as part of the
49 notification procedure under section 26-511.2 of this chapter.

50 (4) when the local regulated housing restoration adjustment rent
51 amount is determined to exceed the legal regulated rent for a substan-
52 tially similar housing accommodation as defined by this section, the
53 commissioner of housing and community renewal shall order that the legal
54 regulated rent for the subject unit shall be the greater of the legal
55 regulated rent for a substantially similar housing accommodation in the
56 same geographic area or the HUD fair market value for the statistical

1 metropolitan area or the small area fair market rent as determined by
2 the local housing authority. Any required refunds shall be made by the
3 owner in cash or as a credit against unpaid rent over a period not to
4 exceed of six months.

5 b. Notwithstanding subdivision a of this section, provided that the
6 owner has submitted to the division documentation in accordance with
7 subdivision a of section 26-511.2 of this chapter, the division shall
8 only determine whether the rent charged to the first tenant after the
9 local regulated housing restoration adjustment is supported by the rent
10 for a substantially similar unit. Any documentation deficiencies shall
11 be resolved through the audit process set forth in section 26-511.2 of
12 this chapter.

13 c. In the lease execution package for the first lease after the legal
14 rent was adjusted under the local regulated housing restoration adjust-
15 ment, the owner shall give notice, both in the lease and subsequently in
16 writing by certified mail, or by electronic delivery if the tenant has
17 opted to receive electronic delivery of documents, to the tenant of such
18 housing accommodation on a form prescribed by the commissioner of hous-
19 ing and community renewal that the local regulated housing restoration
20 adjustment was applied, including notification of the prior legal regu-
21 lated rent, a description of work completed, the building address and
22 legal regulated rent amounts for at least one and up to three substan-
23 tially similar units, and such tenant's right to file an application
24 challenging the new legal regulated rent of such housing accommodation.

25 § 4. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
26 576 of the laws of 1974, constituting the emergency tenant protection
27 act of nineteen seventy-four, as amended by chapter 102 of the laws of
28 1984, is amended and a new paragraph 6 is added to read as follows:

29 (5) as an alternative to the hardship application provided under para-
30 graph four of this subdivision, owners of buildings acquired by the same
31 owner or a related entity owned by the same principals three years prior
32 to the date of application may apply to the division for increases in
33 excess of the level of applicable guideline increases established under
34 this law based on a finding by the commissioner that such guideline
35 increases are not sufficient to enable the owner to maintain an annual
36 gross rent income for such building which exceeds the annual operating
37 expenses of such building by a sum equal to at least five percent of
38 such gross rent. For the purposes of this paragraph, operating expenses
39 shall consist of the actual, reasonable, costs of fuel, labor, utili-
40 ties, taxes, other than income or corporate franchise taxes, fees,
41 permits, necessary contracted services and non-capital repairs, insur-
42 ance, parts and supplies, management fees and other administrative costs
43 and mortgage interest. For the purposes of this paragraph, mortgage
44 interest shall be deemed to mean interest on a bona fide mortgage
45 including an allocable portion of charges related thereto. Criteria to
46 be considered in determining a bona fide mortgage other than an institu-
47 tional mortgage shall include; condition of the property, location of
48 the property, the existing mortgage market at the time the mortgage is
49 placed, the term of the mortgage, the amortization rate, the principal
50 amount of the mortgage, security and other terms and conditions of the
51 mortgage. The commissioner shall set a rental value for any unit occu-
52 pied by the owner or a person related to the owner or unoccupied at the
53 owner's choice for more than one month at the last regulated rent plus
54 the minimum number of guidelines increases or, if no such regulated rent
55 existed or is known, the commissioner shall impute a rent consistent
56 with other rents in the building. The amount of hardship increase shall

1 be such as may be required to maintain the annual gross rent income as
2 provided by this paragraph. The division shall not grant a hardship
3 application under this paragraph or paragraph four of this subdivision
4 for a period of three years subsequent to granting a hardship applica-
5 tion under the provisions of this paragraph. The collection of any
6 increase in the rent for any housing accommodation pursuant to this
7 paragraph shall not exceed six percent in any year from the effective
8 date of the order granting the increase over the rent set forth in the
9 schedule of gross rents, with collectability of any dollar excess above
10 said sum to be spread forward in similar increments and added to the
11 rent as established or set in future years. No application shall be
12 approved unless the owner's equity in such building exceeds five percent
13 of: (i) the arms length purchase price of the property; (ii) the cost of
14 any capital improvements for which the owner has not collected a
15 surcharge; (iii) any repayment of principal of any mortgage or loan used
16 to finance the purchase of the property or any capital improvements for
17 which the owner has not collected a surcharge; and (iv) any increase in
18 the equalized assessed value of the property which occurred subsequent
19 to the first valuation of the property after purchase by the owner. For
20 the purposes of this paragraph, owner's equity shall mean the sum of (i)
21 the purchase price of the property less the principal of any mortgage or
22 loan used to finance the purchase of the property, (ii) the cost of any
23 capital improvement for which the owner has not collected a surcharge
24 less the principal of any mortgage or loan used to finance said improve-
25 ment, (iii) any repayment of the principal of any mortgage or loan used
26 to finance the purchase of the property or any capital improvement for
27 which the owner has not collected a surcharge, and (iv) any increase in
28 the equalized assessed value of the property which occurred subsequent
29 to the first valuation of the property after purchase by the owner[-];
30 or

31 (6) provides that, notwithstanding any other provision of this chapter
32 to the contrary, when a housing accommodation subject to this chapter
33 has been vacated after continuous tenancy or occupancy of ten years or
34 more prior to vacancy, and the owner has submitted documentation to the
35 division demonstrating restoration of the unit as set forth in subdivi-
36 sion (a-1) of section ten of this chapter, the new legal regulated rent
37 shall be the rent agreed to by the owner and first tenant after such
38 restoration and reserved in a lease or other rental agreement; provided
39 that such new legal regulated rent may be adjusted on audit by the divi-
40 sion under subdivision (a-1) of section ten of this section, or on
41 application of a tenant under subdivision d-1 of section nine of this
42 chapter. The legal regulated rent adjustment set forth in this paragraph
43 shall be known as the local regulated housing restoration adjustment.

44 § 5. Section 10 of section 4 of chapter 576 of the laws of 1974,
45 constituting the emergency tenant protection act of nineteen seventy-
46 four is amended by adding a new subdivision (a-1) to read as follows:

47 (a-1) the division of housing and community renewal shall establish a
48 notification procedure and documentation submission guidelines for the
49 local regulated housing restoration adjustment. a. Documentation to
50 qualify for the local regulated housing restoration adjustment shall be
51 limited to:

52 (1) XRF test results demonstrating a lead-free housing accommodation
53 under applicable local definitions;

54 (2) any required tenant protection plans or similar submission in
55 connection with such restoration;

56 (3) any required contractor licenses;

1 (4) list and specifications of new electric appliances installed;
2 (5) before and after photos;
3 (6) lease or rental agreement listing new legal regulated rent; and
4 (7) legal regulated rent amount or amounts for substantially similar
5 unit or units as defined by section 26-513.1 of the administrative code
6 of the city of New York.

7 b. The local regulated housing restoration adjustment shall not be
8 permitted:

9 (1) for units that are rented within a twenty-four-month period after
10 an arm's length transfer of ownership;

11 (2) for units that are rented within a thirty-six-month period after
12 determination by the division that the owner has engaged in unlawful
13 harassment with respect to the unit; or

14 (3) after an eviction, unless the eviction was pursuant to order,
15 judgment, or other decree by court or governmental or legal authority
16 for reasons including nonpayment of rent, expiration or termination of
17 the lease term or license or other occupancy right, violation of a
18 substantial obligation of the tenancy, or any other grounds permitted
19 under this chapter.

20 c. The division of housing and community renewal shall establish an
21 audit process to review a percentage, as established by the division, of
22 housing accommodations that register adjusted legal regulated rents
23 under the local regulated housing restoration adjustment. The divi-
24 sion's established audit process shall be subject to the following
25 requirements:

26 (1) any audit shall be limited subdivision to: (i) confirmation that
27 documentation set forth in paragraph a of this subdivision has been
28 submitted, (ii) visual inspection of the subject unit, and (iii) review
29 of the unit's registered rent in comparison to the legal regulated rents
30 of substantially similar housing accommodations in the same geographic
31 area considering the same factors set forth in subdivision d-1 of
32 section nine of this chapter, including the owner's right to submit the
33 legal regulated rent of a substantially similar unit or units. Such
34 audit shall be initiated within one year of the filing of an annual
35 apartment registration indicating an adjustment to the legal regulated
36 rent under the local regulated housing restoration adjustment;

37 (2) if an audit under this subdivision determines that an owner has
38 failed to submit documentation set forth in paragraph a of this subdivi-
39 sion and the owner then fails to submit any missing documentation after
40 sixty days' written notice from the division, the division may then set
41 the subject unit's legal regulated rent based upon an evaluation of
42 documentation provided but in no event shall the legal regulated rent be
43 set at an amount less than HUD fair market value for the statistical
44 metropolitan area or the small area fair market rent as determined by
45 the local housing authority provided that applicable housing quality
46 standards have been confirmed by inspection as set forth above;

47 (3) if an audit under this subdivision determines that the owner
48 submitted documentation set forth in paragraph a of this subdivision but
49 that the registered rent exceeds the legal regulated rent of a substan-
50 tially similar housing accommodation in the same geographic area, then
51 the division may set the legal regulated rent at the greater of the
52 legal regulated rent for a substantially similar housing accommodation
53 in the same geographic area or the HUD fair market value for the statis-
54 tical metropolitan area or the small area fair market rent as determined
55 by the local housing authority. Any required refunds shall be made in
56 accordance with subdivision d-1 of section nine of this chapter; and

d. Access to the documentation submitted as part of the local regulated housing restoration adjustment shall be governed by the same laws governing access to building and apartment registrations filed with the division.

§ 6. Section 9 of section 4 of chapter 576 of the laws of 1974, constituting the emergency tenant protection act of nineteen seventy-four is amended by adding a new subdivision d-1 to read as follows:

d-1. (1) The tenant of a housing accommodation that was vacant on, or became vacant after, June 14, 2019, and has been subject to the local regulated housing restoration adjustment, may file with the commissioner within 120 days after notice has been received under paragraph three of this subdivision an application for the adjustment of the rent for such housing accommodation. Such applications shall be subject to the following:

(i) in the application, the tenant must allege that the local regulated housing restoration adjustment rent exceeds the rent for a substantially similar unit within the same geographic area;

(ii) in determining an application filed pursuant to this section, the commissioner of housing and community renewal shall only consider legal regulated rents for substantially similar regulated housing accommodations within a one-mile radius of the subject unit in the same borough or applicable municipal subdivision. Substantially similar housing accommodations are those rent-stabilized units with similar room counts and square footage, similar levels of code compliance, including state laws, local laws and codes for health, safety, and environmental sustainability, similar regulatory status, similar apartment conditions and quality of fixtures and finishes, similar unit and building amenities, similar quality and condition of the building and common areas, and with vacancy or renewal leases starting within twelve months from the start date of the complaining tenant's vacancy lease. For purposes of considering legal regulated rents of similar housing accommodations, the geographic area may be expanded by increments of one-quarter mile radii as many times as necessary to find a substantially similar housing accommodation located in the same borough or applicable municipal subdivision. Notwithstanding the foregoing, any local regulated housing restoration adjustment rent amount that does not exceed the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority shall be presumed to be fair;

(iii) the owner of the housing accommodation subject to an application under this section shall be given an opportunity to submit proof of legal regulated rents for up to three substantially similar housing accommodations, in addition to any already submitted as part of the notification procedure under paragraph three of this subdivision; and

(iv) when the local regulated housing restoration adjustment rent amount is determined to exceed the legal regulated rent for a substantially similar housing accommodation as defined by this section, the commissioner of housing and community renewal shall order that the legal regulated rent for the subject unit shall be the greater of the legal regulated rent for a substantially similar housing accommodation in the same geographic area or the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority. Any required refunds shall be made by the owner in cash or as a credit against unpaid rent over a period not to exceed of six months.

1 (2) Notwithstanding paragraph a of this subdivision, provided that the
2 owner has submitted to the division documentation in accordance with
3 subdivision (a-1) of section ten of this chapter, the division shall
4 only determine whether the rent charged to the first tenant after the
5 local regulated housing restoration adjustment is supported by a compa-
6 erable legal regulated rent for a substantially similar regulated unit.
7 Any documentation deficiencies shall be resolved through the audit proc-
8 ess set forth in subdivision (a-1) of section ten of this chapter.

9 (3) In the lease execution package for the first lease after the legal
10 rent was adjusted under the local regulated housing restoration adjust-
11 ment, the owner shall give notice, both in the lease and subsequently in
12 writing by certified mail, or by electronic delivery if the tenant has
13 opted to receive electronic delivery of documents, to the tenant of such
14 housing accommodation on a form prescribed by the commissioner of hous-
15 ing and community renewal that the local regulated housing restoration
16 adjustment was applied, including notification of the prior legal regu-
17 lated rent, a description of work completed, the building address and
18 legal regulated rent amounts for at least one and up to three substan-
19 tially similar units, and such tenant's right to file an application for
20 adjustment of the new legal regulated rent of such housing accommo-
21 dation.

22 § 7. This act shall take effect immediately; and provided that the
23 amendments to chapter 4 of title 26 of the administrative code of the
24 city of New York made by sections one, two and three of this act shall
25 expire on the same date as such law expires and shall not affect the
26 expiration of such law as provided under section 26-520 of such law.