

STATE OF NEW YORK

6352--A

2023-2024 Regular Sessions

IN SENATE

April 17, 2023

Introduced by Sens. COMRIE, FERNANDEZ, SEPULVEDA, ADDABBO, MANNION, MARTINEZ, PARKER, PERSAUD, SCARCELLA-SPANTON, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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;

11 (7) evidence of renting to a housing subsidy voucher holder, or the
12 legal regulated rent amount or amounts for substantially similar unit or
13 units as defined by section 26-513.1 of this chapter;

14 (8) evidence of renting to a housing subsidy voucher holder, or
15 documentation confirming that, as of the date of the commencement of the
16 incoming tenant's lease, any physical condition within the unit that was
17 the basis for a previously issued violation has been corrected; and

18 (9) for units vacated after the effective date of this section, a form
19 to be promulgated by the division and signed by the previous tenant
20 affirming that the vacatur prior to the local regulated housing restora-
21 tion adjustment was voluntary and not the result of unlawful owner
22 harassment. In considering the sufficiency of alternate documentation,
23 and notwithstanding other potentially sufficient documentation, vacatur
24 shall be presumed voluntary and not the result of owner harassment when
25 (i) the owner recovered possession of the unit through judicial
26 proceedings, (ii) the owner demonstrates abandonment of the unit through
27 electronic communications, recordings, or other evidence of voluntary
28 vacatur, or (iii) the owner demonstrates the previous tenant died and
29 the unit was not occupied by a lawful successor.

30 b. The local regulated housing restoration adjustment shall not be
31 permitted:

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

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

37 (3) for units in buildings subject to housing preservation and devel-
38 opment's alternate enforcement program.

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

44 (1) any audit shall be limited to: (i) confirmation that documentation
45 set forth in subdivision a of this section has been submitted; (ii)
46 visual inspection of the subject unit; and (iii) unless rented to a
47 housing subsidy voucher holder, review of the unit's registered rent in
48 comparison to the legal regulated rents of substantially similar housing
49 accommodations in the same geographic area considering the same factors
50 set forth in section 26-513.1 of this chapter, including the owner's
51 right to submit the legal regulated rent of a substantially similar unit
52 or units. Such audit shall be initiated within one year of the filing of
53 an annual apartment registration indicating an adjustment to the legal
54 regulated rent under the local regulated housing restoration adjustment;
55 and

(2) if an audit under this subdivision determines that an owner has failed to submit documentation set forth in subdivision a of this section and the owner then fails to submit any missing documentation after sixty days' written notice from the division, or if an audit under this subdivision determines the local housing restoration adjustment exceeds the legal rent for all substantially similar housing accommodations as defined by this section, the division shall then set the subject unit's legal regulated rent at an amount equal to the legal regulated rent for a substantially similar unit in the same geographic area, provided, however, that the legal regulated rents for units subject to housing subsidy vouchers shall be established at the contract rent amount approved by the agency administering the voucher.

(3) Any required refunds shall be made in accordance with section 26-513.1 of this chapter.

d. To encourage rental of units subject to a local housing restoration adjustment to individuals and families with housing subsidy vouchers or that are in communities of need, the division shall establish incentives, in addition to those already contained in this section, for housing providers who rent to housing subsidy voucher holders located in very low- and low-income zip codes.

e. 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.

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

§ 26-513.1 Application for adjustment of local regulated housing restoration adjustment. a. 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 of housing and community renewal within 120 days after notice has been received under subdivision c of this section an application for the adjustment of the rent for such housing accommodation. Such applications shall be subject to the following:

(1) in the application, the tenant must allege that the local regulated housing restoration adjustment rent exceeds the rent for substantially similar units within the same geographic area.

(2) in determining an application filed pursuant to this section, the commissioner shall only consider legal regulated rents for substantially similar 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 for units subject to housing subsidy vouchers that does not exceed the contract

1 rent amounts approved by the local housing agency administering the
2 voucher shall be determined to be fair.

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

8 (4) when the local regulated housing restoration adjustment rent
9 amount is determined to exceed the legal regulated rent for a substan-
10 tially similar housing accommodation as defined by this section, the
11 commissioner of housing and community renewal shall order that the legal
12 regulated rent for the subject unit shall be equal to the legal regu-
13 lated rent for a substantially similar housing accommodation in the same
14 geographic area; provided, however, that the legal regulated rents for
15 units subject to housing subsidy vouchers shall be equal to the contract
16 rent amount approved by the local housing authority that issues the
17 voucher. Any required refunds shall be made by the owner in cash or as a
18 credit against unpaid rent over a period not to exceed six months.

19 b. Notwithstanding subdivision a of this section, provided that the
20 owner has submitted to the division documentation in accordance with
21 subdivision a of section 26-511.2 of this chapter, the division shall
22 only determine whether the tenancy is subject to a housing subsidy
23 voucher and, if not, whether the rent charged to the first tenant after
24 the local regulated housing restoration adjustment is supported by the
25 rent for a substantially similar unit. Any documentation deficiencies
26 shall be resolved through the audit process set forth in section
27 26-511.2 of this chapter.

28 c. In the lease execution package for the first lease after the legal
29 rent was adjusted under the local regulated housing restoration adjust-
30 ment, the owner shall give notice, both in the lease and subsequently in
31 writing by certified mail, or by electronic delivery if the tenant has
32 opted to receive electronic delivery of documents, to the tenant of such
33 housing accommodation on a form prescribed by the commissioner of hous-
34 ing and community renewal that the local regulated housing restoration
35 adjustment was applied, including notification of the prior legal regu-
36 lated rent, a description of work completed, the building address and
37 legal regulated rent amounts for at least one and up to three substan-
38 tially similar units, and such tenant's right to file an application
39 challenging the new legal regulated rent of such housing accommodation.

40 § 4. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
41 576 of the laws of 1974, constituting the emergency tenant protection
42 act of nineteen seventy-four, as amended by chapter 102 of the laws of
43 1984, is amended and a new paragraph 6 is added to read as follows:

44 (5) as an alternative to the hardship application provided under para-
45 graph four of this subdivision, owners of buildings acquired by the same
46 owner or a related entity owned by the same principals three years prior
47 to the date of application may apply to the division for increases in
48 excess of the level of applicable guideline increases established under
49 this law based on a finding by the commissioner that such guideline
50 increases are not sufficient to enable the owner to maintain an annual
51 gross rent income for such building which exceeds the annual operating
52 expenses of such building by a sum equal to at least five percent of
53 such gross rent. For the purposes of this paragraph, operating expenses
54 shall consist of the actual, reasonable, costs of fuel, labor, utili-
55 ties, taxes, other than income or corporate franchise taxes, fees,
56 permits, necessary contracted services and non-capital repairs, insur-

1 ance, parts and supplies, management fees and other administrative costs
2 and mortgage interest. For the purposes of this paragraph, mortgage
3 interest shall be deemed to mean interest on a bona fide mortgage
4 including an allocable portion of charges related thereto. Criteria to
5 be considered in determining a bona fide mortgage other than an institu-
6 tional mortgage shall include; condition of the property, location of
7 the property, the existing mortgage market at the time the mortgage is
8 placed, the term of the mortgage, the amortization rate, the principal
9 amount of the mortgage, security and other terms and conditions of the
10 mortgage. The commissioner shall set a rental value for any unit occu-
11 pied by the owner or a person related to the owner or unoccupied at the
12 owner's choice for more than one month at the last regulated rent plus
13 the minimum number of guidelines increases or, if no such regulated rent
14 existed or is known, the commissioner shall impute a rent consistent
15 with other rents in the building. The amount of hardship increase shall
16 be such as may be required to maintain the annual gross rent income as
17 provided by this paragraph. The division shall not grant a hardship
18 application under this paragraph or paragraph four of this subdivision
19 for a period of three years subsequent to granting a hardship applica-
20 tion under the provisions of this paragraph. The collection of any
21 increase in the rent for any housing accommodation pursuant to this
22 paragraph shall not exceed six percent in any year from the effective
23 date of the order granting the increase over the rent set forth in the
24 schedule of gross rents, with collectability of any dollar excess above
25 said sum to be spread forward in similar increments and added to the
26 rent as established or set in future years. No application shall be
27 approved unless the owner's equity in such building exceeds five percent
28 of: (i) the arms length purchase price of the property; (ii) the cost of
29 any capital improvements for which the owner has not collected a
30 surcharge; (iii) any repayment of principal of any mortgage or loan used
31 to finance the purchase of the property or any capital improvements for
32 which the owner has not collected a surcharge; and (iv) any increase in
33 the equalized assessed value of the property which occurred subsequent
34 to the first valuation of the property after purchase by the owner. For
35 the purposes of this paragraph, owner's equity shall mean the sum of (i)
36 the purchase price of the property less the principal of any mortgage or
37 loan used to finance the purchase of the property, (ii) the cost of any
38 capital improvement for which the owner has not collected a surcharge
39 less the principal of any mortgage or loan used to finance said improve-
40 ment, (iii) any repayment of the principal of any mortgage or loan used
41 to finance the purchase of the property or any capital improvement for
42 which the owner has not collected a surcharge, and (iv) any increase in
43 the equalized assessed value of the property which occurred subsequent
44 to the first valuation of the property after purchase by the owner[.];
45 or

46 (6) provides that, notwithstanding any other provision of this chapter
47 to the contrary, when a housing accommodation subject to this chapter
48 has been vacated after continuous tenancy or occupancy of ten years or
49 more prior to vacancy, and the owner has submitted documentation to the
50 division demonstrating restoration of the unit as set forth in subdivi-
51 sion (a-1) of section ten of this chapter, the new legal regulated rent
52 shall be the rent agreed to by the owner and first tenant after such
53 restoration and reserved in a lease or other rental agreement; provided
54 that such new legal regulated rent may be adjusted on audit by the divi-
55 sion under subdivision (a-1) of section ten of this section, or on
56 application of a tenant under subdivision d-1 of section nine of this

chapter. The legal regulated rent adjustment set forth in this paragraph shall be known as the local regulated housing restoration adjustment.

§ 5. Section 10 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 (a-1) to read as follows:

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

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

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

(3) any required contractor licenses;

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

(5) before and after photos;

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

(7) evidence of renting to a housing subsidy voucher holder, or the legal regulated rent amount or amounts for substantially similar unit or units as defined by section 26-513.1 of the administrative code of the city of New York;

(8) evidence of renting to a housing subsidy voucher holder, or documentation confirming that, as of the date of the commencement of the incoming tenant's lease, any physical condition within the unit that was the basis for a previously issued violation has been corrected; and

(9) for units vacated after the effective date of this subdivision, a form to be promulgated by the division and signed by the previous tenant affirming that the vacatur prior to the local regulated housing restoration adjustment was voluntary and not the result of unlawful owner harassment. In considering the sufficiency of alternate documentation, and notwithstanding other potentially sufficient documentation, vacatur shall be presumed voluntary and not the result of owner harassment when (i) the owner recovered possession of the unit through judicial proceedings, (ii) the owner demonstrates abandonment of the unit through electronic communications, recordings, or other evidence of voluntary vacatur, or (iii) the owner demonstrates the previous tenant died and the unit was not occupied by a lawful successor.

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

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

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

(3) for units in buildings subject to housing preservation and development's alternate enforcement program.

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

(1) any audit shall be limited subdivision to: (i) confirmation that documentation set forth in paragraph a of this subdivision has been submitted, (ii) visual inspection of the subject unit, and (iii) review

1 of the unit's registered rent in comparison to the legal regulated rents
2 of substantially similar housing accommodations in the same geographic
3 area considering the same factors set forth in subdivision d-1 of
4 section nine of this chapter, including the owner's right to submit the
5 legal regulated rent of a substantially similar unit or units. Such
6 audit shall be initiated within one year of the filing of an annual
7 apartment registration indicating an adjustment to the legal regulated
8 rent under the local regulated housing restoration adjustment; and

9 (2) if an audit under this subdivision determines that an owner has
10 failed to submit documentation set forth in subdivision a of this
11 section and the owner then fails to submit any missing documentation
12 after sixty days' written notice from the division, or if an audit under
13 this subdivision determines the local housing restoration adjustment
14 exceeds the legal rent for all substantially similar housing accommo-
15 dations as defined by this section, the division shall then set the
16 subject unit's legal regulated rent at an amount equal to the legal
17 regulated rent for a substantially similar unit in the same geographic
18 area, provided, however, that the legal regulated rents for units
19 subject to housing subsidy vouchers shall be established at the contract
20 rent amount approved by the agency administering the voucher.

21 (3) Any required refunds shall be made in accordance with section
22 26-513.1 of this chapter.

23 d. To encourage rental of units subject to a local housing restoration
24 adjustment to individuals and families with housing subsidy vouchers or
25 that are in communities of need, the division shall establish incen-
26 tives, in addition to those already contained in this section, for hous-
27 ing providers who rent to housing subsidy voucher holders located in
28 very low- and low-income zip codes.

29 e. Access to the documentation submitted as part of the local regu-
30 lated housing restoration adjustment shall be governed by the same laws
31 governing access to building and apartment registrations filed with the
32 division.

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

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

43 (i) in the application, the tenant must allege that the local regu-
44 lated housing restoration adjustment rent exceeds the rent for a
45 substantially similar unit within the same geographic area;

46 (ii) in determining an application filed pursuant to this section, the
47 commissioner of housing and community renewal shall only consider legal
48 regulated rents for substantially similar regulated housing accommo-
49 dations within a one-mile radius of the subject unit in the same borough
50 or applicable municipal subdivision. Substantially similar housing
51 accommodations are those rent-stabilized units with similar room counts
52 and square footage, similar levels of code compliance, including state
53 laws, local laws and codes for health, safety, and environmental
54 sustainability, similar regulatory status, similar apartment conditions
55 and quality of fixtures and finishes, similar unit and building amen-
56 ities, similar quality and condition of the building and common areas,

1 and with vacancy or renewal leases starting within twelve months from
2 the start date of the complaining tenant's vacancy lease. For purposes
3 of considering legal regulated rents of similar housing accommodations,
4 the geographic area may be expanded by increments of one-quarter mile
5 radii as many times as necessary to find a substantially similar housing
6 accommodation located in the same borough or applicable municipal subdi-
7 vision. Notwithstanding the foregoing, any local regulated housing
8 restoration adjustment rent amount for units subject to housing subsidy
9 vouchers that does not exceed the contract rent amounts approved by the
10 local housing agency administering the voucher shall be determined to be
11 fair;

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

17 (iv) when the local regulated housing restoration adjustment rent
18 amount is determined to exceed the legal regulated rent for a substan-
19 tially similar housing accommodation as defined by this section, the
20 commissioner of housing and community renewal shall order that the legal
21 regulated rent for the subject unit shall be equal to the legal regu-
22 lated rent for a substantially similar housing accommodation in the same
23 geographic area; provided, however, that the legal regulated rents for
24 units subject to housing subsidy vouchers shall be equal to the contract
25 rent amounts approved by the local housing agency administering the
26 voucher. Any required refunds shall be made by the owner in cash or as
27 a credit against unpaid rent over a period not to exceed six months.

28 (2) Notwithstanding paragraph a of this subdivision, provided that the
29 owner has submitted to the division documentation in accordance with
30 subdivision (a-1) of section ten of this chapter, the division shall
31 only determine whether the tenancy is subject to a housing subsidy
32 voucher and, if not, whether the rent charged to the first tenant after
33 the local regulated housing restoration adjustment is supported by a
34 comparable legal regulated rent for a substantially similar regulated
35 unit. Any documentation deficiencies shall be resolved through the audit
36 process set forth in subdivision (a-1) of section ten of this chapter.

37 (3) In the lease execution package for the first lease after the legal
38 rent was adjusted under the local regulated housing restoration adjust-
39 ment, the owner shall give notice, both in the lease and subsequently in
40 writing by certified mail, or by electronic delivery if the tenant has
41 opted to receive electronic delivery of documents, to the tenant of such
42 housing accommodation on a form prescribed by the commissioner of hous-
43 ing and community renewal that the local regulated housing restoration
44 adjustment was applied, including notification of the prior legal regu-
45 lated rent, a description of work completed, the building address and
46 legal regulated rent amounts for at least one and up to three substan-
47 tially similar units, and such tenant's right to file an application for
48 adjustment of the new legal regulated rent of such housing accommo-
49 dation.

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