

STATE OF NEW YORK

6352--B

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 -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- 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 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 16 to read
3 as follows:

4 (16) 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.

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

LBD10320-13-4

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

3 § 26-511.2 The local regulated housing restoration adjustment. a. The
4 division of housing and community renewal, the "division" shall estab-
5 lish a notification procedure and documentation submission guidelines
6 for the local regulated housing restoration adjustment. Documentation
7 to qualify for the local regulated housing restoration adjustment shall
8 be limited to:

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

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

13 (3) any required contractor licenses;

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

15 (5) before and after photos;

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

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

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

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

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

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

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

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

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

50 (1) any audit shall be limited to: (i) confirmation that documentation
51 set forth in subdivision a of this section has been submitted; (ii)
52 visual inspection of the subject unit; and (iii) unless rented to a
53 housing subsidy voucher holder, review of the unit's registered rent in
54 comparison to the legal regulated rents of substantially similar housing
55 accommodations in the same geographic area considering the same factors
56 set forth in section 26-513.1 of this chapter, including the owner's

1 right to submit the legal regulated rent of a substantially similar unit
2 or units. Such audit shall be initiated within one year of the filing of
3 an annual apartment registration indicating an adjustment to the legal
4 regulated rent under the local regulated housing restoration adjustment;
5 and

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

18 (3) Any required refunds shall be made in accordance with section
19 26-513.1 of this chapter.

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

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

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

32 § 26-513.1 Application for adjustment of local regulated housing
33 restoration adjustment. a. The tenant of a housing accommodation that
34 was vacant on, or became vacant after, June fourteenth, two thousand
35 nineteen, and has been subject to the local regulated housing restora-
36 tion adjustment, may file with the commissioner of housing and community
37 renewal within one hundred twenty days after notice has been received
38 under subdivision c of this section an application for the adjustment of
39 the rent for such housing accommodation. Such applications shall be
40 subject to the following:

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

44 (2) in determining an application filed pursuant to this section, the
45 commissioner shall only consider legal regulated rents for substantially
46 similar housing accommodations within a one-mile radius of the subject
47 unit in the same borough or applicable municipal subdivision. Substan-
48 tially similar housing accommodations are those rent-stabilized units
49 with similar room counts and square footage, similar levels of code
50 compliance, including state laws, local laws and codes for health, safe-
51 ty, and environmental sustainability, similar regulatory status, similar
52 apartment conditions and quality of fixtures and finishes, similar unit
53 and building amenities, similar quality and condition of the building
54 and common areas, and with vacancy or renewal leases starting within
55 twelve months from the start date of the complaining tenant's vacancy
56 lease. For purposes of considering legal regulated rents of similar

1 housing accommodations, the geographic area may be expanded by incre-
2 ments of one-quarter mile radii as many times as necessary to find a
3 substantially similar housing accommodation located in the same borough
4 or applicable municipal subdivision. Notwithstanding the foregoing, any
5 local regulated housing restoration adjustment rent amount for units in
6 buildings with tenancies subject to housing subsidy vouchers that does
7 not exceed the contract rent amounts approved by the local housing agen-
8 cy administering the voucher shall be determined to be fair.

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

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

26 b. Notwithstanding subdivision a of this section, provided that the
27 owner has submitted to the division documentation in accordance with
28 subdivision a of section 26-511.2 of this chapter, the division shall
29 only determine whether the tenancy is subject to a housing subsidy
30 voucher and, if not, whether the rent charged to the first tenant after
31 the local regulated housing restoration adjustment is supported by the
32 rent for a substantially similar unit. Any documentation deficiencies
33 shall be resolved through the audit process set forth in section
34 26-511.2 of this chapter.

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

47 § 4. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
48 576 of the laws of 1974, constituting the emergency tenant protection
49 act of nineteen seventy-four, as amended by chapter 102 of the laws of
50 1984, is amended and a new paragraph 6 is added to read as follows:

51 (5) as an alternative to the hardship application provided under para-
52 graph four of this subdivision, owners of buildings acquired by the same
53 owner or a related entity owned by the same principals three years prior
54 to the date of application may apply to the division for increases in
55 excess of the level of applicable guideline increases established under
56 this law based on a finding by the commissioner that such guideline

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

1 demonstrating restoration of the unit as set forth in subdivision a-1 of
2 section ten of this act, the new legal regulated rent shall be the rent
3 agreed to by the owner and first tenant after such restoration and
4 reserved in a lease or other rental agreement; provided that such new
5 legal regulated rent may be adjusted on audit by the division under
6 subdivision a-1 of section ten of this act, or on application of a
7 tenant under subdivision d-1 of section nine of this act. The legal
8 regulated rent adjustment set forth in this paragraph shall be known as
9 the local regulated housing restoration adjustment.

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

13 a-1. The division of housing and community renewal shall establish a
14 notification procedure and documentation submission guidelines for the
15 local regulated housing restoration adjustment. a. Documentation to
16 qualify for the local regulated housing restoration adjustment shall be
17 limited to:

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

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

22 (3) any required contractor licenses;

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

24 (5) before and after photos;

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

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

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

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

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

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

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

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

55 c. The division of housing and community renewal shall establish an
56 audit process to review a percentage, as established by the division, of

1 housing accommodations that register adjusted legal regulated rents
2 under the local regulated housing restoration adjustment. The divi-
3 sion's established audit process shall be subject to the following
4 requirements:

5 (1) any audit shall be limited subdivision to: (i) confirmation that
6 documentation set forth in paragraph a of this subdivision has been
7 submitted, (ii) visual inspection of the subject unit, and (iii) unless
8 rented to a housing subsidy voucher holder, review of the unit's regis-
9 tered rent in comparison to the legal regulated rents of substantially
10 similar housing accommodations in the same geographic area considering
11 the same factors set forth in subdivision d-1 of section nine of this
12 act, including the owner's right to submit the legal regulated rent of a
13 substantially similar unit or units. Such audit shall be initiated with-
14 in one year of the filing of an annual apartment registration indicating
15 an adjustment to the legal regulated rent under the local regulated
16 housing restoration adjustment; and

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

29 (3) Any required refunds shall be made in accordance with section
30 26-513.1 of the administrative code of the city of New York.

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

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

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

44 d-1. (1) The tenant of a housing accommodation that was vacant on, or
45 became vacant after, June 14, 2019, and has been subject to the local
46 regulated housing restoration adjustment, may file with the commissioner
47 within 120 days after notice has been received under paragraph 3 of this
48 subdivision an application for the adjustment of the rent for such hous-
49 ing accommodation. Such applications shall be subject to the following:

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

53 (ii) in determining an application filed pursuant to this section, the
54 commissioner of housing and community renewal shall only consider legal
55 regulated rents for substantially similar regulated housing accommo-
56 dations within a one-mile radius of the subject unit in the same borough

1 or applicable municipal subdivision. Substantially similar housing
2 accommodations are those rent-stabilized units with similar room counts
3 and square footage, similar levels of code compliance, including state
4 laws, local laws and codes for health, safety, and environmental
5 sustainability, similar regulatory status, similar apartment conditions
6 and quality of fixtures and finishes, similar unit and building amen-
7 ities, similar quality and condition of the building and common areas,
8 and with vacancy or renewal leases starting within twelve months from
9 the start date of the complaining tenant's vacancy lease. For purposes
10 of considering legal regulated rents of similar housing accommodations,
11 the geographic area may be expanded by increments of one-quarter mile
12 radii as many times as necessary to find a substantially similar housing
13 accommodation located in the same borough or applicable municipal subdi-
14 vision. Notwithstanding the foregoing, any local regulated housing
15 restoration adjustment rent amount for units in buildings with tenancies
16 subject to housing subsidy vouchers that does not exceed the contract
17 rent amounts approved by the local housing agency administering the
18 voucher shall be determined to be fair;

19 (iii) the owner of the housing accommodation subject to an application
20 under this section shall be given an opportunity to submit proof of
21 legal regulated rents for up to three substantially similar housing
22 accommodations, in addition to any already submitted as part of the
23 notification procedure under paragraph 3 of this subdivision; and

24 (iv) when the local regulated housing restoration adjustment rent
25 amount is determined to exceed the legal regulated rent for a substan-
26 tially similar housing accommodation as defined by this subdivision, the
27 commissioner of housing and community renewal shall order that the legal
28 regulated rent for the subject unit shall be equal to the legal regu-
29 lated rent for a substantially similar housing accommodation in the same
30 geographic area, provided, however, that the legal regulated rents for
31 units in buildings with tenancies subject to housing subsidy vouchers
32 shall be equal to the contract rent amounts approved by the local hous-
33 ing agency administering the voucher. Any required refunds shall be
34 made by the owner in cash or as a credit against unpaid rent over a
35 period not to exceed six months.

36 (2) Notwithstanding paragraph 1 of this subdivision, provided that the
37 owner has submitted to the division documentation in accordance with
38 subdivision a-1 of section ten of this act, the division shall only
39 determine whether the tenancy is subject to a housing subsidy voucher
40 and, if not, whether the rent charged to the first tenant after the
41 local regulated housing restoration adjustment is supported by a compa-
42 rable legal regulated rent for a substantially similar regulated unit.
43 Any documentation deficiencies shall be resolved through the audit proc-
44 ess set forth in subdivision a-1 of section ten of this act.

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

1 adjustment of the new legal regulated rent of such housing accommo-
2 dation.

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