

STATE OF NEW YORK

6352--C

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 -- 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 can demonstrate restoration of
8 the unit as set forth in section 26-511.2 of this chapter, the new legal
9 regulated rent shall be the rent agreed to by the owner and first tenant
10 after such restoration and reserved in a lease or other rental agree-
11 ment; provided that such new legal regulated rent: (i) shall not exceed
12 the section 8 voucher payment standard adopted by a local public housing
13 agency for a unit of the same size and located within the same zip code
14 that was in effect at the time the lease was executed; and (ii) may be

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

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1 adjusted on audit by the division under section 26-511.2 of this chap-
2 ter, or on application of a tenant or owner under section 26-513.1 of
3 this chapter. The legal regulated rent adjustment set forth in this
4 paragraph shall be known as the local regulated housing restoration
5 adjustment.

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

8 § 26-511.2 The local regulated housing restoration adjustment. a. The
9 division of housing and community renewal, the "division" shall estab-
10 lish a notification procedure and documentation submission guidelines
11 for the local regulated housing restoration adjustment. Documentation
12 to qualify for the local regulated housing restoration adjustment shall
13 be limited to:

14 (1) XRF test results or other documentation demonstrating a lead-free
15 housing accommodation under applicable local definitions;

16 (2) any required tenant protection plans or similar submissions to the
17 local building department in connection with such restoration;

18 (3) any required contractor licenses or certifications;

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

20 (5) before and after photos;

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

22 (7) evidence of renting to a housing subsidy voucher holder, or the
23 section 8 voucher payment standard adopted by a local public housing
24 agency for a unit of the same size and located within the same zip code
25 that was in effect at the time the lease was executed;

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

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

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

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

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

49 (3) for units in buildings subject to housing preservation and devel-
50 opment's alternative enforcement program; or

51 (4) after an unlawful eviction.

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

(1) any audit shall be limited to: (i) confirmation that documentation set forth in subdivision a of this section has been submitted; and (ii) unless rented to a housing subsidy voucher holder, confirmation that the unit's agreed rent does not exceed the section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size and located within the same zip code that was in effect at the time the lease was executed. Such audit shall be initiated within one year of the filing of an annual apartment registration indicating an adjustment to the legal regulated rent under the local regulated housing restoration adjustment; and

(2) if an audit under this subdivision determines that (i) 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 (ii) the local housing restoration adjustment exceeds the section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size and located within the same zip code that was in effect at the time the lease was executed, the division shall set the subject unit's legal regulated rent at an amount equal to seventy-five percent of the section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size and located within the same zip code that was in effect at the time the lease was executed, except 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 section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size and located within the same zip code that was in effect at the time the lease was executed.

(2) in determining an application filed pursuant to this section, the commissioner shall only consider whether the subject rent exceeds the section 8 voucher payment standard adopted by a local public housing

1 agency for a unit of the same size and located within the same zip code
2 that was in effect at the time the lease was executed.

3 (3) the owner of the housing accommodation subject to an application
4 under this section shall be given an opportunity to submit a written
5 answer to any application.

6 (4) when the local regulated housing restoration adjustment rent
7 amount is determined to exceed the section 8 voucher payment standard
8 adopted by a local public housing agency for a unit of the same size and
9 located within the same zip code that was in effect at the time the
10 lease was executed, the commissioner of housing and community renewal
11 shall order that the legal regulated rent for the subject unit shall be
12 equal to seventy-five percent of the section 8 voucher payment standard
13 adopted by a local public housing agency for a unit of the same size and
14 located within the same zip code that was in effect at the time the
15 lease was executed; except that the legal regulated rents for units
16 subject to housing subsidy vouchers shall be equal to the contract rent
17 amount approved by the local housing authority that issues the voucher.
18 Any required refunds shall be made by the owner in cash or as a credit
19 against unpaid rent over a period not to exceed six months.

20 b. Notwithstanding subdivision a of this section, provided that the
21 owner has submitted to the division documentation in accordance with
22 subdivision a of section 26-511.2 of this chapter, the division shall
23 only determine whether the tenancy is subject to a housing subsidy
24 voucher and, if not, whether the rent charged to the first tenant after
25 the local regulated housing restoration adjustment exceeds the section 8
26 voucher payment standard adopted by a local public housing agency for a
27 unit of the same size located within the same zip code that was in
28 effect at the time the lease was executed. Any documentation deficien-
29 cies shall be resolved through the audit process set forth in section
30 26-511.2 of this chapter.

31 c. In the lease execution package for the first lease after the legal
32 rent was adjusted under the local regulated housing restoration adjust-
33 ment, the owner shall give notice, both in the lease and subsequently in
34 writing by certified mail, or by electronic delivery if the tenant has
35 opted to receive electronic delivery of documents, to the tenant of such
36 housing accommodation on a form prescribed by the commissioner of hous-
37 ing and community renewal that the local regulated housing restoration
38 adjustment was applied, including notification of the prior legal regu-
39 lated rent, a description of work completed, the building address and
40 the section 8 voucher payment standard adopted by a local public housing
41 agency for a unit of the same size and located within the same zip code
42 that was in effect at the time the lease was executed, and such tenant's
43 right to file an application challenging the new legal regulated rent of
44 such housing accommodation.

45 § 4. Paragraph 5 of subdivision d of section 6 of section 4 of chapter
46 576 of the laws of 1974, constituting the emergency tenant protection
47 act of nineteen seventy-four, as amended by chapter 102 of the laws of
48 1984, is amended and a new paragraph 6 is added to read as follows:

49 (5) as an alternative to the hardship application provided under para-
50 graph four of this subdivision, owners of buildings acquired by the same
51 owner or a related entity owned by the same principals three years prior
52 to the date of application may apply to the division for increases in
53 excess of the level of applicable guideline increases established under
54 this law based on a finding by the commissioner that such guideline
55 increases are not sufficient to enable the owner to maintain an annual
56 gross rent income for such building which exceeds the annual operating

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

50 or

51 (6) provides that, notwithstanding any other provision of this chapter
52 to the contrary, when a housing accommodation subject to this chapter
53 has been vacated after continuous tenancy or occupancy of ten years or
54 more prior to vacancy, and the owner can demonstrate restoration of the
55 unit as set forth in subdivision (a-1) of section ten of this chapter,
56 the new legal regulated rent shall be the rent agreed to by the owner

1 and first tenant after such restoration and reserved in a lease or other
2 rental agreement; provided that such new legal regulated rent: (i)
3 shall not exceed the section 8 voucher payment standard adopted by a
4 local public housing agency for a unit of the same size and located
5 within the same zip code that was in effect at the time the lease was
6 executed; and (ii) may be adjusted on audit by the division under subdi-
7 vision (a-1) of section ten of this chapter, or on application of a
8 tenant or owner under subdivision d-1 of section nine of this chapter.
9 The legal regulated rent adjustment set forth in this paragraph shall be
10 known as the local regulated housing restoration adjustment.

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

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

19 (1) XRF test results or other documentation demonstrating a lead-free
20 housing accommodation under applicable local definitions;

21 (2) any required tenant protection plans or similar submissions to the
22 local building department in connection with such restoration;

23 (3) any required contractor licenses or certifications;

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

25 (5) before and after photos;

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

27 (7) evidence of renting to a housing subsidy voucher holder, or the
28 section 8 voucher payment standard adopted by a local public housing
29 agency for a unit of the same size and located within the same zip code
30 that was in effect at the time the lease was executed;

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

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

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

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

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

54 (3) for units in buildings subject to housing preservation and devel-
55 opment's alternative enforcement program; or

56 (4) after an unlawful eviction.

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

7 (1) any audit shall be limited to: (i) confirmation that documentation
8 set forth in paragraph a of this subdivision has been submitted; and
9 (ii) unless rented to a housing subsidy voucher holder, confirmation
10 that the units agreed upon rent as reserved in a lease agreement does
11 not exceed the section 8 voucher payment standard adopted by a local
12 public housing agency for a unit of the same size and located within the
13 same zip code that was in effect at the time the lease was executed.
14 Such audit shall be initiated within one year of the filing of an annual
15 apartment registration indicating an adjustment to the legal regulated
16 rent under the local regulated housing restoration adjustment; and

17 (2) if an audit under this subdivision determines that: (i) an owner
18 has failed to submit documentation set forth in subdivision a of this
19 section and the owner then fails to submit any missing documentation
20 after sixty days' written notice from the division; or (ii) the local
21 housing restoration adjustment exceeds the section 8 voucher payment
22 standard adopted by a local public housing agency for a unit of the same
23 size and located within the same zip code that was in effect at the time
24 the lease was executed, the division shall set the subject unit's legal
25 regulated rent at an amount equal to seventy-five percent of the section
26 8 voucher payment standard adopted by a local public housing agency for
27 a unit of the same size and located within the same zip code that was in
28 effect at the time the lease was executed, provided, however, that the
29 legal regulated rents for units subject to housing subsidy vouchers
30 shall be established at the contract rent amount approved by the agency
31 administering the voucher.

32 (3) Any required refunds shall be made in accordance with section
33 26-513.1 of this chapter.

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

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

44 § 6. Section 9 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 d-1 to read as follows:

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

54 (i) in the application, the tenant must allege that the local regu-
55 lated housing restoration adjustment rent exceeds the section 8 voucher
56 payment standard adopted by a local public housing agency for a unit of

1 the same size and located within the same zip code that was in effect at
2 the time the lease was executed;

3 (ii) in determining an application filed pursuant to this section, the
4 commissioner of housing and community renewal shall only consider wheth-
5 er the subject rent exceeds the section 8 voucher payment standard
6 adopted by a local public housing agency for a unit of the same size and
7 located within the same zip code that was in effect at the time the
8 lease was executed;

9 (iii) the owner of the housing accommodation subject to an application
10 under this section shall be given an opportunity to submit a written
11 answer to any application; and

12 (iv) when the local regulated housing restoration adjustment rent
13 amount is determined to exceed the section 8 voucher payment standard
14 adopted by a local public housing agency for a unit of the same size and
15 located within the same zip code that was in effect at the time the
16 lease was executed, the commissioner of housing and community renewal
17 shall order that the legal regulated rent for the subject unit shall be
18 equal to seventy-five percent of the section 8 voucher payment standard
19 adopted by a local public housing agency for a unit of the same size and
20 located within the same zip code that was in effect at the time the
21 lease was executed; provided, however, that the legal regulated rents
22 for units subject to housing subsidy vouchers shall be equal to the
23 contract rent amounts approved by the local housing agency administering
24 the voucher. Any required refunds shall be made by the owner in cash or
25 as a credit against unpaid rent over a period not to exceed six months.

26 (2) Notwithstanding paragraph a of this subdivision, provided that the
27 owner has submitted to the division documentation in accordance with
28 subdivision (a-1) of section ten 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 exceeds the section 8
32 voucher payment standard adopted by a local public housing agency for a
33 unit of the same size located within the same zip code that was in
34 effect at the time the lease was executed. Any documentation deficien-
35 cies shall be resolved through the audit process set forth in subdivi-
36 sion (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 the section 8 voucher payment standard adopted by a local public housing
47 agency for a unit of the same size and located within the same zip code
48 that was in effect at the time the lease was executed, and such tenant's
49 right to file an application for adjustment of the new legal regulated
50 rent of such housing accommodation.

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