

STATE OF NEW YORK

7402

2023-2024 Regular Sessions

IN SENATE

May 23, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple dwelling law, in relation to rent impairing violations; and to amend the real property actions and proceedings law, in relation to eviction proceedings

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

1 Section 1. Subdivision 3 of section 302-a of the multiple dwelling
2 law, as added by chapter 911 of the laws of 1965, is amended to read as
3 follows:
4 3. a. If (i) the official records of the department shall note that a
5 rent impairing violation exists or existed in respect to a multiple
6 dwelling and that notice of such violation has been given by the depart-
7 ment, by mail, to the owner last registered with the department and (ii)
8 such note of the violation [~~is~~] was not cancelled or removed of record
9 within [~~six~~] three months after the date of such notice of such
10 violation, then for the period that such violation remains uncorrected
11 after the expiration of said [~~six~~] three months, no rent shall be recov-
12 ered by any owner for any premises in such multiple dwelling used by a
13 resident thereof for human habitation in which the condition constitut-
14 ing such rent impairing violation exists, provided, however, that if the
15 violation is one that requires approval of plans by the department for
16 the corrective work and if plans for such corrective work shall have
17 been duly filed within [~~three months~~] one month from the date of notice
18 of such violation by the department to the owner last registered with
19 the department, the [~~six months~~] three month period aforementioned shall
20 not begin to run until the date that plans for the corrective work are
21 approved by the department; if plans are not filed within said [~~three-~~
22 ~~months~~] one month period or if so filed, they are disapproved and amend-
23 ments are not duly filed within thirty days after the date of notifica-

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

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1 tion of the disapproval by the department to the person having filed the
2 plans, the [~~six months~~] three month period shall be computed as if no
3 plans whatever had been filed under this proviso. If a condition consti-
4 tuting a rent impairing violation exists in the part of a multiple
5 dwelling used in common by the residents or in the part under the
6 control of the owner thereof, the violation shall be deemed to exist in
7 the respective premises of each resident of the multiple dwelling.

8 b. The provisions of subparagraph a shall not apply if (i) the condi-
9 tion referred to in the department's notice to the owner last registered
10 with the department did not in fact exist, notwithstanding the notation
11 thereof in the records of the department; (ii) the condition which is
12 the subject of the violation has in fact been corrected within the three
13 month period required by subparagraph a of this subdivision, though the
14 note thereof in the department has not been removed or cancelled; (iii)
15 the violation has been caused by the resident from whom rent is sought
16 to be collected or by members of his family or by his guests or by
17 another resident of the multiple dwelling or the members of the family
18 of such other resident or by his guests, or (iv) the resident proceeded
19 against for rent has refused entry to the owner for the purpose of
20 correcting the condition giving rise to the violation.

21 c. To raise a defense under subparagraph a in any action to recover
22 rent or in any special proceeding for the recovery of possession because
23 of non-payment of rent, the resident must affirmatively plead and prove
24 the material facts under subparagraph a [~~, and must also deposit with the~~
25 ~~clerk of the court in which the action or proceeding is pending at the~~
26 ~~time of filing of the resident's answer the amount of rent sought to be~~
27 ~~recovered in the action or upon which the proceeding to recover~~
28 ~~possession is based, to be held by the clerk of the court until final~~
29 ~~disposition of the action or proceeding at which time the rent deposited~~
30 ~~shall be paid to the owner, if the owner prevails, or be returned to the~~
31 ~~resident if the resident prevails. Such deposit of rent shall vitiate~~
32 ~~any right on the part of the owner to terminate the lease or rental~~
33 ~~agreement of the resident because of nonpayment of rent~~].

34 d. If a resident voluntarily pays rent or an installment of rent when
35 he or she would be privileged to withhold the same under subparagraph a,
36 he or she shall [~~not thereafter~~] have [~~any~~] a claim or cause of action
37 to recover back the rent or installment of rent so paid. A voluntary
38 payment within the meaning hereof shall mean payment other than one made
39 pursuant to a judgment in an action or special proceeding.

40 e. [~~If upon the trial of any action to recover rent or any special~~
41 ~~proceeding for the recovery of possession because of non payment of rent~~
42 ~~it shall appear that the resident has raised a defense under this~~
43 ~~section in bad faith, or has caused the violation or has refused entry~~
44 ~~to the owner for the purpose of correcting the condition giving rise to~~
45 ~~the violation, the court, in its discretion, may impose upon the resi-~~
46 ~~dent the reasonable costs of the owner, including counsel fees, in main-~~
47 ~~taining the action or proceeding not to exceed one hundred dollars.~~] The
48 department shall notify the resident and owner when a rent impairing
49 violation has been placed in their apartment. The notification shall
50 include a list of the rent impairing violations placed and an explana-
51 tion of the resident's right to raise the rent impairing violations as a
52 defense in any action to recover rent or in any special proceeding for
53 the recovery of possession because of non-payment of rent.

54 § 2. Subdivisions 10 and 11 of section 713 of the real property
55 actions and proceedings law, subdivision 10 as amended by chapter 467 of

1 the laws of 1981 and subdivision 11 as added by chapter 312 of the laws
2 of 1962, are amended to read as follows:

3 10. The person in possession has entered the property or remains in
4 possession by force or unlawful means and he or she or his or her prede-
5 cessor in interest was not in quiet possession for three years before
6 the time of the forcible or unlawful entry or detainer and the petition-
7 er was peaceably in actual possession at the time of the forcible or
8 unlawful entry or in constructive possession at the time of the forcible
9 or unlawful detainer. Any lawful occupant, physically or constructively
10 in possession, who has been evicted or dispossessed without the court
11 process mandated by section seven hundred eleven of this article, may
12 commence a proceeding under this subdivision to be restored to
13 possession, and shall be so restored upon proof that their eviction was
14 unlawful; no notice to quit shall be required in order to maintain a
15 proceeding under this subdivision.

16 11. The person in possession entered into possession as an incident to
17 employment by petitioner, and the time agreed upon for such possession
18 has expired or, if no such time was agreed upon, the employment has been
19 terminated[~~, no notice to quit shall be required in order to maintain~~
20 ~~the proceeding under this subdivision~~].

21 § 3. Subdivisions 2 and 3 of section 732 of the real property actions
22 and proceedings law, as amended by section 14 of part M of chapter 36 of
23 the laws of 2019, are amended to read as follows:

24 2. If the respondent answers, the clerk shall fix a date for trial or
25 hearing not less than three nor more than eight days after joinder of
26 issue, and shall immediately notify by mail the parties or their attor-
27 neys of such date. If the determination be for the petitioner, the issu-
28 ance of a warrant shall not be stayed for more than five days from such
29 determination, except as provided in section seven hundred fifty-three
30 of this article. If the respondent fails to appear on such date, the
31 court, after making an assessment, pursuant to section thirty-two
32 hundred fifteen of the civil practice law and rules, may issue a judg-
33 ment in favor of the petitioner and the issuance of the warrant shall be
34 stayed for a period not to exceed ten days from the date of service,
35 except as provided in section seven hundred fifty-three of this article.

36 3. If the respondent fails to answer within ten days from the date of
37 service, as shown by the affidavit or certificate of service of the
38 notice of petition and petition, [~~the judge shall render judgment in~~
39 ~~favor of the petitioner and~~] the petitioner may make an application for
40 a default judgment. Upon this application, the clerk shall fix a date
41 for inquest and immediately notify by mail the parties or their attor-
42 neys of such date. If the respondent fails to appear on such date, the
43 court, after making an assessment, pursuant to section thirty-two
44 hundred fifteen of the civil practice law and rules, may issue a judg-
45 ment in favor of the petitioner and may stay the issuance of the warrant
46 for a period of not to exceed ten days from the date of service, except
47 as provided in section seven hundred fifty-three of this article.

48 § 4. This act shall take effect immediately and shall apply to all
49 pending proceedings on and after such date.