STATE OF NEW YORK

4093

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. KELLES, CUNNINGHAM, RAGA -- read once and referred to the Committee on Housing

AN ACT to amend the real property actions and proceedings law and the real property law, in relation to prohibiting residential evictions during the winter months

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

Section 1. Short Title. This act shall be known and may be cited as the "winter moratorium on evictions act of 2023".

§ 2. Legislative findings and declaration of emergency. The legislature hereby finds and declares all of the following:

The serious public emergency regarding the scarcity of affordable housing across New York State continues to exist, and such emergency puts families and individuals at a heightened risk of eviction, displacement, and homelessness.

The legislature recognizes that evictions trigger long-lasting and irreparable harm to public health and safety. Evictions are linked to all-cause mortality and lead to an array of negative mental and physical health outcomes including higher rates of emergency room utilization, mental health hospitalizations, suicide, children's hospitalization, and depression. Evictions directly result in job loss and disruption to a child's education. Those who have experienced an eviction are more likely to live in substandard housing and have greater residential precarity and are less likely to secure safe and affordable housing in the long term. These consequences are disproportionately felt by Black and Latinx households, who face the highest rates of eviction.

Evictions are a significant cause of homelessness, both directly and indirectly. In New York City, 25 percent of shelter residents and 12 percent of unsheltered individuals are homeless due to an eviction. The Department of Housing and Urban Development identified at least 91,271 homeless individuals throughout New York State as of January 2020,

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

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including 77,943 individuals in New York City and 13,328 individuals throughout the rest of the State.

The well-documented and devastating consequences of homelessness are exacerbated by cold weather. Unsheltered individuals have an increased risk of developing exposure-related health problems, particularly in cold weather. NYC Department of Homeless Services reported that 613 homeless individuals died between July 2019 and June 2020 in New York City. Individuals experiencing homelessness accounted for at least 25 percent of all cold-related hospitalizations between 2003 and 2015.

The legislature further recognizes that the statewide stock of shelter accommodations fails to ameliorate the threat to public health and safety posed by eviction and homelessness. A 2020 audit by the New York State Comptroller found unsafe conditions, including structural damage, vermin infestations, and mold, in 60 percent of shelters. In 2020, the New York City Comptroller found widespread hazardous conditions jeopardizing infants' health and safety in City shelters. Incidents of violence, theft, and police presence are pervasive in City shelters; 38 percent of New York City residents experiencing street homelessness choose not to return to the shelter system and become street-homeless because of personal safety concerns. Convoluted and punitive rules and procedures, loss of personal agency, inadequate resources and staff training, and a systemic failure to accommodate disabilities are further deterrents.

The legislature further recognizes that, pursuant to Article XVII of the New York State Constitution, the "aid, care, and support of the needy are public concerns and shall be provided by the state." Such obligation extends to the State's homeless population, whose needs are heightened during winter months. The Executive Department has found that inclement winter weather presents a threat to the life, health, and safety of the State's homeless citizens in particular, and defines "inclement winter weather" as air temperatures at or below 32 degrees Fahrenheit, including National Weather Service calculations for wind chill. According to National Weather Service data, inclement winter weather falls within the normal temperature ranges in all or parts of New York State from November through April.

The legislature therefore finds and declares that in order to prevent death, hardship, and other negative health outcomes to New York State residents, the provisions of this act are necessary to protect public health, safety, and general welfare. The necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

§ 3. Subdivision 2 of section 711 of the real property actions and proceedings law, as amended by section 12 of part M of chapter 36 of the laws 2019, is amended to read as follows:

2. [~~The~~] **Except as provided in section seven hundred forty-seven of this article, the** tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section seven hundred thirty-five of this article. Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seek-

ing a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

§ 4. Section 741 of the real property actions and proceedings law is amended by adding a new subdivision 7 to read as follows:

7. State that a warrant of eviction may only be executed between April sixteenth and October thirty-first of any calendar year.

§ 5. Section 747 of the real property actions and proceedings law is amended by adding two new subdivisions 5 and 6 to read as follows:

5. In any case for nonpayment of rent in which a judgment has been entered, the party maintaining the proceeding, or their heirs or successor, shall move by order to show cause to vacate such judgment within thirty days of receiving a payment amount satisfying the judgment. Unless such judgment has been vacated pursuant to subdivision six of this section or pursuant to a lawful written agreement between the parties filed with the court in which the judgment was issued, failure to comply with this subdivision shall prohibit a party from commencing a subsequent proceeding for nonpayment of rent against any person covered by such judgment until such judgment has been vacated.

6. In any case for nonpayment of rent in which a judgment has been entered, any person covered by such judgment may move by order to show cause at any time to have such judgment vacated. Within sixty days of the effective date of this subdivision, the office of court administration shall promulgate a pro se order to show cause and affidavit to support the vacatur of such judgment, which shall be provided at the time the judgment is entered to all respondents who are named or appeared in the proceeding.

§ 6. Subdivision 1 of section 749 of the real property actions and proceedings law, as amended by section 19 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of time. **Pursuant to section seven hundred fifty-three-a of this article, the earliest date upon which execution may occur shall fall between April sixteenth and October thirty-first of any given calendar year.**

§ 7. The real property actions and proceedings law is amended by adding a new section 753-a to read as follows:

§ 753-a. Winter eviction moratorium in premises occupied for dwelling purposes. 1. The winter moratorium period shall commence at 12:00 AM on November first of a calendar year and end at 11:59 PM on April fifteenth of the subsequent calendar year.

(a) In a proceeding to recover possession of premises occupied for dwelling purposes, other than a room or rooms in a hotel occupied by a transient occupant for less than thirty days, the court shall not issue a warrant pursuant to section seven hundred forty-nine of this article with an execution date during the winter moratorium period.

(b) At the commencement of the winter moratorium period, all pending unexecuted judgments and warrants shall automatically be stayed through the end of the winter moratorium period.

2. (a) During the winter moratorium period, a person maintaining a proceeding shall maintain the same legal rights and obligations with respect to the tenant that were held prior to the issuance of the judgment and warrant including, but not limited to, the obligations to keep the premises in livable, safe, and sanitary condition, to not discriminate, harass, or retaliate, and to keep the premises in good repair pursuant to federal, state, and local housing maintenance standards. Such person shall maintain the right to collect rent for use and occupancy during the winter moratorium period without prejudice to the judgment stayed except as provided in subdivision four of this section. For the purposes of this section, "person maintaining a proceeding" shall mean a person who may maintain proceeding pursuant to section seven hundred twenty-one of this article.

(b) During the winter moratorium period, a tenant against whom a judgment and warrant have been issued shall maintain the same rights and obligations as were held prior to the issuance of the judgment and warrant. Such obligations shall include the obligation to tender rent for use and occupancy at the last lawful rate previously agreed to by the parties or set by the court, subject to any abatement, offset, or reduction to which the tenant is lawfully entitled. Such rights shall include, but are not limited to, the right to livable, safe, and sanitary premises, the right to be free from discrimination, harassment, and retaliation, the right to bring legal action in any appropriate forum with respect to the violation of such rights, and all other rights and protections afforded to tenants and occupants by local, state, and federal law. For the purposes of this section, "tenant" shall have the same meaning as provided in section seven hundred eleven of this article.

3. (a) During the winter moratorium period, any proceeding, judgment, and warrant, stayed pursuant to this section shall be sufficient for the purposes of establishing an "emergency" under 18 NYCRR 397.1(b), 18 NYCRR 372.4, and/or section three hundred fifty-j of the social services law.

(b) A person against whom a judgment and warrant have been issued remains the "subject of an eviction proceeding" during the winter moratorium period for the purposes of 68 RCNY 10-03(B). Such a person shall be considered "facing eviction" for the purposes of 18 NYCRR 352.3(a)(ii) and (iii).

4. During the winter moratorium period, all monies tendered to a person maintaining a proceeding shall be presumed to apply to the earliest period for which rent for use and occupancy is owed pursuant to the judgment, unless such payment is earmarked by the payer as being for a specific purpose. Any agreement to the contrary shall be deemed null and void.

§ 8. Paragraph (b) of subdivision 2 of section 768 of the real property actions and proceedings law, as added by section 24 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

(b) [~~Such~~] For each violation of this section occurring between April sixteenth and October thirty-first of any calendar year, such person shall also be subject to a civil penalty of not less than one thousand nor more than ten thousand dollars for each violation. For each violation of this section occurring between January first and April fifteenth, or from November first to December thirty-first of any calen-

dar year, such person shall also be subject to a civil penalty of not less than five thousand dollars nor more than fifty thousand dollars for each violation. Each such violation shall be a separate and distinct offense. In the case of a failure to take all reasonable and necessary action to restore an occupant pursuant to paragraph (b) of subdivision one of this section, such person shall be subject to an additional civil penalty of not more than one hundred dollars per day from the date on which restoration to occupancy is requested until the date on which restoration occurs, provided, however, that such period shall not exceed [~~six~~] **twelve** months.

§ 9. The real property law is amended by adding a new section 235-j to read as follows:

§ 235-j. Credit of payment of rent. Upon the receipt of the payment of rent for residential premises, it shall be the duty of the lessor, or any agent of the lessor, to immediately credit such payment to the rental account of the tenant, which shall be reflected on any rent statement, ledger, or bill provided to the tenant.

§ 10. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all proceedings commenced on or after such date.