STATE OF NEW YORK

6772

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. BURGOS, CUNNINGHAM, GIBBS, ALVAREZ, FALL, HYNDMAN, BENEDETTO -- read once and referred to the Committee on Housing

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:

Section 1. Subdivision c of section 26-511 of the administrative code of the city of New York is amended by adding a new paragraph 15 to read as follows:

(15) provides that, notwithstanding any other provision of this chapter to the contrary, when a housing accommodation subject to this chapter has been vacated after continuous tenancy or occupancy of ten years or more prior to vacancy, and the owner has submitted documentation to the division demonstrating restoration of the unit as set forth in section 26-511.2 of this chapter, the new legal regulated rent shall be the rent agreed to by the owner and first tenant after such restoration and reserved in a lease or other rental agreement; provided that such new legal regulated rent may be adjusted on audit by the division under section 26-511.2 of this chapter, or on application of a tenant under section 26-513.1 of this chapter. The legal regulated rent adjustment set forth in this paragraph shall be known as the local regulated housing restoration adjustment.

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

§ 26-511.2 The local regulated housing restoration adjustment. a. The division of housing and community renewal, the "division" shall establish a notification procedure and documentation submission guidelines 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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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; and

(7) legal regulated rent amount or amounts for substantially similar unit or units as defined by section 26-513.1 of this chapter.

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) after an eviction, unless the eviction was pursuant to order, judgment, or other decree by court or governmental or legal authority for reasons including nonpayment of rent, expiration or termination of the lease term or license or other occupancy right, violation of a substantial obligation of the tenancy, or any other grounds permitted under this chapter.

c. The division 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 to: (i) confirmation that documentation set forth in subdivision a of this section has been submitted; (ii) visual inspection of the subject unit; and (iii) review of the unit's registered rent in comparison to the legal regulated rents of substantially similar housing accommodations in the same geographic area considering the same factors set forth in section 26-513.1 of this chapter, including the owner's right to submit the legal regulated rent of a substantially similar unit or units. 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.

(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, the division may then set the subject unit's legal regulated rent based upon an evaluation of documentation provided but in no event shall the legal regulated rent be set at an amount less than HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority provided that applicable housing quality standards have been confirmed by inspection as set forth in this section.

(3) if an audit under this subdivision determines that the owner submitted documentation set forth in subdivision a of this section but that the registered rent exceeds the level permitted under section 26-513.1 of this chapter, the division may set the legal regulated rent

at the greater of the legal regulated rent for a substantially similar housing accommodation in the same geographic area or the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority. Any required refunds shall be made in accordance with section 26-513.1 of this chapter.

d. 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 that does not exceed the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority shall be determined to be fair.

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

(4) when the local regulated housing restoration adjustment rent amount is determined to exceed the legal regulated rent for a substantially similar housing accommodation as defined by this section, the commissioner of housing and community renewal shall order that the legal regulated rent for the subject unit shall be the greater of the legal regulated rent for a substantially similar housing accommodation in the same geographic area or the HUD fair market value for the statistical

metropolitan area or the small area fair market rent as determined by the local housing authority. Any required refunds shall be made by the owner in cash or as a credit against unpaid rent over a period not to exceed of six months.

b. Notwithstanding subdivision a of this section, provided that the owner has submitted to the division documentation in accordance with subdivision a of section 26-511.2 of this chapter, the division shall only determine whether the rent charged to the first tenant after the local regulated housing restoration adjustment is supported by the rent for a substantially similar unit. Any documentation deficiencies shall be resolved through the audit process set forth in section 26-511.2 of this chapter.

c. In the lease execution package for the first lease after the legal rent was adjusted under the local regulated housing restoration adjustment, the owner shall give notice, both in the lease and subsequently in writing by certified mail, or by electronic delivery if the tenant has opted to receive electronic delivery of documents, to the tenant of such housing accommodation on a form prescribed by the commissioner of housing and community renewal that the local regulated housing restoration adjustment was applied, including notification of the prior legal regulated rent, a description of work completed, the building address and legal regulated rent amounts for at least one and up to three substantially similar units, and such tenant's right to file an application challenging the new legal regulated rent of such housing accommodation.

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

(5) as an alternative to the hardship application provided under paragraph four of this subdivision, owners of buildings acquired by the same owner or a related entity owned by the same principals three years prior to the date of application may apply to the division for increases in excess of the level of applicable guideline increases established under this law based on a finding by the commissioner that such guideline increases are not sufficient to enable the owner to maintain an annual gross rent income for such building which exceeds the annual operating expenses of such building by a sum equal to at least five percent of such gross rent. For the purposes of this paragraph, operating expenses shall consist of the actual, reasonable, costs of fuel, labor, utilities, taxes, other than income or corporate franchise taxes, fees, permits, necessary contracted services and non-capital repairs, insurance, parts and supplies, management fees and other administrative costs and mortgage interest. For the purposes of this paragraph, mortgage interest shall be deemed to mean interest on a bona fide mortgage including an allocable portion of charges related thereto. Criteria to be considered in determining a bona fide mortgage other than an institutional mortgage shall include; condition of the property, location of the property, the existing mortgage market at the time the mortgage is placed, the term of the mortgage, the amortization rate, the principal amount of the mortgage, security and other terms and conditions of the mortgage. The commissioner shall set a rental value for any unit occupied by the owner or a person related to the owner or unoccupied at the owner's choice for more than one month at the last regulated rent plus the minimum number of guidelines increases or, if no such regulated rent existed or is known, the commissioner shall impute a rent consistent with other rents in the building. The amount of hardship increase shall

be such as may be required to maintain the annual gross rent income as provided by this paragraph. The division shall not grant a hardship application under this paragraph or paragraph four of this subdivision for a period of three years subsequent to granting a hardship application under the provisions of this paragraph. The collection of any increase in the rent for any housing accommodation pursuant to this paragraph shall not exceed six percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. No application shall be approved unless the owner's equity in such building exceeds five percent of: (i) the arms length purchase price of the property; (ii) the cost of any capital improvements for which the owner has not collected a surcharge; (iii) any repayment of principal of any mortgage or loan used to finance the purchase of the property or any capital improvements for which the owner has not collected a surcharge; and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner. For the purposes of this paragraph, owner's equity shall mean the sum of (i) the purchase price of the property less the principal of any mortgage or loan used to finance the purchase of the property, (ii) the cost of any capital improvement for which the owner has not collected a surcharge less the principal of any mortgage or loan used to finance said improvement, (iii) any repayment of the principal of any mortgage or loan used to finance the purchase of the property or any capital improvement for which the owner has not collected a surcharge, and (iv) any increase in the equalized assessed value of the property which occurred subsequent to the first valuation of the property after purchase by the owner[~~.~~]**;**

or

(6) provides that, notwithstanding any other provision of this chapter to the contrary, when a housing accommodation subject to this chapter has been vacated after continuous tenancy or occupancy of ten years or more prior to vacancy, and the owner has submitted documentation to the division demonstrating restoration of the unit as set forth in subdivision (a-1) of section ten of this chapter, the new legal regulated rent shall be the rent agreed to by the owner and first tenant after such restoration and reserved in a lease or other rental agreement; provided that such new legal regulated rent may be adjusted on audit by the division under subdivision (a-1) of section ten of this section, or on 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; and
(7) 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.
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) after an eviction, unless the eviction was pursuant to order, judgment, or other decree by court or governmental or legal authority for reasons including nonpayment of rent, expiration or termination of the lease term or license or other occupancy right, violation of a substantial obligation of the tenancy, or any other grounds permitted under this chapter.
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 of the unit's registered rent in comparison to the legal regulated rents of substantially similar housing accommodations in the same geographic area considering the same factors set forth in subdivision d-1 of section nine of this chapter, including the owner's right to submit the legal regulated rent of a substantially similar unit or units. 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;
(2) if an audit under this subdivision determines that an owner has failed to submit documentation set forth in paragraph a of this subdivision and the owner then fails to submit any missing documentation after sixty days' written notice from the division, the division may then set the subject unit's legal regulated rent based upon an evaluation of documentation provided but in no event shall the legal regulated rent be set at an amount less than HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority provided that applicable housing quality standards have been confirmed by inspection as set forth above;
(3) if an audit under this subdivision determines that the owner submitted documentation set forth in paragraph a of this subdivision but that the registered rent exceeds the legal regulated rent of a substantially similar housing accommodation in the same geographic area, then the division may set the legal regulated rent at the greater of the legal regulated rent for a substantially similar housing accommodation in the same geographic area or the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority. Any required refunds shall be made in accordance with subdivision d-1 of section nine of this chapter; and

d. 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.

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

d-1. (1) 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 within 120 days after notice has been received under paragraph three of this subdivision an application for the adjustment of the rent for such housing accommodation. Such applications shall be subject to the following:

(i) in the application, the tenant must allege that the local regulated housing restoration adjustment rent exceeds the rent for a substantially similar unit within the same geographic area;

(ii) in determining an application filed pursuant to this section, the commissioner of housing and community renewal shall only consider legal regulated rents for substantially similar regulated 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 that does not exceed the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority shall be presumed to be fair;

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

(iv) when the local regulated housing restoration adjustment rent amount is determined to exceed the legal regulated rent for a substantially similar housing accommodation as defined by this section, the commissioner of housing and community renewal shall order that the legal regulated rent for the subject unit shall be the greater of the legal regulated rent for a substantially similar housing accommodation in the same geographic area or the HUD fair market value for the statistical metropolitan area or the small area fair market rent as determined by the local housing authority. Any required refunds shall be made by the owner in cash or as a credit against unpaid rent over a period not to exceed of six months.

(2) Notwithstanding paragraph a of this subdivision, provided that the owner has submitted to the division documentation in accordance with subdivision (a-1) of section ten of this chapter, the division shall only determine whether the rent charged to the first tenant after the local regulated housing restoration adjustment is supported by a comparable legal regulated rent for a substantially similar regulated unit. Any documentation deficiencies shall be resolved through the audit process set forth in subdivision (a-1) of section ten of this chapter.

(3) In the lease execution package for the first lease after the legal rent was adjusted under the local regulated housing restoration adjustment, the owner shall give notice, both in the lease and subsequently in writing by certified mail, or by electronic delivery if the tenant has opted to receive electronic delivery of documents, to the tenant of such housing accommodation on a form prescribed by the commissioner of housing and community renewal that the local regulated housing restoration adjustment was applied, including notification of the prior legal regulated rent, a description of work completed, the building address and legal regulated rent amounts for at least one and up to three substantially similar units, and such tenant's right to file an application for adjustment of the new legal regulated rent of such housing accommodation.

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