

STATE OF NEW YORK

6772--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. BURGOS, GIBBS, HYNDMAN, BENEDETTO, ZEBROWSKI, SLATER, ZACCARO -- read once and referred to the Committee on Housing -- recommitted to the Committee on Housing in accordance with Assembly Rule 3, sec. 2 -- 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 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:

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

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

LBD10320-18-4

§ 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 to qualify for the local regulated housing restoration adjustment shall be limited to:

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

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

(3) any required contractor licenses or certifications;

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

(5) before and after photos;

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

(7) evidence of renting to a housing subsidy voucher holder, or 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;

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

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

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;

(3) for units in buildings subject to housing preservation and development's alternative enforcement program; or

(4) after an unlawful eviction.

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; 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

1 and located within the same zip code that was in effect at the time the
2 lease was executed. Such audit shall be initiated within one year of
3 the filing of an annual apartment registration indicating an adjustment
4 to the legal regulated rent under the local regulated housing restora-
5 tion adjustment; and

6 (2) if an audit under this subdivision determines that (i) an owner
7 has 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 (ii) the local
10 housing restoration adjustment exceeds the section 8 voucher payment
11 standard adopted by a local public housing agency for a unit of the same
12 size and located within the same zip code that was in effect at the time
13 the lease was executed, the division shall set the subject unit's legal
14 regulated rent at an amount equal to seventy-five percent of the section
15 8 voucher payment standard adopted by a local public housing agency for
16 a unit of the same size and located within the same zip code that was in
17 effect at the time the lease was executed, except that the legal regu-
18 lated rents for units subject to housing subsidy vouchers shall be
19 established at the contract rent amount approved by the agency adminis-
20 tering the voucher.

21 (3) Any required refunds shall be made in accordance with section
22 26-513.1 of this chapter.

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

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

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

35 § 26-513.1 Application for adjustment of local regulated housing
36 restoration adjustment. a. The tenant of a housing accommodation that
37 was vacant on, or became vacant after, June 14, 2019, and has been
38 subject to the local regulated housing restoration adjustment, may file
39 with the commissioner of housing and community renewal within 120 days
40 after notice has been received under subdivision c of this section an
41 application for the adjustment of the rent for such housing accommo-
42 dation. Such applications shall be subject to the following:

43 (1) in the application, the tenant must allege that the local regu-
44 lated housing restoration adjustment rent exceeds the section 8 voucher
45 payment standard adopted by a local public housing agency for a unit of
46 the same size and located within the same zip code that was in effect at
47 the time the lease was executed.

48 (2) in determining an application filed pursuant to this section, the
49 commissioner shall only consider whether the subject rent exceeds the
50 section 8 voucher payment standard adopted by a local public housing
51 agency for a unit of the same size and located within the same zip code
52 that was in effect at the time the lease was executed.

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

(4) when the local regulated housing restoration adjustment rent amount is determined to 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, the commissioner of housing and community renewal shall order that the legal regulated rent for the subject unit shall be 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 equal to the contract rent amount approved by the local housing authority that issues the voucher. Any required refunds shall be made by the owner in cash or as a credit against unpaid rent over a period not to exceed 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 tenancy is subject to a housing subsidy voucher and, if not, whether the rent charged to the first tenant after the local regulated housing restoration adjustment exceeds the section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size located within the same zip code that was in effect at the time the lease was executed. 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 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, 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, insur-

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

46 (6) provides that, notwithstanding any other provision of this chapter
47 to the contrary, when a housing accommodation subject to this chapter
48 has been vacated after continuous tenancy or occupancy of ten years or
49 more prior to vacancy, and the owner can demonstrate restoration of the
50 unit as set forth in subdivision (a-1) of section ten of this chapter,
51 the new legal regulated rent shall be the rent agreed to by the owner
52 and first tenant after such restoration and reserved in a lease or other
53 rental agreement; provided that such new legal regulated rent: (i)
54 shall not exceed the section 8 voucher payment standard adopted by a
55 local public housing agency for a unit of the same size and located
56 within the same zip code that was in effect at the time the lease was

1 executed; and (ii) may be adjusted on audit by the division under subdivi-
2 vision (a-1) of section ten of this chapter, or on application of a
3 tenant or owner under subdivision d-1 of section nine of this chapter.
4 The legal regulated rent adjustment set forth in this paragraph shall be
5 known as the local regulated housing restoration adjustment.

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

9 (a-1) the division of housing and community renewal shall establish a
10 notification procedure and documentation submission guidelines for the
11 local regulated housing restoration adjustment. a. Documentation to
12 qualify for the local regulated housing restoration adjustment shall be
13 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 subdivision, a
31 form 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 of housing and community renewal shall establish an
53 audit process to review a percentage, as established by the division, of
54 housing accommodations that register adjusted legal regulated rents
55 under the local regulated housing restoration adjustment. The divi-

1 sion's established audit process shall be subject to the following
2 requirements:

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

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

28 (3) Any required refunds shall be made in accordance with section
29 26-513.1 of this chapter.

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

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

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

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

50 (i) in the application, the tenant must allege that the local regu-
51 lated housing restoration adjustment rent exceeds the section 8 voucher
52 payment standard adopted by a local public housing agency for a unit of
53 the same size and located within the same zip code that was in effect at
54 the time the lease was executed;

55 (ii) in determining an application filed pursuant to this section, the
56 commissioner of housing and community renewal shall only consider wheth-

er the subject 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;

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

(iv) when the local regulated housing restoration adjustment rent amount is determined to 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, the commissioner of housing and community renewal shall order that the legal regulated rent for the subject unit shall be 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; provided, however, that the legal regulated rents for units subject to housing subsidy vouchers shall be equal to the contract rent amounts approved by the local housing agency administering the voucher. Any required refunds shall be made by the owner in cash or as a credit against unpaid rent over a period not to exceed 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 tenancy is subject to a housing subsidy voucher and, if not, whether the rent charged to the first tenant after the local regulated housing restoration adjustment exceeds the section 8 voucher payment standard adopted by a local public housing agency for a unit of the same size located within the same zip code that was in effect at the time the lease was executed. 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 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, 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.