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:

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 16 to read as follows:

(16) 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 can demonstrate 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: (i) shall 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; and (ii) may be adjusted on audit by the division under section 26-511.2 of this chapter, or on application of a tenant or owner 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.

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

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 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.

(3) 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.

(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-

ance, 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 can demonstrate 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: (i) shall 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; and (ii) may be adjusted on audit by the division under subdivision (a-1) of section ten of this chapter, or on application of a tenant or owner 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 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 subdivision, 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 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 divi-

sion'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 paragraph a of this subdivision has been submitted; and (ii) unless rented to a housing subsidy voucher holder, confirmation that the units agreed upon rent as reserved in a lease agreement 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, provided, however, 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.

§ 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 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;

(ii) in determining an application filed pursuant to this section, the 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.