STATE OF NEW YORK

2943--A

2023-2024 Regular Sessions

IN SENATE

January 26, 2023

Introduced by Sens. KAVANAGH, GIANARIS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities 1 -- committee discharged and said bill committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to apply the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and destruction

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

Section 1. Legislative findings. The legislature hereby finds and declares that:

(a) the pool of rent regulated apartments in New York state contains an unacceptably high number of apartments in which the current rents are based on prior rents that exceeded the legal regulated rent at the time they were charged, but for which remedies were limited under the law in effect before the effective date of the Housing Stability and Tenant Protection Act of 2019 (HSTPA);

(b) it is public policy prospectively to reduce, insofar as possible, those rents to a level in line with what they would have been in the absence of the unlawful rent setting and deregulations that were permitted under prior law to go unremedied, and therefore to impose the rent calculation standards of the HSTPA prospectively from the date of its enactment, including in cases where the pre-HSTPA rent has already been established by a court or administrative agency;

(c) the purpose of the prospective application of the penalty and record review provisions of the HSTPA is to prevent the perpetual collection of unlawful and inflated rents, and to encourage the voluntary registration of any rent stabilized apartment for which any prior annual registration statement has not been filed, and to encourage the voluntary recalculation of unreliable pre-HSTPA rents;

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

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(d) in light of court decisions arising under the HSTPA of 2019, including **Regina Metro v. DHCR**, it is public policy that the legislature define clearly the prospective reach of that law, and limit, to the extent required by the constitution, the retroactive reach of that law;

(e) despite **Regina**, the scope of the fraud exception to the pre-HSTPA four year rule for calculating rents remains unsettled and the subject of litigation, and courts have diverged from the controlling authority of **Thornton v. Baron** and **Grimm v. DHCR** to impose a common law fraud standard that is not found in these cases and is inconsistent with the intent of the legislature to discourage and penalize fraud against the rent regulatory system itself, as well as against individual tenants, and it is therefore public policy that the legislature codify, without expanding or reducing the liability of landlords under pre-HSTPA law, the standard for applying that exception;

(f) the New York state division of housing and community renewal (DHCR) misinterpreted the rent stabilization law for a significant period of time with respect to the regulatory obligations arising from the receipt of J-51 and 421-a tax benefits resulting in the unlawful deregulation of tens of thousands of rent-stabilized apartments, the setting of unlawful rents, and the collection of millions of dollars of rent overcharges, during a housing emergency. Both landlords and tenants relied upon the DHCR's misinterpretation of the law. In **Regina**, the Court of Appeals settled many of the issues arising from overcharge claims by tenants who were misled into refraining from filing overcharge cases during the period when DHCR's erroneous interpretation of the law was in effect, but left open the issue of whether a landlord's ongoing collection of overcharges and failure to return apartments to rent-stabilization, after the law was clarified, should be treated as fraud;

(g) the integrity of the registration system for rent regulated housing has been eroded by the use of base date rents, rather than the service and filing of reliable registration statements, to set rents under the law in effect between the enactment of the Rent Regulation Reform Act of 1997 and the HSTPA. It is therefore public policy to impose, prospectively from the date of the enactment of the HSTPA, a rent calculation formula that, insofar as possible, derives the legal regulated rents for apartments from reliable registration statements served upon tenants and made available to the public; and

(h) because pre-HSTPA law with respect to the maintenance by landlords of rent records was complex, and has an ongoing impact upon the calculation of post-HSTPA rents, it is necessary to codify the pre-HSTPA law that applied to the destruction of rent records prior to the enactment of the HSTPA, and to define clearly the impact of such law upon the prospective calculation of rents under the HSTPA.

§ 2. (a) The legal rent for all rent stabilized apartments for the period from July 1, 2019 and thereafter shall be determined in accordance with Part F of the HSTPA. Where the legal regulated rent for a rent stabilized apartment for the period prior to June 14, 2019 has been determined by any court or administrative agency, that determination shall not foreclose a recalculation of the post-HSTPA rent, except that any pre-HSTPA rent that, as of June 14, 2019, is lower than the rent that would be permitted to be charged under the HSTPA, shall be deemed to be the lawful rent under the HSTPA on June 15, 2019, and shall be used as the basis for calculating subsequent rents under the HSTPA;

(b) Subdivision (a) of this section shall apply to all cases, including those pending as of June 14, 2019 before any court, appellate tribunal, or administrative agency in which a claim for rent overcharges or

rent arrears has been asserted with respect to rent stabilized housing, the legal regulated rent for the period from June 14, 2019 and thereafter shall be determined in accordance with Part F of the HSTPA. The legal regulated rent for the portion of any overcharge claim involving rents paid prior to June 14, 2019 shall be determined under pre-HSTPA law, including the default formula in cases of fraud, as codified herein.

(c) Nothing in this act, or the HSTPA, or prior law, shall be construed as restricting, impeding or diminishing the use of records of any age or type, going back to any date that may be relevant, for purposes of determining the status of any apartment under the rent stabilization law;

(d) The legal regulated rent payable for the period prior to June 14, 2019 shall be calculated in accordance with the law in effect prior to the HSTPA, including the prior four year limitation on the consideration of rent records, and including the fraud exception to such limitation and such other exceptions as existed under prior law and under the regulations of the New York state division of housing and community renewal. Nothing in this act shall be construed as limiting such exceptions or as limiting the application of any equitable doctrine that extends statutes of limitations generally. With respect to the calculation of legal rents for the period either prior to or subsequent to June 14, 2019, an owner shall be deemed to have committed fraud if the owner shall have committed a material breach of any duty, arising under statutory, administrative or common law, to disclose truthfully to any tenant, government agency or judicial or administrative tribunal, the rent, regulatory status, or lease information, for purposes of claiming an unlawful rent or claiming to have deregulated an apartment, whether or not the owner's conduct would be considered fraud under the common law, and whether or not a complaining tenant specifically relied on untruthful or misleading statements in registrations, leases, or other documents. The following conduct shall be presumed to have been the product of such fraud: (1) the unlawful deregulation of any apartment, including such deregulation as results from claiming an unlawful increase such as would have brought the rent over the deregulation threshold that existed under prior law, unless the landlord can prove good faith reliance on a directive or ruling by an administrative agency or court; or (2) beginning October 1, 2011, failing to register, as rent stabilized, any apartment in a building receiving J-51 or 421-a benefits;

(e) In accordance with the practice of the New York state division of housing and community renewal prior to June 14, 2019, where fraud is not established, base rents of apartments unlawfully deregulated shall be calculated as the average of rents for comparable rent stabilized apartments in the building, rather than the default formula applicable to cases involving fraud;

(f) For the period prior to June 14, 2019, neither the version of subdivision g of section 26-516 of the administrative code of the city of New York then in effect, nor the version of section 2523.7 of the rent stabilization code (9 NYCRR 2523.7) then in effect shall be construed as permitting the destruction of rent records for units that have not been properly and timely registered. Where records have been permitted to be destroyed by virtue of proper registration, and no other law required the maintenance of such records, and where the owner has proven that such records were actually destroyed in accordance with prior law and that such destruction took place prior to June 15, 2019, the registration served and filed prior to such lawful destruction of

records shall be presumed to be reliable, for purposes of any post-HSTPA calculation of the rent, but that presumption shall be rebuttable. The parties shall be entitled to discovery of any evidence found to be reasonably necessary to demonstrate the legal rent. Nothing in this paragraph shall be interpreted as authorizing the destruction of any record, that under prior law was relevant to establishing (1) the status of an apartment as regulated or unregulated; (2) the presence or absence of fraud with respect to renting any housing accommodation; (3) the presence or absence of willfulness in the collection of overcharges; (4) the useful life of any item, the replacement of which is claimed by the owner to qualify an apartment for a rent increase; (5) the duration of any tenancy, such as would establish whether an owner was entitled under prior law to a longevity increase; or (6) compliance with any law that, independently of the rent stabilization law, required or requires the maintenance of such records. Where the calculation of the rent is dependent upon records that the owner has improperly destroyed, including where the records were destroyed without the apartment having been registered, the rent shall be calculated in accordance with the default formula.

§ 3. This act shall take effect immediately.