STATE OF NEW YORK

7402

2023-2024 Regular Sessions

IN SENATE

May 23, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple dwelling law, in relation to rent impairing violations; and to amend the real property actions and proceedings law, in relation to eviction proceedings

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

Section 1. Subdivision 3 of section 302-a of the multiple dwelling law, as added by chapter 911 of the laws of 1965, is amended to read as follows:

3. a. If (i) the official records of the department shall note that a rent impairing violation exists **or existed** in respect to a multiple dwelling and that notice of such violation has been given by the department, by mail, to the owner last registered with the department and (ii) such note of the violation [~~is~~] **was** not cancelled or removed of record within [~~six~~] **three** months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said [~~six~~] **three** months, no rent shall be recovered by any owner for any premises in such multiple dwelling used by a resident thereof for human habitation in which the condition constituting such rent impairing violation exists, provided, however, that if the violation is one that requires approval of plans by the department for the corrective work and if plans for such corrective work shall have been duly filed within [~~three months~~] **one month** from the date of notice of such violation by the department to the owner last registered with the department, the [~~six months~~] **three month** period aforementioned shall not begin to run until the date that plans for the corrective work are approved by the department; if plans are not filed within said [~~three months~~] **one month** period or if so filed, they are disapproved and amendments are not duly filed within thirty days after the date of notifica-

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

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tion of the disapproval by the department to the person having filed the plans, the [~~six-months~~] **three month** period shall be computed as if no plans whatever had been filed under this proviso. If a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling.

b. The provisions of subparagraph a shall not apply if (i) the condition referred to in the department's notice to the owner last registered with the department did not in fact exist, notwithstanding the notation thereof in the records of the department; (ii) the condition which is the subject of the violation has in fact been corrected **within the three month period required by subparagraph a of this subdivision**, though the note thereof in the department has not been removed or cancelled; (iii) the violation has been caused by the resident from whom rent is sought to be collected or by members of his family or by his guests or by another resident of the multiple dwelling or the members of the family of such other resident or by his guests, or (iv) the resident proceeded against for rent has refused entry to the owner for the purpose of correcting the condition giving rise to the violation.

c. To raise a defense under subparagraph a in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent, the resident must affirmatively plead and prove the material facts under subparagraph a[~~, and must also deposit with the clerk of the court in which the action or proceeding is pending at the time of filing of the resident's answer the amount of rent sought to be recovered in the action or upon which the proceeding to recover possession is based, to be held by the clerk of the court until final disposition of the action or proceeding at which time the rent deposited shall be paid to the owner, if the owner prevails, or be returned to the resident if the resident prevails. Such deposit of rent shall vitiate any right on the part of the owner to terminate the lease or rental agreement of the resident because of nonpayment of rent~~].

d. If a resident voluntarily pays rent or an installment of rent when he **or she** would be privileged to withhold the same under subparagraph a, he **or she** shall [~~not thereafter~~] have [~~any~~] **a** claim or cause of action to recover back the rent or installment of rent so paid. A voluntary payment within the meaning hereof shall mean payment other than one made pursuant to a judgment in an action or special proceeding.

e. [~~If upon the trial of any action to recover rent or any special proceeding for the recovery of possession because of non-payment of rent it shall appear that the resident has raised a defense under this section in bad faith, or has caused the violation or has refused entry to the owner for the purpose of correcting the condition giving rise to the violation, the court, in its discretion, may impose upon the resident the reasonable costs of the owner, including counsel fees, in maintaining the action or proceeding not to exceed one hundred dollars.~~] **The department shall notify the resident and owner when a rent impairing violation has been placed in their apartment. The notification shall include a list of the rent impairing violations placed and an explanation of the resident's right to raise the rent impairing violations as a defense in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent.**

§ 2. Subdivisions 10 and 11 of section 713 of the real property actions and proceedings law, subdivision 10 as amended by chapter 467 of

the laws of 1981 and subdivision 11 as added by chapter 312 of the laws of 1962, are amended to read as follows:

10. The person in possession has entered the property or remains in possession by force or unlawful means and he or **she or** his **or her** predecessor in interest was not in quiet possession for three years before the time of the forcible or unlawful entry or detainer and the petitioner was peaceably in actual possession at the time of the forcible or unlawful entry or in constructive possession at the time of the forcible or unlawful detainer**. Any lawful occupant, physically or constructively in possession, who has been evicted or dispossessed without the court process mandated by section seven hundred eleven of this article, may commence a proceeding under this subdivision to be restored to possession, and shall be so restored upon proof that their eviction was unlawful**; no notice to quit shall be required in order to maintain a proceeding under this subdivision.

11. The person in possession entered into possession as an incident to employment by petitioner, and the time agreed upon for such possession has expired or, if no such time was agreed upon, the employment has been terminated[~~**; no notice to quit shall be required in order to maintain the proceeding under this subdivision**~~].

§ 3. Subdivisions 2 and 3 of section 732 of the real property actions and proceedings law, as amended by section 14 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

2. If the respondent answers, the clerk shall fix a date for trial or hearing not less than three nor more than eight days after joinder of issue, and shall immediately notify by mail the parties or their attorneys of such date. If the determination be for the petitioner, the issuance of a warrant shall not be stayed for more than five days from such determination, except as provided in section seven hundred fifty-three of this article. **If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and the issuance of the warrant shall be stayed for a period not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.**

3. If the respondent fails to answer within ten days from the date of service, as shown by the affidavit or certificate of service of the notice of petition and petition, [~~**the judge shall render judgment in favor of the petitioner and**~~] **the petitioner may make an application for a default judgment. Upon this application, the clerk shall fix a date for inquest and immediately notify by mail the parties or their attorneys of such date. If the respondent fails to appear on such date, the court, after making an assessment, pursuant to section thirty-two hundred fifteen of the civil practice law and rules, may issue a judgment in favor of the petitioner and** may stay the issuance of the warrant for a period of not to exceed ten days from the date of service, except as provided in section seven hundred fifty-three of this article.

§ 4. This act shall take effect immediately and shall apply to all pending proceedings on and after such date.