

STATE OF NEW YORK

7403

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 administrative code of the city of New York, the emergency housing rent control law and the emergency tenant protection act of nineteen hundred seventy-four, in relation to extending the time a tenant shall have to answer when an application for a major capital improvement rent increase has been filed

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

1 Section 1. Paragraph 10 of subdivision a of section 26-511.1 of the
2 administrative code of the city of New York, as added by section 4 of
3 part K of chapter 36 of the laws of 2019, is amended to read as follows:
4 (10) provide, that where an application for a major capital improve-
5 ment rent increase has been filed, a tenant shall have [~~sixty~~] ninety
6 days from the date of mailing of a notice of a proceeding in which to
7 answer or reply;
8 § 2. Paragraph 10 of subdivision a of section 26-405.1 of the adminis-
9 trative code of the city of New York, as added by section 5 of part K of
10 chapter 36 of the laws of 2019, is amended to read as follows:
11 (10) provide, that where an application for a major capital improve-
12 ment rent increase has been filed, a tenant shall have [~~sixty~~] ninety
13 days from the date of mailing of a notice of a proceeding in which to
14 answer or reply;
15 § 3. Paragraph 10 of subdivision (a) of section 10-b of section 4 of
16 chapter 576 of the laws of 1974, constituting the emergency tenant
17 protection act of nineteen seventy-four, as added by section 6 of part K
18 of chapter 36 of the laws of 2019, is amended to read as follows:
19 10. provide, that where an application for a major capital improvement
20 rent increase has been filed, a tenant shall have [~~sixty~~] ninety days

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

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1 from the date of mailing of a notice of a proceeding in which to answer
2 or reply;

3 § 4. Paragraph (j) of subdivision 1 of section 8-a of chapter 274 of
4 the laws of 1946, constituting the emergency housing rent control law,
5 as added by section 7 of part K of chapter 36 of the laws of 2019, is
6 amended to read as follows:

7 (j) provide, that where an application for a major capital improvement
8 rent increase has been filed, a tenant shall have [~~sixty~~] **ninety** days
9 from the date of mailing of a notice of a proceeding in which to answer
10 or reply;

11 § 5. Paragraph 6 of subdivision c of section 26-511 of the administra-
12 tive code of the city of New York, as separately amended by section 12
13 of part K of chapter 36 and section 28 of part Q of chapter 39 of the
14 laws of 2019, is amended to read as follows:

15 (6) provides criteria whereby the commissioner may act upon applica-
16 tions by owners for increases in excess of the level of fair rent
17 increase established under this law provided, however, that such crite-
18 ria shall provide (a) as to hardship applications, for a finding that
19 the level of fair rent increase is not sufficient to enable the owner to
20 maintain approximately the same average annual net income (which shall
21 be computed without regard to debt service, financing costs or manage-
22 ment fees) for the three year period ending on or within six months of
23 the date of an application pursuant to such criteria as compared with
24 annual net income, which prevailed on the average over the period nine-
25 teen hundred sixty-eight through nineteen hundred seventy, or for the
26 first three years of operation if the building was completed since nine-
27 teen hundred sixty-eight or for the first three fiscal years after a
28 transfer of title to a new owner provided the new owner can establish to
29 the satisfaction of the commissioner that he or she acquired title to
30 the building as a result of a bona fide sale of the entire building and
31 that the new owner is unable to obtain requisite records for the fiscal
32 years nineteen hundred sixty-eight through nineteen hundred seventy
33 despite diligent efforts to obtain same from predecessors in title and
34 further provided that the new owner can provide financial data covering
35 a minimum of six years under his or her continuous and uninterrupted
36 operation of the building to meet the three year to three year compar-
37 ative test periods herein provided; and (b) as to completed building-
38 wide major capital improvements, for a finding that such improvements
39 are deemed depreciable under the Internal Revenue Code and that the cost
40 is to be amortized over a twelve-year period for a building with thir-
41 ty-five or fewer housing accommodations, or a twelve and one-half-year
42 period for a building with more than thirty-five housing accommodations,
43 for any determination issued by the division of housing and community
44 renewal after the effective date of the [~~the~~] chapter of the laws of two
45 thousand nineteen that amended this paragraph and shall be removed from
46 the legal regulated rent thirty years from the date the increase became
47 effective inclusive of any increases granted by the applicable rent
48 guidelines board. Temporary major capital improvement increases shall be
49 collectible prospectively on the first day of the first month beginning
50 sixty days from the date of mailing notice of approval to the tenant.
51 Such notice shall disclose the total monthly increase in rent and the
52 first month in which the tenant would be required to pay the temporary
53 increase. An approval for a temporary major capital improvement increase
54 shall not include retroactive payments. The collection of any increase
55 shall not exceed two percent in any year from the effective date of the
56 order granting the increase over the rent set forth in the schedule of

1 gross rents, with collectability of any dollar excess above said sum to
2 be spread forward in similar increments and added to the rent as estab-
3 lished or set in future years. Upon vacancy, the landlord may add any
4 remaining balance of the temporary major capital improvement increase to
5 the legal regulated rent. Notwithstanding any other provision of the
6 law, for any renewal lease commencing on or after June 14, 2019, the
7 collection of any rent increases due to any major capital improvements
8 approved on or after June 16, 2012 and before June 16, 2019 shall not
9 exceed two percent in any year for any tenant in occupancy on the date
10 the major capital improvement was approved or based upon cash purchase
11 price exclusive of interest or service charges. Where an application for
12 a temporary major capital improvement increase has been filed, a tenant
13 shall have [~~sixty~~] **ninety** days from the date of mailing of a notice of a
14 proceeding in which to answer or reply. The state division of housing
15 and community renewal shall provide any responding tenant with the
16 reasons for the division's approval or denial of such application. The
17 division of housing and community renewal shall require the submission
18 of copies of all permits pertaining to major capital improvement work
19 with any application for a major capital improvement rent increase. Any
20 application submitted with fraudulent permits or without required
21 permits shall be denied. Notwithstanding anything to the contrary
22 contained herein, no hardship increase granted pursuant to this para-
23 graph shall, when added to the annual gross rents, as determined by the
24 commissioner, exceed the sum of, (i) the annual operating expenses, (ii)
25 an allowance for management services as determined by the commissioner,
26 (iii) actual annual mortgage debt service (interest and amortization) on
27 its indebtedness to a lending institution, an insurance company, a
28 retirement fund or welfare fund which is operated under the supervision
29 of the banking or insurance laws of the state of New York or the United
30 States, and (iv) eight and one-half percent of that portion of the fair
31 market value of the property which exceeds the unpaid principal amount
32 of the mortgage indebtedness referred to in subparagraph (iii) of this
33 paragraph. Fair market value for the purposes of this paragraph shall be
34 six times the annual gross rent. The collection of any increase in the
35 stabilized rent for any apartment pursuant to this paragraph shall not
36 exceed six percent in any year from the effective date of the order
37 granting the increase over the rent set forth in the schedule of gross
38 rents, with collectability of any dollar excess above said sum to be
39 spread forward in similar increments and added to the stabilized rent as
40 established or set in future years;

41 § 6. Paragraph 3-a of subdivision d of section 6 of section 4 of chap-
42 ter 576 of the laws of 1974, constituting the emergency tenant
43 protection act of nineteen seventy-four, as added by section 13 of part
44 K of chapter 36 of the laws of 2019, is amended to read as follows:

45 (3-a) an application for a temporary major capital improvement
46 increase has been filed, a tenant shall have [~~sixty~~] **ninety** days from
47 the date of mailing of a notice of a proceeding in which to answer or
48 reply. The state division of housing and community renewal shall provide
49 any responding tenant with the reasons for the division's approval or
50 denial of such application; or

51 § 7. Subparagraph 7 of the second undesignated paragraph of paragraph
52 (a) of subdivision 4 of section 4 of chapter 274 of the laws of 1946,
53 constituting the emergency housing rent control law, as separately
54 amended by section 25 of part Q of chapter 39 and section 14 of part K
55 of chapter 36 of the laws of 2019, is amended to read as follows:

1 (7) there has been since March first, nineteen hundred fifty, a major
2 capital improvement essential for the preservation, energy efficiency,
3 functionality, or infrastructure of the entire building, improvement of
4 the structure including heating, windows, plumbing and roofing, but
5 shall not be for operational costs or unnecessary cosmetic improvements;
6 which for any order of the commissioner issued after the effective date
7 of the chapter of the laws of two thousand nineteen that amended this
8 paragraph the cost of such improvement shall be amortized over a twelve-
9 year period for buildings with thirty-five or fewer units or a twelve
10 and one-half year period for buildings with more than thirty-five units,
11 and shall be removed from the legal regulated rent thirty years from the
12 date the increase became effective inclusive of any increases granted by
13 the applicable rent guidelines board. Temporary major capital improve-
14 ment increases shall be collectible prospectively on the first day of
15 the first month beginning sixty days from the date of mailing notice of
16 approval to the tenant. Such notice shall disclose the total monthly
17 increase in rent and the first month in which the tenant would be
18 required to pay the temporary increase. An approval for a temporary
19 major capital improvement increase shall not include retroactive
20 payments. The collection of any increase shall not exceed two percent in
21 any year from the effective date of the order granting the increase over
22 the rent set forth in the schedule of gross rents, with collectability
23 of any dollar excess above said sum to be spread forward in similar
24 increments and added to the rent as established or set in future years.
25 Upon vacancy, the landlord may add any remaining balance of the tempo-
26 rary major capital improvement increase to the legal regulated rent.
27 Notwithstanding any other provision of the law, for any renewal lease
28 commencing on or after June 14, 2019, the collection of any rent
29 increases due to any major capital improvements approved on or after
30 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
31 any year for any tenant in occupancy on the date the major capital
32 improvement was approved; provided, however, where an application for a
33 temporary major capital improvement increase has been filed, a tenant
34 shall have [~~sixty~~ ninety] days from the date of mailing of a notice of
35 proceeding in which to answer or reply. The state division of housing
36 and community renewal shall provide any responding tenant with the
37 reasons for the division's approval or denial of such application;
38 provided, however, no application for a major capital improvement rent
39 increase shall be approved by the division of housing and community
40 renewal unless the owner of the property has filed all copies of permits
41 pertaining to the major capital improvement work with such application.
42 Any application submitted with fraudulent permits or without required
43 permits shall be denied; or

44 § 8. Subparagraph (g) of paragraph 1 of subdivision g of section
45 26-405 of the administrative code of the city of New York, as amended by
46 section 27 of part Q of chapter 39 of the laws of 2019, is amended to
47 read as follows:

48 (g) There has been since July first, nineteen hundred seventy, a major
49 capital improvement essential for the preservation energy efficiency,
50 functionality, or infrastructure of the entire building, improvement of
51 the structure including heating, windows, plumbing and roofing but shall
52 not be for operational costs or unnecessary cosmetic improvements. The
53 temporary increase based upon a major capital improvement under this
54 subparagraph for any order of the commissioner issued after the effec-
55 tive date of the chapter of the laws of two thousand nineteen that
56 amended this subparagraph shall be in an amount sufficient to amortize

1 the cost of the improvements pursuant to this subparagraph (g) over a
2 twelve-year period for buildings with thirty-five or fewer units or a
3 twelve and one-half year period for buildings with more than thirty-five
4 units, and shall be removed from the legal regulated rent thirty years
5 from the date the increase became effective inclusive of any increases
6 granted by the applicable rent guidelines board. Temporary major capital
7 improvement increases shall be collectible prospectively on the first
8 day of the first month beginning sixty days from the date of mailing
9 notice of approval to the tenant. Such notice shall disclose the total
10 monthly increase in rent and the first month in which the tenant would
11 be required to pay the temporary increase. An approval for a temporary
12 major capital improvement increase shall not include retroactive
13 payments. The collection of any increase shall not exceed two percent in
14 any year from the effective date of the order granting the increase over
15 the rent set forth in the schedule of gross rents, with collectability
16 of any dollar excess above said sum to be spread forward in similar
17 increments and added to the rent as established or set in future years.
18 Upon vacancy, the landlord may add any remaining balance of the tempo-
19 rary major capital improvement increase to the legal regulated rent.
20 Notwithstanding any other provision of the law, for any renewal lease
21 commencing on or after June 14, 2019, the collection of any rent
22 increases due to any major capital improvements approved on or after
23 June 16, 2012 and before June 16, 2019 shall not exceed two percent in
24 any year for any tenant in occupancy on the date the major capital
25 improvement was approved[~~7~~]; provided, however, no application for a
26 major capital improvement rent increase shall be approved by the divi-
27 sion of housing and community renewal unless the owner of the property
28 has filed all copies of permits pertaining to the major capital improve-
29 ment work with such application. Any application submitted with fraudu-
30 lent permits or without required permits shall be denied; or

31 § 9. Paragraph 3 of subdivision d of section 6 of section 4 of chap-
32 ter 576 of the laws of 1974, constituting the emergency tenant
33 protection act of nineteen seventy-four, as amended by section 26 of
34 part Q of chapter 39 of the laws of 2019, is amended to read as follows:

35 (3) there has been since January first, nineteen hundred seventy-four
36 a major capital improvement essential for the preservation, energy effi-
37 ciency, functionality, or infrastructure of the entire building,
38 improvement of the structure including heating, windows, plumbing and
39 roofing, but shall not be for operation costs or unnecessary cosmetic
40 improvements. An adjustment under this paragraph shall be in an amount
41 sufficient to amortize the cost of the improvements pursuant to this
42 paragraph over a twelve-year period for a building with thirty-five or
43 fewer housing accommodations, or a twelve and one-half period for a
44 building with more than thirty-five housing accommodations and shall be
45 removed from the legal regulated rent thirty years from the date the
46 increase became effective inclusive of any increases granted by the
47 applicable rent guidelines board, for any determination issued by the
48 division of housing and community renewal after the effective date of
49 the chapter of the laws of two thousand nineteen that amended this para-
50 graph. Temporary major capital improvement increases shall be collecta-
51 ble prospectively on the first day of the first month beginning sixty
52 days from the date of mailing notice of approval to the tenant. Such
53 notice shall disclose the total monthly increase in rent and the first
54 month in which the tenant would be required to pay the temporary
55 increase. An approval for a temporary major capital improvement increase
56 shall not include retroactive payments. The collection of any increase

1 shall not exceed two percent in any year from the effective date of the
2 order granting the increase over the rent set forth in the schedule of
3 gross rents, with collectability of any dollar excess above said sum to
4 be spread forward in similar increments and added to the rent as estab-
5 lished or set in future years. Upon vacancy, the landlord may add any
6 remaining balance of the temporary major capital improvement increase to
7 the legal regulated rent. Notwithstanding any other provision of the
8 law, the collection of any rent increases for any renewal lease commenc-
9 ing on or after June 14, 2019, due to any major capital improvements
10 approved on or after June 16, 2012 and before June 16, 2019 shall not
11 exceed two percent in any year for any tenant in occupancy on the date
12 the major capital improvement was approved[7]; provided, however, no
13 application for a major capital improvement rent increase shall be
14 approved by the division of housing and community renewal unless the
15 owner of the property has filed all copies of permits pertaining to the
16 major capital improvement work with such application. Any application
17 submitted with fraudulent permits or without required permits shall be
18 denied; or

19 § 10. This act shall take effect immediately; provided that the
20 amendments to sections 26-405 and 26-405.1 of the city rent and rehabil-
21 itation law made by sections two and eight of this act shall remain in
22 full force and effect only as long as the public emergency requiring the
23 regulation and control of residential rents and evictions continues, as
24 provided in subdivision 3 of section 1 of the local emergency housing
25 rent control act; provided, further, that the amendments to sections
26 26-511 and 26-511.1 of the administrative code of the city of New York,
27 made by sections one and five of this act shall expire on the same date
28 as such law expires and shall not affect the expiration of such law, as
29 provided under section 26-520 of such law.