



New York State
Unified Court System

OFFICE OF COURT ADMINISTRATION

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To: All Town and Village Judges

From: Office of Justice Court Support

Re: Statewide Housing Security and Tenant Protection Act of 2019 and its effect on
Summary Proceedings w/in Town and Village Courts

Date: June 19, 2019

On Friday, June 14, 2019, the governor signed into law a series of reforms, regarding landlord-tenant law, some of which has an effect statewide. Many of these provisions went into effect **IMMEDIATELY** and apply to any special proceedings (ie: Summary Proceedings) commenced¹ on or after June 14, 2019. Any effectiveness date other than on or after June 14, 2019 is so noted. While some of these changes are applicable to manufactured home eviction proceeding, such as the new 10 -17 day rule regarding service of the Petition and Notice of Petition, additional changes contained in this legislation relating to manufactured homes will be broken down in a further Memo to be distributed prior to their effective date of July 14th.

The Real Property Actions and Proceedings Law (RPAPL) is amended to add §702 which defines “rent” in a residential dwelling to mean the monthly or weekly amount charged in consideration, and excludes added fees from definition of rent.

RPAPL §711 is amended to add that no tenant or lawful occupant of a dwelling shall be removed except in a special proceeding. Further, **written** demand for rent must be made with at least **14 days’ notice** (a change from 3 days) for requiring either payment of rent, or possession of the premises, served as prescribed in §735 of RPAPL. Further, in the instance where a tenant dies during the term of the lease and rent is not been paid, an action may be commenced against the estate seeking a possessory judgment. Entry of such judgment shall be without prejudice to the possessory claims of the occupants and any warrant shall not be effective against the occupants.

RPAPL §731 is amended to provide that in an action premised on a tenant defaulting in the payment of rent, payment to the landlord of the full amount of the rent due, when such payment is made at any time prior to the hearing on the petition, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.

¹ Justice Courts are considered service courts, so a summary proceeding is commenced upon the service of the Notice of Petition and Petition. See, *528 East 11th Street HDFC v. Durieaux*, 164 Misc 2d 595 (Civil Court, City of New York, Housing Part 1995). In instances of less than personal service, service is complete upon filing with the Court.

RPAPL §732(1) is amended to require that the notice of petition in non-payment proceeding shall be returnable within **10 days**, (a change from 5 days) after its service. Stays of warrants of eviction have been significantly adjusted.

RPAPL §733 is amended to change the service time of the Notice of Petition and Petition to **no less than 10 days, and no more than 17 days**, before the time at which the petition is noticed to be heard (a change from the prior service time of 5 and 12 days) unless the appropriate Appellate Division has provided other service rules.

RPAPL §743 is amended to eliminate the requirement that an answer be made at least 3 days prior to the date the petition is to be heard.

RPAPL §745 is amended **to require** an adjournment of the trial **for not less than 14 days at the request of either party**. A second or subsequent request for adjournment shall be granted in the court's sole discretion.

RPAPL §749 is amended to require the warrant of eviction to not only describe the property, but to state the earliest date upon which execution may occur pursuant to the order of the court, but allowing the court to issue a stay of re-letting or renovation of the premises for a reasonable period of time.

The officer to whom the warrant is directed shall give at least **14 days' notice** (a change from 72 hours' notice) and the warrant shall be executed on a business day (Monday – Friday).

Effective October 12, 2019, RPL §226-c amended to require written notice of rent increases greater than 5% or intention not to renew tenancy by the following schedule:

- If tenant has occupied for less than 1 year and does not have a lease term of at least 1 year, landlord shall provide at least 30 days' notice
- If tenant has occupied for more than 1 year, but less than 2 years, landlord shall provide at least 60 days' notice
- If tenant has occupied for more than 2 years or has a lease term of at least 2 years, landlord shall provide at least 90 days' notice

Effective October 12, 2019, RPL §232-b amends monthly or month-to-month tenancies outside the city of New York to permit such tenancies to be terminated by the tenant at least 1 month before the expiration of the term of the tenant's election to terminate; the landlord's ability to terminate a monthly or month-to-month tenancy is governed by RPL §226-c.

The Court is affirmatively provided the power to stay or vacate the warrant prior to the execution thereof, as well as to restore the tenant to possession subsequent to the execution of the warrant. In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith.

RPAPL §753 is amended to permit, upon application of the occupant, a stay of the issuance of a warrant of eviction or any execution to collect the costs of the proceeding for a period of **not more than**

1 year (a change from 6 months), if the premises were used as a dwelling; that application is made in good faith; that the applicant cannot secure similar premises within the neighborhood and that the applicant made due and reasonable efforts to secure such other premises or by reason of other facts it would occasion extreme hardship to the applicant or the applicant's family if the stay were not granted. The Court shall consider serious ill health, significant exacerbation of an ongoing condition, a child's enrollment in a local school, and any other extenuating life circumstances affecting the ability of the applicant or the applicant's family to relocate and maintain quality of life. The Court shall consider any substantial hardship the stay may impose on the landlord in determining whether to grant the stay or in setting the length and other terms of the stay.

The provisions of the stay are not applicable to a proceeding when competent evidence establishes that the tenant is objectionable.

In the event that the such proceeding is based upon a claim that tenant or lessee has breached a provision of the lease, the Court shall grant a **30 day** (a change from 10 days) stay of issuance of the warrant, during which time the respondent may correct such breach.

RPAPL §757 provides that court records relating to evictions from foreclosed properties shall be sealed and deemed confidential. No disclosure or use of such information relating to any such lessee shall be authorized, and the use of such information shall be prohibited.

RPAPL §768 is amended to create the class A misdemeanor of Unlawful Eviction, which also carries civil penalties of not less than \$1,000, nor more than \$10,000 per violation.

Real Property Law (RPL) §223-b was amended to increase protections for retaliatory evictions, expressly protecting the warranty of habitability and prohibiting changes to the terms of tenancy, creating a presumption of retaliation for efforts to evict within 1 year of a good faith complaint, adding attorney's fees to a civil action for retaliatory eviction.

RPL §227-e creates a duty for the landlord to mitigate damages, in the event that the tenant vacates a premise in violation of the terms of a lease. Burden of proof to show mitigation effort in good faith is placed on party seeking to recover damages.

RPL §234 is amended to prohibit the recovery of attorney's fees upon a default judgment.

RPL §235-e is amended to require more formality in rent receipts and the lessor to maintain records of cash receipts for at least 3 years. Rent receipts must be issued immediately if rent is personally transmitted and within 15 days, if payment of rent is transmitted indirectly.

If the lessor fails to receive payment within 5 days of the date specified in a lease agreement, such lessor shall send the lessee, by certified mail, a written notice stating the failure to receive such rent payment. Failure of the lessor to provide a lessee with a written notice of the non-payment may be used as an affirmative defense by such lessee in an eviction proceeding based on a non-payment of rent.

RPL §238-a is amended to prohibit application fees and to limit the fees for credit or background checks to the actual cost of the credit or background check or \$20, whichever is less. In order to collect such fee, the lessor must provide a copy of the credit or background check and the receipt from the entity conducting the credit or background check to the potential tenant. The fee for a credit or background

check shall be waived, if the potential tenant provides a copy of a credit or background check conducted within the past 30 days.

No landlord may demand any late fee unless the payment of rent has not been made within 5 days of the date it was due, and the late fee shall not exceed \$50 or 5% of the monthly rent, whichever is less.

These protections protecting against additional fees may not be waived by the terms of the lease. These provisions do not apply to most retirement or continuing care communities.

Judiciary Law §212 is amended to prohibit the court system from selling any data regarding judicial proceedings related to residential tenancy, rent or eviction to any third party.

Effective July 14, 2019, RPL §227-f prohibits denial to rent based on the tenant's prior involvement in landlord-tenant actions, with a possible civil penalty of \$500-\$1,000 for each violation enforced by Attorney General.

Effective July 14, 2019, §7-108 of the General Obligations Law is amended for dwelling units subject to rent control, retirement communities, etc., that no security deposit shall exceed the amount of one month's rent, codifying the return of security deposits, granting the right to inspections of the rented property before and prior to the end of the rental period, requiring the landlord provide an itemized statement for the basis of the deposit retained and assigning the burden of proof to the landlord for retaining any portion of the deposit.

Please review these changes and contact the Office of Justice Court Support at 1-800-232-0630 with any questions you may have.