


To: Andrew R. Tyman, CEO

cc: Hilary Iannopollo, Valerie Mallard, Janet Adams, Karen Robideau,
Rhonda Nagle, Yessenia Green

From: M. Eades, Counsel 

Date: June 24, 2019

Re: "Statewide Housing Security and Tenant Protection Act of 2019"

I'm sending this by hard copy because I don't have email service back yet.

Last week New York State put into effect sweeping changes in the laws affecting landlord-tenant matters.

I've looked at the legislation over the weekend, but only today have a printed copy available to review.

I'll be sending further details later.

For now, some few highlights from Part M, which covers the whole state:

- ❖ The retaliatory eviction defense used to become available if a tenant made a good-faith complaint to a government agency regarding a landlord's alleged violation of any health or safety law, ordinance, etc. It now is also available if the tenant made a complaint to the landlord or the landlord's agent, and includes complaints about the warranty of habitability or of the landlord's statutory obligation to repair.
- ❖ The rebuttable presumption that the eviction proceeding is retaliatory now extends for year (instead of six months) after

the complaint, and now even in a non-payment proceeding! The burden is now on the landlord to “establish a non-retaliatory motive for his acts.”

- ❖ If the landlord does not intend to renew a lease, or offers to renew at a rent that is 5% or more above the existing rent, he must provide written notice at least thirty days before the end of the term (up to ninety days, depending on the length of the lease or the amount of time the tenant has occupied the unit). This will apply to month-to-month tenancies as well.
- ❖ The landlord has an affirmative duty to mitigate damage if a tenant vacates in violation of a lease. He shall “in good faith and according to the landlord’s resources and abilities, take reasonable and customary actions to rent the premises at fair market value” or at the rate as rented to the vacated tenant, whichever is lower.
- ❖ A landlord cannot refuse to rent to a potential tenant “on the basis that the potential tenant was involved in a past or pending landlord-tenant action or summary proceeding.” There’s a rebuttable presumption against the landlord if he “requested information from a tenant screening bureau” or “otherwise inspected court records pertaining to a potential tenant”, and then “subsequently refuses to rent or offer a lease to the potential tenant.”
- ❖ Termination of a month-to-month tenancy by a tenant is still upon one month’s notice, as it has been until now for both landlord and tenant. There’s no requirement that it be in writing. The tenant has no obligation to give notice to terminate at the end of a tenancy for a definite term (although the landlord must give notice of non-renewal, as above).

- ❖ “A landlord may not recover attorneys’ fees upon a default judgment.”
- ❖ The rules for issuing receipts for rent payments have been expanded. Among other things, if the rent isn’t paid within five days of its due date, the landlord “shall send the lessee, by certified mail, a written notice” to pay. Failure to do so creates an affirmative defense in a non-payment proceeding.
- ❖ Late fees can be charged only if payment is not made within five days of the due date, and cannot exceed \$50.00 or 5% of the rent, whichever is less.
- ❖ “Rent” means “the monthly or weekly amount charged in consideration for the use and occupation of a dwelling pursuant to a written or oral rental agreement. No fees, charges or penalties other than rent may be sought in a summary proceeding ... , notwithstanding any language to the contrary in any lease or rental agreement.”
- ❖ What used to be a three-day notice to the tenant to pay or vacate is now a fourteen-day notice.
- ❖ It is now clearly stated that a tenant who has defaulted in rent payment can make “payment to the landlord of the full amount of rent due, when such payment is made at any time prior to the hearing on the petition”, and it “shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.”
- ❖ The NP&P previously had to be served “at least five and not more than twelve days before the time at which the petition is noticed to be heard.” That has been changed to “at least ten and not more than seventeen days.”

- ❖ A landlord can no longer demand service of a reply at least three days before the appearance date if he has served the NP&P at least eight days in advance.
- ❖ If the Court determines there is a triable issue of fact and that a trial must be held, the Court used to be able in its discretion to grant an adjournment to a party upon certain proof of the need for the adjournment. Now the adjournment must be granted, for “not less than fourteen days, except by consent by all parties. A party’s second or subsequent request for adjournment shall be granted in the court’s sole discretion.” An adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel, made on a return date of the proceeding, does not count as an adjournment for the above purposes.
- ❖ A warrant now must “state the earliest date upon which execution may occur” and the statutory stay between service and execution of the warrant, formerly three days, is now fourteen days, excluding Saturday, Sunday and holiday.
- ❖ “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.” (Note: not only before the warrant is signed, as before, but now before it is executed!)
- ❖ There used to be a provision for the stay of proceedings dealing with residential premises in New York City. It’s now statewide. The Court can stay the issuance of a warrant for up to one year in certain circumstances, upon application by the occupant showing that “refusal to grant a stay would occasion extreme hardship”, but only upon the condition of the applicant’s deposit or payment in to the Court of an occupancy amount as a

rent equivalent during the stay, and the Court may require deposit of “rent unpaid by the occupant prior to the period of the stay.” (Query: does the full payment before execution of the warrant mean that the tenant can remain?)

- ❖ If a proceeding “is based upon a claim that the tenant or lessee has breached a provision of the lease, the court shall grant a thirty day stay of issuance of the warrant, during which time the respondent may correct such breach.” (Query: does the correction mean that the tenant can stay?)
- ❖ Newly defined unlawful eviction acts by a landlord may result in misdemeanor conviction and to significant civil penalty.
- ❖ Security deposits cannot exceed the amount of one month’s rent, and “shall be refundable ... upon the tenant’s vacating of the premises except for an amount lawfully retained for the reasonable and itemized costs due to non-payment of rent, damage caused by the tenant beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant’s belongings.”
- ❖ If the tenant accepts the landlord’s mandated offer to inspect the premises before initial possession, the parties must sign a written agreement before tenancy “attesting to the condition of the property and specifically noting any existing defects or damages.”
- ❖ “Within a reasonable time after notification of either party’s intention to terminate the tenancy, unless the tenant terminates the tenancy with less than two weeks’ notice,“ the landlord must offer in writing the opportunity to be present at an inspection to be made at least one week and not more than two weeks prior to the end of the tenancy. The landlord must

provide at least 48 hours' notice of the inspection date; must provide the tenant with an itemized statement specifying the repairs or cleaning that are proposed to be the basis for any deduction from the deposit; and the tenant will have the opportunity to cure any such condition before the end of the tenancy.

- ❖ Within fourteen days after the tenant has vacated, “the landlord shall provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, and shall return any remaining portion of the deposit to the tenant. Failure to meet the fourteen day deadline will result in forfeiture of “any right to retain any portion of the deposit.”
- ❖ These provisions became effective on June 14, the day the Governor signed the law, “and shall apply to actions and proceedings commenced on or after such effective date”, except that:
 - The landlord can still terminate a month-to-month tenancy upon a month's notice for 120 days (October 12?);
 - The new requirements for security deposit amount and refund, and for inspections, take effect thirty days after the law was signed (July 13?), “and shall apply to any lease or rental agreement or renewal of a lease or rental agreement entered into on or after such date;” and
 - The language about landlords not denying tenancy because of applicant's involvement in prior landlord-tenant actions or proceedings is also delayed for thirty days (July 13?).

**NEW PROVISIONS OF
REAL PROPERTY ACTIONS AND PROCEEDINGS LAW
RELATIVE TO SUMMARY EVICTION PROCEEDINGS:**

PREREQUISITES: NOTIFICATIONS TO TENANT

Notice/Papers	Type of Service	Time Table
<u>Rent Demand</u>	Written ... Oral Notice of Demand to pay is insufficient.	<u>14 days must elapse</u> after service upon tenant before Petition can be filed
Service of Process; Petition	Personal or Substitute Service	10-17 days
Legally Sufficient of Petition	Rent Only 1. Cannot include late fee 2. Cannot include attorney fee	
Answer by Tenant/Respondent	Written or Oral	Acceptable in Court (Need not be served in advance)
Payment of Delinquent Rent	Petition Dismissal	Tendered at or before initial court date
Utilities: Stay of Proceedings	Motion pre-hearing where Petitioner/Landlord has caused cessation of utility service	until utilities service is reinstated
Unlawful Eviction: Criminal Offense, Class A Misdemeanor against Petitioner/Landlord	Motion pre-hearing where Petitioner/Landlord has 1. "locked out" the Respondent/Tenant OR 2. Used force to evict Tenant/Respondent	

HEARING & POST HEARING ISSUES

Notice/Papers	Type of Service	Time Table
Request for Adjournment of Hearing	1. In court request 2. Where court finds a triable issue of fact	2 week minimum
Default Judgment	Failure of Tenant/Respondent to Appear 1. Judgment of Possession/ Warrant of Eviction 2. No Money Judgment regardless of the nature of service of process	At first court date
Payment of Delinquent Rent after Warrant Issued	Warrant of Eviction to be Vented	Received/Tendered to Court <i>before</i> execution of Warrant of Eviction unless court determines that delay was in "Bad Faith"
Affirmative Defense	failure to provide Tenant/Respondent with written receipt for cash payment withi 15 days; OR 30 day notice of intention not to renew lease OR 30 day notice of rent increase	to be presented at hearing

Warrants of Eviction

Hardship Stay of Execution of Warrant	request at hearing for a Stay of Execution of Warrant	for up to 1 year
Execution By Marshals	Court MUST insure clearly state the earliest day of execution on the Warrant	1. 14 days from date of service (up from 72 hours) 2. Business day between sunrise and sunset