

LAWS & RULES COMMITTEE MEETING

NOVEMBER 17, 2021 6:30 PM.

****HYBRID****

NO new Business

OLD BUSINESS

Good Cause Eviction

City of Kingston Legislation

Article XXX Prohibition of Eviction Without Good Cause

§ XX-XXX Grounds for removal of tenants

- A. No landlord shall remove a tenant from any housing accommodation, or attempt such removal or exclusion from possession, notwithstanding that the tenant has no written lease or that the lease or other rental agreement has expired or otherwise terminated, except upon order of a court of competent jurisdiction entered in an appropriate judicial action or proceeding in which the petitioner or plaintiff has established one of the following grounds as good cause for removal or eviction:
- (1) The tenant has failed to pay rent due and owing, provided, however, that the rent due and owing, or any part thereof, did not result from a rent increase or pattern of rent increases which, regardless of the tenant's prior consent, if any, is unconscionable or imposed for the purpose of circumventing the intent of this article. In determining whether all or part of the rent due and owing is the result of an unconscionable rent increase or pattern of rent increases that is imposed for the purpose of circumventing this article, the Court may consider, among other factors, i) the rate of the increase relative to the tenant's ability to afford said increase, ii) improvements made to the subject unit or common areas serving said unit, iii) whether the increase was precipitated by the tenant engaging in the activity described at section 223-b (1(a)-(c) of the Real Property Actions and Proceedings Law, iv) significant market changes relevant to the subject unit, and v) the condition of the unit or common areas serving the unit, and it shall be a rebuttable presumption that the rent for a dwelling not protected by rent regulation is unconscionable or imposed for the purpose of circumventing the intent of this article if said rent has been increased in any calendar year by a percentage exceeding five percent;
 - (2) The tenant is violating a reasonable obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;
 - (3) The tenant is committing or permitting a nuisance in such housing accommodation, common areas, or other areas of the property, or is maliciously or by reason of negligence damaging the housing accommodation, common areas, or other areas of the property; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures, including but not limited to, smoking inside the residential unit where smoking inside the residential unit has been prohibited by the landlord

and such prohibition has been communicated to the tenant, failing to dispose of waste created by the tenant's pet(s) from the property on which the residential unit is located in accordance with relevant laws, repeatedly engaging in activities that cause an unreasonable amount of noise or allowing others to do so without taking appropriate steps to mitigate such noise, and causing the accumulation of excessive rubbish and/or garbage in the residential unit and common areas;

- (4) Occupancy of the housing accommodation by the tenant is in violation of or causes a violation of law and the landlord is subject to civil or criminal penalties therefor; provided however that the City of Kingston or other qualified governmental entity has issued an order requiring the tenant to vacate the housing accommodation. No tenant shall be removed from possession of a housing accommodation on such ground unless the court finds that the cure of the violation of law requires the removal of the tenant and that the landlord did not, through neglect or deliberate action or failure to act, create the condition necessitating the order to vacate. In instances where the landlord does not undertake to cure conditions of the housing accommodation causing such violation of the law, the tenant shall have the right to pay or secure payment in a manner satisfactory to the court, to cure such violation provided that any tenant expenditures shall be applied against rent to which the landlord is entitled. In instances where removal of a tenant is absolutely essential to their health and safety, the removal of the tenant shall be without prejudice to any leasehold interest or other right of occupancy the tenant may have and the tenant shall be entitled to resume possession at such time as the dangerous conditions have been removed. Nothing herein shall abrogate or otherwise limit the right of a tenant to bring an action for monetary damages against the landlord to compel compliance by the landlord with all applicable laws;
- (5) The tenant is using or permitting the housing accommodation to be used for an illegal purpose;
- (6) The tenant has unreasonably refused the landlord access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or for the purpose of showing the housing accommodation to a prospective purchaser, mortgagee, or other person having a legitimate interest therein;
- (7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person;

- (8) The landlord seeks in good faith to recover possession of any or all housing accommodations located in a building with less than five units to personally occupy such housing accommodations as their principal residence;
- (9) Where the tenant has refused in bad faith to enter into a written lease which has been offered in good faith to the tenant by the landlord, subject to the following:
- (a) The proposed written lease must have been offered to the tenant in writing on at least two occasions at least two weeks apart; and such written offer shall include:
- (i) an original and one copy of the proposed written lease, executed by the landlord or their designee;
- (ii) notice of the landlord's intention to pursue eviction if the tenant rejects the proposed written lease and/or does not enter into said lease within forty-five days of the initial offer and specifying that the landlord may pursue eviction at any time between the expiration of the 45 days and 120 days of the date of such offer;
- (iii) clear instructions to the tenant concerning the manner in which the tenant is to communicate to the landlord acceptance or rejection of the written lease; and
- (iv) Notice of any proposed increase in rent equal to or greater than 5% shall be provided in compliance with RPL sect 226-C;
- (b) the proposed written lease shall not supersede an existing, active lease to which the landlord and the tenant are parties;
- (c) The terms of the proposed written lease may not:
- (i) be unconscionable and/or mandate or proscribe activities not rationally related to the regulation of activities—that would create a nuisance at the property—or cause discomfort to the tenants or occupants of the same or adjacent buildings or structures, including, but not limited to activities described in subdivision (3) of subsection A-above; or
- (ii) substantially alter the terms any of any existing lease other than to provide reasonable clarification of the terms and conditions of the tenancy;
- (d) the proposed written lease shall not be offered for the purposes of circumventing this article;
- (e) the tenant shall be entitled to dismissal of any eviction petition brought for the tenant's refusal to enter into a lease according to these terms if:

(i) the tenant consents to enter into the proposed written lease presented in the first offer pursuant to subsection 10(a) at any time prior to the earlier of the execution of the warrant of eviction or the good faith execution of an enforceable lease agreement between the landlord and a different party in an arms-length transaction for the premises occupied by the tenant regardless of landlord's willingness to accept said consent at the time it is communicated; and/or

(ii) prior to the commencement of the eviction proceeding the tenant attempted in good faith to negotiate the terms of the proposed written lease without substantially altering the terms of the prior lease agreement and that the landlord refused in bad faith to engage in such negotiation; and/or

(iii) the tenant's failure to enter into the proposed written lease was due to a good faith failure to comprehend the terms of the proposed written lease;

(iv) the tenant is a victim of domestic violence as defined by NY Social Service Law §459-A and is unable to safely enter into the proposed written lease due to good faith concerns for the tenant's personal safety; and/or

(v) the proposed written lease includes an increase in rent or increase in the tenant's responsibility for recurring payments associated with the tenancy would violate the terms or intent of subdivision (1) of subsection (A) above;

(f) that any proceeding for eviction pursuant to this subsection shall have been commenced within 120 days of the proposed written lease first having been offered to the tenant, provided, however, the landlord may commence the process for execution of a lease pursuant to this subdivision by submitting a new or revised lease to the tenant that would recommence the 120 day time period for a potential eviction action pursuant to this subdivision.

Section 2. This local law shall take effect immediately after final passage, public hearing and filing with the Secretary of State

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 - (2) The tenant is violating a reasonable obligation of their tenancy, other than the obligation to surrender possession, and has failed to cure such violation after written notice that the violation cease within ten days of receipt of such written notice, provided however, that the obligation of tenancy for which violation is claimed was not imposed for the purpose of circumventing the intent of this article;
 - (3) The tenant is committing or permitting a nuisance in such housing accommodation, common areas, or other areas of the property, or is maliciously or by reason of negligence damaging the housing accommodation, common areas, or other areas of the property; or the tenant's conduct is such as to interfere with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures, including but not limited to, smoking inside the residential unit where smoking inside the residential unit has been prohibited by the landlord

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- (7) The landlord seeks in good faith to recover possession of a housing accommodation located in a building containing fewer than twelve units because of immediate and compelling necessity for their own personal use and occupancy as their principal residence, or the personal use and occupancy as principal residence of their partner, spouse, parent, child, stepchild, father-in-law or mother-in-law, when no other suitable housing accommodation in such building is available. This paragraph shall permit recovery of only one housing accommodation and shall not apply to a housing accommodation occupied by a tenant who is sixty-two years of age or older or who is a disabled person;

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