

# Representing Tenants 2019 Legislative Update

Presented by Bryan Bergeron and Anthony Mohen  
Legal Aid Society of Northeastern New York  
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# Emergency Tenant Protection Act

- ETPA is now amended to provide for rent stabilization in all counties in New York State
  - previously set forth rent stabilization laws only in NYC, Rockland, Nassau, and Westchester Counties
  - empowers municipalities to declare an emergency for a class of housing accommodations if there is a vacancy rate below 5% for that class of accommodations
- ETPA no longer expires

*Effective June 14, 2019*

## Retaliation by Landlord (RPL § 223-b)

- Existing law protected tenants from evictions in retaliation for good faith complaints made to a government agency for alleged violations of any health or safety law, regulation, code, or ordinance
- For six months following a complaint or other action by the tenant, created a “rebuttable presumption” that an eviction by the landlord was retaliatory
  - Did not apply to nonpayment evictions or lease violations
  - Landlord only needed to provide a credible explanation of a non-retaliatory motive.
- Included refusal to offer a renewal lease
- Provided treble (triple) damages for enforcing provisions for retaliatory fees or penalties

## Retaliation by Landlord (updates)

- Now includes “warranty of habitability” or “duty to repair” issues (new), in addition to violations of any health or safety law, regulation, code, or ordinance
- A tenant can now complain directly to the landlord or the landlord’s agent, as well as to a governmental authority
- Extends “rebuttable presumption” period to one year from a good faith complaint
- Landlord must “establish” non-retaliatory motive
- Covers offer of a new lease with an unreasonable rent increase
- Applies in nonpayment and lease violation evictions

*Effective June 14, 2019*

## Non-renewals or rent increases (RPL § 226-c) (new)

- If a landlord does not intend to renew a tenancy, written notice must be given as follows:
  - 30-day notice required for tenants who have occupied an apartment for less than one year and do not have a lease term of at least one year;
  - 60-day notice required for tenants who have occupied an apartment for more than one year but less than two years, or have a lease term for at least one year but less than two years
  - 90-day notice required for tenants who have occupied an apartment for more than two years or has a lease term of at least 2 years – 90 days
- Also applies if landlord intends to renew tenancy with a rent increase greater or equal to 5%

*Effective October 12, 2019*

# Duty to Mitigate Damages (RPL § 227-e) (new)

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- If a tenant vacates an apartment in violation of lease, the landlord shall “in good faith ... take reasonable and customary actions to rent the premises at fair market value or the rate agreed to during the terms of the tenancy, whichever is lower.”
- New tenant’s lease “at fair market value or at the rate agreed to during the term of the tenancy” terminates the prior lease
- Burden of proof is on the landlord seeking to recover damages
- Once the landlord has found a new tenant, the vacating tenant is no longer responsible for rent

*Effective June 14, 2019*

## Denial for Prior Landlord/Tenant Disputes (RPL § 227-f) (new)

- Landlords may not longer refuse to rent or offer a lease to a potential tenant because the tenant was involved in a past/pending landlord/tenant dispute
- If a landlord requests court records or information from a tenant screening bureau and subsequently refuses to rent to a tenant, there is a rebuttable presumption that the landlord is in violation of the statute
- Attorney General may bring actions to enjoin continued violations and for civil penalties (\$500-\$1000)

*Effective July 14, 2019*

# Rent Receipts

## (RPL § 235-e) (updates)

- If tenant requests, in writing, that landlord provide receipt upon payment of rent, this request remains in effect for the duration of tenant's lease term
- Immediate receipts for payments personally transmitted; for payments "transmitted indirectly to a lessor" receipt must be provided within 15 days
- Allows landlord to send a rent demand if rent not received within 5 days after it is due
  - Notice must be written and sent by certified mail
  - Failure to send written notice pursuant to this section is an affirmative defense to a nonpayment eviction

*Effective July 14, 2019*





# Limitations on Fees (RPL §§ 234 and 238-a)

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- RPL 234 now prohibits landlords from recovering attorney fees in default judgments
- RPL 238-A creates new limitations on fees:
  - Landlords cannot charge fees for “processing, review or acceptance of an application”
  - Fees for background/credit checks limited to the actual cost or \$20, whichever is lower
- New limitations on late fees:
  - Cannot be charged until rent is 5 days late
  - Late fees capped at the lower of \$50 or 5% of rent

*Effective June 14, 2019*

# Nonpayment Evictions (updates)

- RPAPL § 702 now defines “rent” to mean only the amount charged for use and occupancy
  - fees, charges, and penalties cannot be sought in a nonpayment as “added rent”
- RPAPL § 711 amended to require a written 14-day rent demand
- RPAPL § 731 amended so that payment of the full amount of rent to the landlord at any time prior to the hearing of the petition shall be accepted by the landlord and renders the petition moot
  - With new laws prohibiting income discrimination, this should require landlords to accept assistance from DSS or other sources in advance of a hearing

*Effective June 14, 2019*

## Notice of Petition (RPAPL § 733)

- Notice of Petition shall now be served at least 10 days and not more than 17 days before the time at which the petition is to be heard
- RPAPL 732 provides a different timeline for nonpayment proceedings that has not been adopted outside of NYC
- RPAPL 743 amended to remove the requirement to answer at least 3 days prior
  - Note: this was originally effective June 14, 2019, but on June 24 the effective date was changed to July 14, 2019

*RPAPL 733 effective June 14, 2019; RPAPL 732 and 743 effective July 14, 2019*

# Trials (RPAPL § 745)

- Where there is a triable issue of fact, the court “shall” (must) grant an adjournment of not less than 14 days (except by consent) if such an adjournment is requested by either party
- A party’s second or subsequent request may be granted in the court’s discretion

*Originally effective June 14, 2019, effective date changed on June 24 to July 14, 2019*



## Warrants of Eviction (RPAPL § 749)

- Warrant of eviction must now state the earliest date upon which execution may occur
- Warrant must give tenant 14 days instead of 72 hours (includes weekends/holidays)
- Warrant may only be executed on business day between sunrise and sunset
- In non-payment proceedings – the court “shall” vacate the warrant upon tender or deposit with the court of the full rent due at any time prior to the warrant’s execution, unless petitioner can show rent was withheld in bad faith

*Effective June 14, 2019*

## Stays in Holdover Evictions (RPAPL § 753)

- Courts may stay a warrant of eviction for up to one year on the good faith application of a tenant in a holdover eviction
  - Tenant must be unable to find alternate housing, must have made reasonable efforts to obtain housing, or established other undue hardship
  - Stay granted only on condition that tenant continues to deposit the rent with the court
  - Does not apply to “objectionable tenancy” evictions
- Evictions based on breach of lease shall be stayed for 30 days to allow tenant to cure

*Effective June 14, 2019*

# Unlawful Evictions (RPAPL § 768)

- New section of the RPAPL prohibits self-help evictions including:
  - Use or threatened use of force
  - Conduct interfering with quiet enjoyment
  - Removing possessions from the unit
  - Removing the doors, changing the locks, or otherwise preventing access
- Violations classified as a class A misdemeanor
- Should a tenant be unlawfully evicted, the police can no longer state that this is a “civil matter” and that they are unable to help. As a class A misdemeanor, the police can (must?) now assist tenants where they have been unlawfully evicted
- Violators subject to civil penalties of no less than \$1,000 and no more than \$10,000 for each violations

*Effective June 14, 2019*

## Security Deposits (GOL § 7-108)

- Security deposits may not exceed the amount of one month's rent
- Landlord shall now offer tenant the opportunity to inspect apartment prior to move in – if this occurs, parties shall execute written agreement outlining conditions of property
- Tenant may now have landlord inspect property prior to tenant vacating the premises
  - Inspection to take place at most 2 weeks and at least 1 week before vacating on 48-hours notice
  - After inspection, tenant should have opportunity to cure any damage to apartment prior to moving out



## Security Deposits (Cont'd)

- Within 14 days of vacating property, landlord SHALL (must) provide tenant with itemize statement indicating the basis for the amounts deducted from security and return any remaining portion
  - If a landlord does not provide this statement within 14 days, they forfeit the right to retain any portion of the deposit
- In any action or proceeding disputing the amount of the deposit retained, the landlord bears the burden of proof
- Violators subject to liability for actual damages
- Willful violations subject to punitive damages up to twice the amount of the deposit

*Effective June 14, 2019*

# Contact Info

Anthony Mohen  
amohen@lasnny.org

Bryan Bergeron  
bbergeron@lasnny.org

