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Rent at your own risk: New law spells out changes for leasing in New York

This past June, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), a robust 145-page bill drafted in response to New York City's ongoing housing shortage crisis, was enacted into law. While the majority of the HSTPA is only applicable to rent-regulated apartments in New York City, there are some provisions that will have (and in some instances, have already had) a major impact on landlords statewide. In particular, local landlords should become familiar with Part M of the of the HSTPA; while it is not the only part to impact landlords outside of New York City, it contains a significant amount of provisions sure to impact day-to-day leasing practices, some of which are already effective, and some of which become effective on Oct. 12, 2019.

Residential landlords are now required to mitigate their damages if a tenant vacates its unit prior to the expiration of its lease term. Landlords must, in good faith and according to their resources and abilities, take reasonable and customary steps to re-rent the premises at fair market value or at the rate agreed upon in the tenant's lease, whichever is lower, and, if the landlord is able to do so, the breaching tenant's lease will be deemed terminated. Moreover, the landlord bears the burden of



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proof in any action to recover unpaid rent or deficiency. The HSTPA also significantly limits residential landlords' rights with respect to security deposits: they may not exceed one month's rent and may only be retained for a limited amount of specific purposes. In addition, prior to a tenant moving in, the landlord must offer the tenant the opportunity to inspect the premises and execute a written agreement whereby the parties agree upon and note any existing damages. Most tenants also now have the right to accompany the landlord or its agent at an inspection of premises, and to cure any defect for which the landlord intends to retain a portion of the deposit, prior to moving out. Lastly, if the landlord does not, within fourteen days of the tenant moving out, provide the tenant with an itemized statement of the defects for which the landlord has retained a portion of the deposit and return any remaining portion

of the deposit not retained, the landlord forfeits its right to retain any portion of such deposit.

Another change residential landlords should be aware of relates to attorneys' fees. If a lease contains language allowing the landlord to recover attorneys' fees or other expenses incurred due a tenant's breach, such lease is now deemed to also contain an implied covenant by the landlord to pay the same to the tenant in the event of a landlord's breach. In addition, landlords may no longer recover attorneys' fees upon a default judgment.

Perhaps some of the most significant changes resulting from the HSTPA relates to the non-payment of rent. Landlords may no longer demand rent or charge a late fee until the sixth day after the date such payment was due, and such fee may not exceed \$50 or five percent of the monthly rent, whichever is less. After such five-day grace period, the landlord must send written notice by certified mail notifying the tenant of such non-payment, and the landlord's failure to do so may be used by the tenant as an affirmative defense in a summary proceeding for failure to pay rent. In addition, before commencing a summary proceeding for failure to pay rent, the landlord must send 14 days' prior written notice demanding

either the rent or the surrender of the premises. In any event, oral demands for rent are now prohibited.

Residential landlords should also be aware of new notice requirements that will become effective on Oct. 12, 2019. If a residential landlord either intends to renew a tenancy with a rent increase in excess of five percent of the prior rental rate, or does not intend to renew a tenancy, the landlord must provide the tenant with sufficient prior written notice of such intention. The required amount of prior notice ranges from thirty to ninety days, depending on the length of the tenancy.

These are only some of the many changes resulting from the enactment of the HSTPA that are binding statewide. Local landlords should familiarize themselves with the HSTPA to ensure they are in compliance with the new law and not engaging in illegal practices.

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