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**New York State Public
Housing Authority
Director's Association**

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**NYS Tenant/Landlord Law:
*Housing Stability and Tenant Protection Act of 2019
Its Impact on Landlord-Tenant Proceedings***

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Overview

- On June 14, 2019, Governor Cuomo signed the Housing Stability and Tenant Protection Act of 2019 which provides for major reform to New York's rent and housing law with greater tenant protections
- With limited exceptions, the amendments were effective immediately as of June 14, 2019

Definition of “Rent”

- Previously
 - Not addressed
- Now
 - Rent is the monthly or weekly amount charged in consideration for use and occupation of a dwelling
 - It does not include fees, charges, or penalties
 - Only rent may be sought in a summary proceeding

Attorney's Fees

- Previously
 - Landlord could recover attorney's fees upon a default judgment
- Now
 - Landlord **may not** recover attorney's fees upon a default judgment
 - Applies to leases of residential property

Affirmative Defense: No Notice of Non-Payment

- Previously
 - Not addressed
- Now
 - Failure to provide tenant with written notice by **certified mail** that the landlord did not receive rent due is an affirmative defense available in a proceeding based on non-payment of rent

Rent Demand

- Previously
 - Landlord required to make a 3-day demand
 - Oral demand was sufficient
- Now
 - Landlord required to make and properly serve a **written demand** for the rent or possession of the premises with at least **14-days' notice** before commencing a summary judgment

Proper Service

- Delivery of Rent Demand, Notice of Petition and Petition
 - Personal delivery to tenant
 - Personal delivery and leave with a person of suitable age and discretion who resides or is employed at the property to be recovered
 - Within one day → mailing a copy to the tenant by both registered or certified mail and by regular first class mail
 - Last Resort: Affixing a copy upon a conspicuous part of the property or placing a copy under the entrance door of the property
 - Within one day → mailing a copy to the tenant by both registered or certified mail and by regular first class mail

Payment of Rent Prior to Hearing

- Previously
 - Not addressed
- Now
 - Payment of full amount of rent due at any time prior to the hearing renders the special proceeding moot

Time for Service of Pleadings

- Previously
 - Pleadings had to be served between 5-12 days before the hearing
- Now
 - Notice of petition and petition must be served **at least 10** and **not more than 17** days before the petition is to be heard

Automatic Adjournment

- Previously
 - Whether or not to grant an adjournment was in the court's sole discretion
- Now
 - Upon request, either party can receive an automatic adjournment of **not less than 14 days**
 - The court still maintains discretion in deciding whether to grant or deny any subsequent requests for adjournment

Warrants

- Previously
 - Officer had to give 72 hours' notice
- Now
 - (1) A warrant must state the earliest date upon which it can be executed and command the officer to remove only those individuals named in the proceeding
 - (2) The officer must give **14 days'** written notice before executing the warrant
 - (3) The warrant must be executed on a **business day** between sunrise and sunset

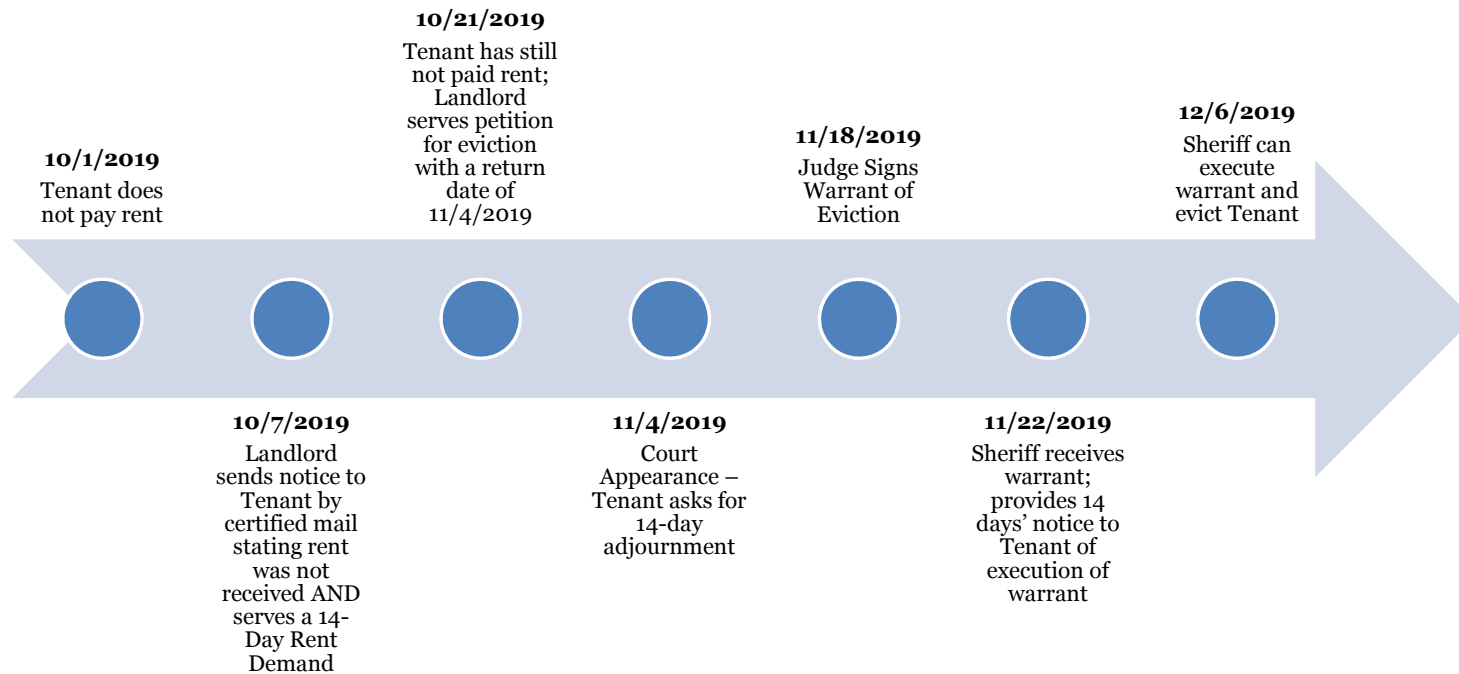
Right to Cure

- Previously
 - Not addressed
- Now
 - In a non-payment proceeding, the court must vacate the warrant if the tenant tenders or deposits with the court the **full amount of rent** due at any time prior to execution of the warrant

Stay of Warrant in premises Used for Dwelling Purposes

- Previously
 - (1) The court could issue a stay for up to 6 months
 - (2) The court had to grant a 10-day stay if proceeding was based on a claim that the tenant breached a lease provision
- Now
 - (1) The court may stay the issuance of a warrant for up to **1-year** in certain circumstances (i.e. extreme hardship) except where established by competent evidence that the tenant is objectionable
 - (2) The court **must** grant a **30-day** stay if proceeding is based on a claim that tenant breached a lease provision

Sample Timeline for Eviction Proceeding



Unlawful Eviction

- Previously
 - Not addressed
- Now
 - An individual who evicts or attempts to evict a lawful occupant by the following is subject to criminal and civil penalties:
 - Using or threatening the use of force
 - Engaging in conduct which interferes with the “comfort, repose, peace or quiet” of the occupant in the use or occupancy of the unit
 - Engaging or threatening to engage in conduct which prevents or intends to prevent the lawful occupancy of the unit
 - Penalties include conviction of a class A misdemeanor and fines of between \$1,000 and \$10,000 for each violation

Retaliatory Eviction

- Tenant's good-faith complaints to landlord, landlord's agent, or governmental authority are now protected
 - Includes good faith complaints about warranty of habitability and duty to repair
- Tenants have a rebuttable presumption of retaliatory eviction if landlord within **one year of complaint**:
 - Serves notice to quit
 - Commences summary proceeding
 - Offers a new lease with unreasonable rent increase
 - Attempts to substantially alter the tenancy terms
- To rebut this presumption, the landlord must establish a non-retaliatory motive for landlord's actions by preponderance of the evidence

Duty to Mitigate Damages

- Previously
 - Common law duty, not codified
- Now
 - Landlord has a duty to mitigate damages when tenant vacates in violation of lease
 - Landlord **must** take reasonable and customary actions to rent premises at a fair market value or rate of previous tenancy

Denial Based on Involvement in Prior Disputes

- Previously
 - Not addressed
- Now
 - A landlord of residential premises **may not** refuse to rent or offer to lease to a potential tenant on the ground that the potential tenant was involved in a past or pending landlord-tenant proceeding
 - The Attorney General can seek an injunction and civil penalties between \$500 and \$1,000 against one who has violated this section

Duty to Provide Rent Receipts

- Previously
 - A request for a receipt of rent paid by personal check did not remain in effect throughout the tenancy
 - Records were not required
 - There were no timing requirements for providing receipts
- Now
 - A request for a receipt of rent paid by personal check **remains in effect** throughout the tenancy
 - A landlord **must** provide a written receipt for rent paid in cash, or upon request if paid by personal check
 - Landlord must keep records of cash payments for at least **3 years**
 - Receipt must be given **immediately** if rent is paid directly, or within **15 days** if paid indirectly

Limitations on Fees

- Application Fees
 - Landlord may not charge fee for processing application
 - Landlord may charge actual costs for background check and/or credit check
 - Up to \$20 total
 - Fee must be waived if tenant provides reports within last **30 days**
- Late Fees
 - May not be charged unless payment is 5 or more days late
 - Cannot exceed **\$50 or 5% of monthly rent**, whichever is less

Notice to Terminate Tenancy or Increase Rent

- Previously
 - Not addressed
- Now
 - A landlord **must** provide **written notice** of a rent increase of at least 5% or an intention not to renew a lease
 - The amount of notice depends on how long the tenant has occupied the premises and/or the length of the lease term
- Note: These changes have an effective date of October 12, 2019.

Return of Security Deposits

- Previously
 - Not addressed
- Now
 - (1) Security deposit or advance **must not** exceed one month's rent
 - Deposit is refundable except for:
 - Costs due to non-payment of rent
 - Damages beyond normal wear and tear
 - Non-payment of utility bills payable to the landlord
 - Moving or storage of tenant's belongings
 - (2) Tenant has right to a pre-move in inspection

Return of Security Deposits

Continued

- (3) Tenant has right to an inspection 1-2 weeks before moving out and an opportunity to cure defects before moving out

- (4) Landlord must provide itemized statement of basis for withholding any portion of the deposit and the balance of the deposit within 14 days
 - If the landlord fails to do so, the landlord forfeits the right to keep any portion of the deposit

Source of Income Discrimination

- Previously
 - Not included as a protection classification
- Now
 - “Lawful source of income” is now a **protected classification** for housing discrimination
 - Illegal to refuse to rent, lease or sell housing based on lawful source of income
 - Lawful source of income includes, but is not limited to:
 - Child support, alimony, foster care subsidies, social security, any form of federal, state or local public assistance or housing assistance, Section 8 vouchers, or any other form of housing assistance payment or credit

Questions?

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