

Proposed Local Law Number 7 Of 2021

County of Ulster

A Local Law Amending The Code Of The County Of Ulster In Relation To Evictions

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. LEGISLATIVE FINDINGS.

The New York State Housing Stability and Tenant Protection Act (“HSTPA”), passed in 2019, provides certain protections for tenants which effectively delay the initiation of an eviction proceeding.

The Ulster County Legislature recognizes that expressly excluded from the HSTPA is any requirement for the landlords or property owners to provide a justification for said eviction or removal of tenants from housing accommodations in the County of Ulster compelling the Legislature to clarify the process generally outlined by the HSTPA.

The Ulster County Legislature further finds it essential to enact a Good Cause eviction law which shall prohibit a landlord from removing a tenant from a housing accommodation without an order from a judge determining whether or not the eviction is for a good cause.

SECTION 2. PROHIBITION OF EVICTION WITHOUT GOOD CAUSE.

A. Definitions.

1. The term “housing accommodation,” as set forth in this Local Law, shall mean any residential premises located in the County of Ulster.
2. The term “landlord,” as set forth in this Local Law shall mean any owner, lessor, sublessor, assignor, or other person receiving or entitled to receive rent for the occupancy of any housing accommodation or an agent of any of the foregoing.
3. The term “tenant” as set forth in this Local Law shall mean a tenant, sub-tenant, lessee, sublessee, assignee, manufactured home tenant as defined in paragraph one of subsection (A) of section two hundred thirty-three of the NYS Real Property Actions and Proceedings Law, an occupant of a rooming house or hotel as defined in section seven hundred eleven of the Real Property Actions and Proceedings Law or any other person entitled to the possession, use or occupancy of any housing accommodation.

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4. The term “rent” as set forth in this Local Law shall mean any consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the possession, use or occupancy of housing accommodations or the execution or transfer of a lease for such housing accommodations.

5. The term “disabled person” as set forth in this Local Law in this article shall be applied according to the definition set forth at NY Public Housing Law §14(4)(c)(iii).

B. Applicability.

This Local Law shall apply to all housing accommodations except:

1. Owner-occupied premises with four or less units;
2. Premises sublet pursuant to section two hundred twenty-six-b of the Real Property Law or otherwise, where the sublessor seeks in good faith to recover possession of such housing accommodation for their own personal use and occupancy;
3. Premises where the possession, use or occupancy of which is solely incident to employment and such employment is being lawfully terminated; and
4. Premises otherwise subject to regulation of rents or evictions pursuant to state or federal law to the extent that such state or federal law requires “good cause” for termination or non-renewal of such tenancies.

SECTION 3. NECESSITY FOR GOOD CAUSE.

A. No landlord shall, by action to evict or to recover possession, by exclusion from possession, by failure to renew any lease, or otherwise, remove any tenant from housing accommodation except for good cause as defined in section three hundred twenty-eight of this article.

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B. 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 unreasonable 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 unreasonable rent increase or pattern of rent increases, 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 unreasonable 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, or is maliciously or by reason of negligence damaging the housing accommodation; or the tenant's conduct, including but not limited, 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, and causing the accumulation of excessive rubbish and/or garbage in the residential unit and common areas, is such as to interfere

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with the comfort of the landlord or other tenants or occupants of the same or adjacent buildings or structures;

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 County of Ulster 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;

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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, who is a disabled person, or who has dependents for which the residence serves as their primary residence;

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, which such written offer to 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 within 120 days pursuant to this article if the tenant rejects the proposed written lease and/or does not enter into said lease within forty-five days of the initial 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 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;

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- c. The terms of the proposed written lease may not;
 - (i) be unreasonable and/or mandate or proscribe activities not rationally related to the regulation of activities which would create a nuisance at the property or cause discomfort to the tenants or occupants of the same or adjacent buildings or structures as described at section A(3) above; or
 - (ii) substantially alter the terms any of any existing lease;
- 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 execution of the warrant of eviction 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 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 which is unreasonable or imposed for the purposes of circumventing the intent of this article per subsection (A)(1), above.

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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.

C. A tenant required to surrender a housing accommodation by virtue of the operation of paragraph (7), (8), or (9) of subsection A of this section shall have a cause of action in any court of competent jurisdiction for damages, declaratory, and injunctive relief against a landlord or purchaser of the premises who makes a fraudulent statement regarding a proposed use of the housing accommodation. In any action or proceeding brought pursuant to this provision a prevailing tenant shall be entitled to recovery of actual damages, and reasonable attorneys' fees.

D. Nothing in this section shall abrogate or limit the tenant's right, pursuant to section seven hundred fifty-one of the Real Property Actions and Proceedings Law, to permanently stay the issuance or execution of a warrant or eviction in a summary proceeding, whether characterized as a nonpayment, objectionable tenancy, or holdover proceeding, the underlying basis of which is the nonpayment of rent, so long as the tenant complies with the procedural requirements of section seven hundred fifty-one of the Real Property Actions and Proceedings Law.

SECTION 4. INTIMIDATION.

A. It shall be a rebuttable presumption that the eviction is not for good cause if there is a history of landlord intimidation of the tenant.

B. For the purpose of this Section, intimidation shall be defined as the use of aggressive methods by the landlord in an attempt to pressure or harass a tenant. It can be, but is not limited, to:

1. Illegal Entry: Entering the premises occupied by a tenant without advance notice, tenant approval, or without prior warning, shall be considered intimidation. Emergencies are an exception to this rule;

2. Discontinuing Essential Services and Utilities: Discontinuing heat, hot water, sewage, and electricity violates the warranty of habitability, allowing the tenant to have the right to basic necessities, and shall be considered intimidation;

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3. Refusing to Make Repairs or Perform Maintenance: A landlord may attempt to make living conditions at the property uncomfortable by refusing to make necessary repairs or perform maintenance furnaces, stoves, cooling system, roof, etc. Landlords may fail or delay to correct hazardous conditions including mold, lead paint, or dust and debris. It shall be considered intimidation to not address these issues;

4. Unreasonable Rent Increases: Unreasonably increasing rent, without proper notice, as described on Section B (3)(1) of this Local Law, shall be considered intimidation;

5. Changing the Locks: A landlord may change the locks on common area doors or on the actual entry doors to the tenant's unit to get the tenant to move out. It shall be considered intimidation from the landlord if these actions are taken.

6. Buyout: A landlord may try to have the tenant accept a sum of money in exchange for the tenant to move out of the premises. However, repeated attempts to buy out the tenant after the tenant's refusal shall be considered intimidation.

7. Verbal and/or Physical Threats: A landlord may attempt to intimidate a tenant over the phone, in person or in writing through texts, emails, or written letters. Additionally, a landlord may try to intimidate a tenant by physically blocking an exit from a room, shouting at the tenant, threatening to disclose the tenants status as an undocumented immigrant, or even putting their hands on the tenant. Verbal or physical threats shall be considered intimidation.

C. The tenant should document any alleged incident of intimidation that occurs including the date, time, and nature of the intimidation. The tenant should keep any evidence of the harassment, including a voicemail, text message, email, letter, photo, or video that captures the incident. The adjudicator may also rely on the credible testimony of the tenant if evidence is not available.

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SECTION 5. PRESERVATION OF EXISTING REQUIREMENTS OF LAW.

No action shall be maintainable and no judgment of possession shall be entered for housing accommodations pursuant to this article, unless the landlord has complied with any and all applicable laws governing such action or proceeding and has complied with any and all applicable laws governing notice to tenants including, without limitation, the manner and the time of service of such notice and the contents of such notice. Nothing in this article shall preclude individuals from the voluntary dissolution of a lease agreement on such permissible terms as both parties may agree to, though such agreement may not provide a basis for the issuance of a warrant of eviction or provide the Court with authority to intervene in such voluntary dissolutions entered into outside of and not properly brought before the Court's jurisdiction.

SECTION 6. WAIVER OF RIGHTS VOID.

Any agreement by a tenant heretofore or hereinafter entered into in a written lease or other rental agreement waiving or modifying their rights as set forth in this article shall be void as contrary to public policy.

SECTION 7. SEVERABILITY

If any provision of this act, or any application of any provision of this article, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this article, which can be given effect without that provision or application; and to that end, the provisions and applications of this article are severable.

SECTION 8. EFFECTIVE DATE.

This Local Law shall become effective 30 days after its filing with the Office of the Secretary of State of the State of New York.