St. John's Law Review

Volume 19
Number 2 *Volume 19, April 1945, Number 2*

Article 20

July 2013

New York Commercial Rent Control Acts

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the proof given and the affidavits sworn to by the respective persons before such judge or surrogate.[26]

It is readily evident, therefore, that a foster parent on active duty in the armed forces of the United States could not be present at the time so required pursuant to statute.[27] Hence, to facilitate adoptions among the members of the armed forces, the legislature has amended the requirement for personal appearance in respect to such members of the armed forces.[28] As the amended statute now provides, it is possible where the foster parent, who is on active duty, is married to the natural parent of the child, for the county judge or surrogate to dispense with the appearance of the foster parent, when the natural parent and spouse is actually present before such judge or surrogate, in person, for the required examinations.[29] Where this is the method followed, and the verification, agreement and consent of the parent in the armed forces is necessary, it is deemed sufficient if such verification, agreement and consent be duly acknowledged, or proved and certified in form sufficient to entitle a conveyance to be recorded in this state.[30] Upon the receipt of such papers duly acknowledged, the judge or surrogate may grant the order of adoption without the personal appearance of such foster parent, parent, or person.[31] The amended act, as adopted, was made retroactive in effect, applying to all proceedings for adoption instituted since December 1, 1941.[32]

It is submitted that the amendment will be beneficial in effect, since by its scope, it seeks to strengthen the status of marriage by removing a possible latent cause for disunity, and to aid further in stabilizing the family unit, as well as eventually to insure the adequate rearing of the children so adopted.

MICHAEL L. POLICHETTI.

NEW YORK COMMERCIAL RENT CONTROL ACTS.—Not the least of the social and economic problems created by the war have been those which have confronted the tenants of real property who have found it necessary to execute or renew a lease under the abnormal conditions brought on by our involvement. It is but pointing out the obvious to say that building construction very nearly ceased in New York City even before we became engaged in the war, while the demand for living quarters and commercial space increased sharply as a result of the increased activity and the concentration of workers

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[26] N. Y. DOM. REL. LAW § 112, par. 5.
[27] *Ibid.*
[28] *Id.* pars. 1 and 5 as amended by L. 1945, c. 98.
[29] *Id.* par. 5.
[30] *Ibid.; see also* N. Y. REAL PROP. LAW § 291 for method of recording conveyances.
[31] See note 30 *supra.*
[32] L. 1945, c. 98, § 2.

which the war effort brought to all manufacturing and commercial centers. Early in the struggle the need for regulation of the renting of dwelling space was realized and dealt with by the adoption of the rent regulations of the O.P.A.[1] Commercial rents, on the other hand, in New York City at least, remained subject to the harsh laws of supply and demand. That there have been periods when landlords as a class have received from their property a return which has been less than adequate is perhaps so notorious as to be a subject of judicial notice, and it would be expecting too much of human nature to anticipate that landlords would let pass unexploited an opportunity to recoup; it is doubtful that tenants would either, if the positions were reversed. Recognizing the danger to the war effort and to civilian economy represented by the prospect of pyramiding commercial rents in a free market, the New York State Legislature has provided a safeguard in preventive and remedial emergency laws which seem admirably suited to accomplish the purposes for which they were drawn.[2]

Chapter three of the Laws of 1945, effective as of January 24, 1945, as amended by chapter 315, approved March 28 but by the terms of the amendment effective as of the date of chapter three, freezes the rent which may be charged for premises used for commercial purposes, that is, the manufacture, sale, processing, storage or distribution of personal property. Retail stores and offices are excluded, being brought under the provisions of chapter 314, effective March 28, 1945. The acts apply only to "a city having more than one million inhabitants" which in effect limit their application to the city of New York. Dwelling space, piers, docks and wharf property, theatres, sports arenas and exhibition halls are specifically excluded by the terms of the acts. The rents which may be charged are fixed, in the case of stores and offices at the actual rent charged on June 1, 1944, and in the case of all other space affected at the rent charged on March 1, 1943, plus fifteen percent in each case. If the space was not occupied on the controlling date for the purpose for which it is let or proposed to be let, provision is made for ascertaining the reasonable rental value as of such date, and fifteen percent may then be added. The rent so computed is designated the "emergency rent", and any rent in excess thereof is presumed to be unjust, unreasonable and oppressive, and the excess above the emergency rent is uncollectible during the emergency. This presumption is modified by a second, namely, that a net return of six percent of the fair value of the entire property, plus two percent for amortization of any principal secured by mortgage, is a reasonable return. If the yield of

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[1] The latest regulations are set forth in O.P.A. Doc. 42476, pt. 1388, Dec. 26, 1944.

[2] A short history of the events preceding the passage of the laws is given by Judge Lewis in his opinion in *A. B. Madison Ave. Corp. v. Cohn,* citing 3 N. Y. STATE Ass. J. (1944) 2382, and N. Y. STATE LEGIS. DOC. No. 2 (1944) 18. See note 4 *infra.*

the emergency rent is less, the landlord may bring a proceeding in the Supreme Court in the county in which the property is located, to fix a rent in excess of the emergency rent and yet reasonable within the meaning of the second presumption. In lieu of fixation by the Supreme Court, arbitration proceedings may be substituted, but only if both parties agree on the latter method. A rent in excess of the emergency rent may also be fixed by written agreement signed by the landlord and the tenant. The agreement must state the amount of the emergency rent, must recite that the landlord has advised the tenant prior to signing the agreement of his right to continue paying the emergency rent until a rent is fixed as provided above, and that such agreement may be cancelled by the tenant upon sixty days' written notice. The landlord is not permitted to seek, receive, or demand an increased rent when any lease or rental agreement provides for a rent less than the emergency rent irrespective of the date of such lease or agreement.

Regardless of the amount of rent reserved in any lease, or in the absence of a lease, so long as the tenant continues to pay the rent to which the landlord is entitled he may not be removed, notwithstanding the issuance of any order of dispossess, warrant or other process prior to the effective date of the new statute. However, the act provides for exceptions to this rule.[3] The landlord is saved harmless in liability for damages for failure to give possession to a new tenant when the former tenant holds over by virtue of the provisions of the act. No cause of action is created in favor of a tenant for rent in excess of the emergency rent paid before the effective date of the act which applies. Any waiver of the provisions of the acts is made unenforceable and void. A lease wherein the specified rent is variable according to volume of business or other criteria continues without change, but if a minimum rent is provided in such case, such minimum rent is subject to the provisions of the legislation. Except

[3] The tenant may be removed: (1) for unreasonably refusing the landlord access to the premises, (2) for violation of a substantial provision of the lease or agreement, except the agreement to pay rent, (3) for committing a nuisance or allowing an illegal use of the premises, (4) for refusal to renew a prior lease on like terms at an emergency rent or less, (5) where the landlord seeks to recover for the purpose of demolishing the building and constructing a new one, (6) where the landlord seeks to recover space for his personal and immediate use, having an equity of twenty-five percent of the value of the entire property and an interest of fifty percent in the business he proposes to carry on, or (7) where the building is to be demolished to carry out a public housing or rehabilitation project, and (8) in cases where the tenant has no lease and is not engaged in war work, if the landlord has rented to one so engaged. It is to be noted that in situation (5) the tenant may recover damages caused by his removal if the landlord does not commence demolition within ninety days and proceed with reasonable diligence, or in situation (6) if he fails to occupy the space and actively conduct a business therein within thirty days, or if after removing the tenant he permits occupancy by or leases to a third party within six months. Not only war contractors, but governmental agencies and bodies organized exclusively for religious purposes are also exempted from removal under the conditions of situation (8).

for the provision suspending, during the emergency, the right to collect the rent reserved to such extent as it exceeds the "emergency rent" or the "reasonable return", all leases would seem to remain in full force and effect,[4] with one further modification, to wit: a lease for a term which commences subsequent to the effective date of either act and which is a renewal of a former lease by the same tenant may be abridged as to the term of the renewal but not so that the term shall be less than that of the prior lease.

The above is presented not as an analysis of the laws, but as a summary of some of the more important provisions. For a determination of the result in any specific situation, recourse must be had to the detailed language of the laws, and to the construction placed thereon by the courts.[5]

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[4] In *Schwartz v. Church & Commerce Corp.*, note 5 *infra*, Mr. Justice Shientag held defendant landlord's contention that the enactment of the statute rendered unenforceable a lease which reserved a rent in excess of the emergency rent, to be without merit.

[5] *A. B. Madison Corp. v. Cohn*, 183 Misc. 1061, 53 N. Y. S. (2d) 54 (1945) was a summary proceeding instituted on Jan. 17, 1945, to dispossess a holdover tenant whose lease had expired on Jan. 15, 1945. Although a new lease had been executed by the parties at a fifty percent increase in rent, the tenant tendered a check in the amount of the old rent, which the landlord refused. The court held that normally the landlord would have been entitled to a final order and the issuance of a warrant of eviction, the conventional relationship which the new lease continued having been terminated by the failure to pay the rent reserved, but that notwithstanding the termination of the lease prior to the effective date of the law, the tenant could not be removed during the emergency so long as he continued to pay the old rent.

In *Twentieth Century Associates, Inc. v. Waldman*, 184 Misc. 24, 53 N. Y. S. (2d) 612 (1945), the tenant occupied commercial space on March 1, 1943, at a monthly rental of $75. On Nov. 28, 1944, a renewal lease was entered into which increased the rent to $133.34 a month. After chapter three, Laws of 1945, became effective, the tenant tendered to the plaintiff landlord the sum of $86.25 as rent computed on the basis of the language of chapter three. In a suit to recover the rent reserved in the lease, the defendant tenant had judgment on the pleadings.

In *Rosen v. 370 West 35th St. Corp.*, 184 Misc. 172, 53 N. Y. S. (2d) 560 (1945), the court granted the holdover tenant's application for an injunction restraining the landlord from executing a warrant of dispossess which had issued prior to the effective date of the act.

In *Sissias v. Perlmutter*, 184 Misc. 174, 53 N. Y. S. (2d) 818 (1945), the court held that the benefits of the laws do not extend to protect purely personal privileges which a sublessee enjoyed from his immediate lessor, when the latter had surrendered the premises to the landlord, without passing on the rights of subtenants generally as against the owner or their immediate lessors.

In *Schwartz v. Church and Commerce Corp.*, 184 Misc. 200, 53 N. Y. S. (2d) 666 (1945), plaintiff tenant had entered, on Oct. 24, 1944, into a new lease for the space he then occupied and for additional space as well. Defendant acquired title on Dec. 11, 1944, subject to the terms of plaintiff's new lease, which commenced on Feb. 1, 1945, but when that date arrived he refused to give plaintiff possession of the additional space, leasing it instead to a corporation of which he was the sole owner. Plaintiff moved for an order directing specific performance of the lease, but the court held that while the enactment of the statute suggested the necessity of equitable intervention, it was not conclusive, and in the absence of a showing of special circumstances

With a like reservation, some of the details of practice and procedure [6] may be noted. Within twenty days from March 28, 1945, the landlord is required to have furnished each tenant with an accurate statement of the amount of his emergency rent, and while the landlord is in default with such statement, no rent is collectible. In a proceeding brought by a landlord to fix a rent in the Supreme Court, or by arbitration, the landlord must on five days' notice or such notice as the court or arbitrators shall determine, furnish the tenant with a verified bill of particulars, setting forth the gross income derived from the entire property the preceding year, the names and addresses of all tenants and the rent charged to each, and other data necessary to a computation of the legal net yield of the lease or rental agreement. Issue shall not be deemed to be joined until such bill is served, and upon default in service, the proceeding must be dismissed on motion of the tenant. As a condition to maintaining a defense, the tenant must pay the emergency rent on the due date. Should a landlord wilfully demand or receive a rent in excess of the emergency rent, he forfeits the succeeding month's rent.

In any proceeding to recover possession for default in payment of rent, the landlord must allege and prove that the rent charged is not greater than the emergency rent, and that there has been no diminution of services. Such excess rent or diminution of services is made a defense and the excess rent or the value of the services shall be allowed in reduction and shall be uncollectible.

Prior to the passage of the acts here under consideration, there had been no attempt to regulate commercial rents by legislative action in New York State. The housing shortage which rose to acute pro-

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or the lack of an adequate remedy at law, denied plaintiff's motion, placing the case on the calendar for trial at an early date. Defenses (1) that the lease was unenforceable under the law because it provided for rent in excess of the maximum permitted under the statute, (2) that there was a mutual mistake of law in executing the lease because it was not in the contemplation of the parties that the act would be passed, and a counterclaim for rescission on the ground that the excessive rent provided for voided the lease, were held to be without merit.

In *Central Savings Bank v. Logan,* 184 Misc. 203, 54 N. Y. S. (2d) 31 (1945), the provisions of the law were held to apply only to rents which accrued after the effective date of the act.

[6] In New York County, where the greater part of the proceedings under the acts have been and probably will be brought, some special requirements in procedure have been laid down by direction of Mr. Justice Irving L. Levey, who presides in the Special Term part devoted exclusively to such proceedings. Chiefly to be noted are provisions making the landlord's books and records pertaining to items claimed in the bill of particulars available to the tenant upon two days' written notice, and directing that appraisals of the value of the property affected shall be exchanged three days before trial.

See N. Y. L. J., Mar. 16, 1945, p. 1005, col. 7; Mar. 28, 1945, p. 1169, col. 6; April 3, 1945, p. 1283, col. 4.

Of 1800 cases at issue in the Special Term, rent control part, all but 25 had been disposed of within two months by Mr. Justice Irving L. Levey. See N. Y. Times, May 22, 1945, p. 21, col. 5.

portions after the last war gave rise to remedial emergency legislation [7] often referred to as the "September Housing" or "Emergency Rent Laws". These laws regulated the rental of dwelling property only, and when attacked on the ground of their constitutionality they were upheld in the leading cases of *People* ex rel. *Durham Realty Corp. v. La Fetra* [8] and *Levy Leasing Co. v. Siegel.*[9] It was there held that denial of the statutory remedy of dispossess, in the emergency, did not deny the equal protection of the laws, impair the obligations of contracts, deprive one of property without due process, or take property without compensation. In *Block v. Hirsch* [10] the Supreme Court of the United States upheld the constitutionality of a statute, similar in design and purpose, which embraced business as well as residential space. In these opinions the courts sustained the laws as emergency legislation, pointing out that it was the emergency growing out of the last war which clothed the renting of premises with such public interest as to bring it, during the emergency, within the police power. In both the *Levy* and the *Block* cases there were vigorous dissents, but although similar attacks have already been made on the present legislation its constitutionality has invariably been upheld.[11]

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[7] Cc. 942-953, L. 1920.

[8] 230 N. Y. 429, 130 N. E. 601 (1921).

[9] 230 N. Y. 634, 130 N. E. 923 (1921).

[10] 256 U. S. 135, 41 Sup. Ct. 458 (1921).

See also the annotations in 11 A. L. R. 1238 and 16 A. L. R. 178.

[11] Twentieth Century Associates v. Waldman; Rosen v. 370 W. 35 St. Corp.; Sissias v. Perlmutter; Schwartz v. Church & Commerce Corp. See note 4 *supra.*

In the first case arising under this legislation to be reviewed by an appellate court, the Appellate Division of the First Department, unanimously upheld the validity of the law in the face of the classic attacks on its constitutionality. In summary proceedings brought by the landlord on Jan. 9, 1945 two tenants consented to the entry of final orders in favor of the landlord and the issuance of warrants forthwith, execution, however, to be stayed until Jan. 31st. On Jan. 24th, chapter three of the Laws of 1945 became effective. The tenants remained in possession and the marshal to whom the warrants had been delivered refused to execute them on the grounds that the law operated to stay the execution. The landlord applied for and obtained an order under Article 78 of the Civil Practice Act, directing the marshal to execute the warrants, but on appeal by the tenants the order was reversed and the application denied. On the appeal the landlord contended that the provision prohibiting removal of a tenant "so long as he continues to pay the rent to which the landlord is entitled", notwithstanding the issuance of any order to dispossess, warrant, or process prior to the effective date of the statute, deprived him of vested property rights. He questioned the constitutionality of the entire legislation, contending that it deprived him of property without due process, denied him equal protection, took private property for private use without just compensation and impaired the obligation of contract. *Held,* for the tenants. The appellate court held that the specified provision does not take away any right, but merely suspends the remedy, and assures the landlord a reasonable rent for his property during an emergency, which the court found as a fact to exist. This is a valid exercise of the police power. Confining itself to the grounds of alleged unconstitutionality urged by the landlord, the court held that while one or more of the constitutional guarantees are infringed by the legislation, those guaran-

It has been pointed out that the provision of the current laws which specifies what shall be presumed a reasonable return draws a distinction between the owners of unencumbered property and the owners of property held subject to mortgage. Property held free and clear is limited to a yield of six percent of the fair value, including land, whereas mortgaged holdings are allowed an additional two percent "of principal for the amortization of any mortgages." It might be argued that this differentiation denies to the owner of unencumbered property the equal protection of the laws. An adequate consideration of this question goes beyond the scope of this article, but it may be said that this is a constitutional limitation which has been invoked with relatively infrequent success [12] and the classification does not appear to be so arbitrary or unreasonable as to violate the provision in Amendment XIV of the United States Constitution and in Article I, Section 11 of the constitution of the State of New York. Relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment,[13] and the needs of holders of mortgaged real estate have already been recognized in other emergency legislation, the mortgage moratorium statutes.[14] Literal and precise equality in respect of some matters is neither attainable nor required.[15] Whether owners of mortgaged property and owners of property not so encumbered fall within this rule remains for the courts to say.

HARRY L. DONNELLY,
JAMES L. GUILMARTIN.

RESTORATION OF CIVIL RIGHTS TO REHABILITATED FELONS.—The amendment to Section 116 of the Executive Law [1] by the legislature at the last session is a step forward in the attempt to rehabilitate the criminal and restore him to his place in society. The amendment creates in the board of parole of the State of New York power to restore to the convicted felon those rights and privileges of citizen-

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tees are subject to the inherent power of the state to control them if the public interest so requires. Matter of Cohen, N. Y. L. J., May 22, 1945, p. 1943, col. 1.

[12] *Cf.* Terrace v. Thompson, 263 U. S. 197, 44 Sup. Ct. 15 (1923); Miller v. Schoene, 276 U. S. 272, 48 Sup. Ct. 246 (1928); Munn v. Illinois, 94 U. S. 113, 24 L. Ed. 77 (1876); Nebbia v. People, 291 U. S. 502, 54 Sup. Ct. 505 (1933); Village of Euclid v. Ambler Realty Co., 272 U. S. 365, 47 Sup. Ct. 114 (1926).

[13] West Coast Hotel Co. v. Parrish, 300 U. S. 379, 57 Sup. Ct. 578 (1937).

[14] L. 1933, c. 793, as amended; C. P. A. § 1077a, 1077b, 1077c, 1077cc, 1077d, 1077e, 1077f.

[15] Canadian Northern Ry. Co. v. Eggen, 252 U. S. 553, 561, 562, 40 Sup. Ct. 402 (1919).

[1] N. Y. Laws 1945, c. 96. Effective March 6, 1945.