

Advocate's VIEW

Expanded statutory protection of defaulting commercial tenants

This past summer, the New York Legislature passed the Housing Stability and Tenant Protection Act of 2019 (TPA). The TPA became effective on June 14, 2019. The TPA made significant changes to Article 7 of the Real Property Actions & Proceedings Law (RPAPL). The RPAPL governs summary proceedings for landlords to recover real property from defaulting tenants.

As its name suggests, the TPA increased protections of tenants under the RPAPL by expanding notice periods that allow the tenant to avoid eviction. The changes do not protect only residential tenants, as the RPAPL also applies to commercial tenancies. This article highlights significant changes to the law that affect a landlord seeking to evict a commercial tenant.

RPAPL Article 7 applies to commercial tenancies

There is a common misconception that the strict requirements of the RPAPL apply only to residential tenancies. But a landlord seeking to evict a commercial tenant in a summary proceeding must follow the RPAPL. See *Main St. Mall Corp. v. NR Store, Inc.*, 155 Misc.2d 118, 120 (New Rochelle City Ct. 1992) (“It has long been held that summary proceedings, wholly a creature of statute, require strict compliance with the applicable statutory requirements, in order to confer jurisdiction on [the court].”); *Marketplace v. Smith*, 181 Misc.2d 440, 442 (Henrietta Town Ct. 1999) (recognizing



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RPAPL statutory requirements must be strictly complied with in commercial context).

Expanded notice requirements in nonpayment proceedings

Under RPAPL § 711(2), before commencing a summary proceeding for nonpayment of rent, a landlord must serve a demand seeking past due rent or possession of the premises. The written demand must be served in a similar manner as a summons and complaint, in accordance with RPAPL § 735.

RPAPL § 711 has long applied to commercial tenants. See *PAK Realty Assocs. v. RE/MAX Universal, Inc.*, 157 Misc.2d 985, 986 (Civ. Ct. Queens Cty. 1993) (“RPAPL § 711 applies to commercial nonpayment actions.”). But prior to TPA’s enactment, RPAPL § 711(2) only required that the demand give a tenant three days’ notice before the landlord could commence a summary proceeding. Under the amended RPAPL § 711(2), a tenant is now entitled to 14 days’ notice, allowing more time to cure before the landlord can proceed.

Additionally, under the amended RPAPL § 711(2), the 14-day rent demand must be written. Under the old law, the three-day rent demand could be delivered orally, even in the commercial con-

text. See *Kulok v. Riddim Co., LLC*, 185 Misc.2d 195, 198 (Civ. Ct. N.Y. Cty. 2000) (discussing pleading requirements of oral rent demand in commercial nonpayment proceeding).

Postponed return date and additional time to cure

Following service of the rent demand, a landlord must serve a notice of petition and petition to formally commence a summary proceeding. See RPAPL § 731(1).

The TPA further amended the RPAPL to expand the notice period after service of the notice of petition. See RPAPL § 732(1) (when applicable, nonpayment petition returnable “within ten days after its service,” instead of five days as required under the old law); RPAPL § 733(1) (increasing requirement to serve notice of petition and petition to “at least ten and not more than seventeen days before the time at which the petition is noticed to be heard”).

The expanded notice periods are significant, as they allow the tenant further opportunity to pay the past-due amount and avoid eviction. See RPAPL § 731(4) (“[P]ayment to the landlord of the full amount of rent due, when such payment is made at any time prior to the hearing on the petition, shall be accepted by the landlord and renders moot the grounds on which the special proceeding was commenced.”).

14-day notice of warrant of eviction

If a landlord is successful in a summary proceeding, the court may issue a warrant of eviction. RPAPL § 749 governs the is-

suance of eviction warrants and the notice that the issuing officer must give the tenant, including commercial tenants. See *Nadine Properties, Inc. v. Henry Bergmann & Co.*, 153 Misc. 2d 695, 698 (Civ. Ct. N.Y. Cty. 1991) (discussing applicability of RPAPL § 749 in context of a commercial nonpayment summary proceeding).

Before executing the warrant, the issuing officer must notify the tenant. Under the old law, the officer was required to give 72 hours' notice. The TPA expanded this notice period to 14 days. See RPAPL § 749(2)(a). The TPA further amended the RPAPL by requiring the court to "vacate a warrant upon tender or deposit with the court of the full rent due at any time prior

to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith." RPAPL § 749(3). Accordingly, even after the summary proceeding, a commercial tenant can retain possession of a leased premises if it pays the past-due amount within fourteen days of receiving written notice of the warrant of eviction.

Conclusion

While this article does not address every amendment to the RPAPL, it highlights some of the changes that are applicable to commercial summary proceedings. Overall, the amendments protect defaulting tenants and slow the eviction process. It is important for attorneys and landlords

to consider these RPAPL amendments before choosing to commence a summary proceeding.

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