

Legal Alert: FAQs for Landlords re: Court of Appeals Ruling that the HSTPA Rent Overcharge Provisions are not to be applied retroactively

April 3, 2020

As we notified you yesterday, the New York Court of Appeals, the State's highest Court, has ruled that the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") may not be applied retroactively with respect to complaints of rent overcharge. The HSTPA became law on June 14, 2019. We have received numerous inquiries about the impact of the decision. The following summarizes the most frequently asked questions, followed by our responses.

1. A tenant filed a complaint of rent overcharge with DHCR on May 31, 2019 and it has not yet been decided. The HSTPA states it applies to pending matters. It provides for six years of damages as well as treble damages for that period if the overcharge is found to be willful. It also provides for a new formula to set the "Base Date Rent" for calculation purposes. Since the case is still pending, will the HSTPA apply?

Response: No. The Court of Appeals ruling is that the HSTPA's overcharge mechanisms cannot be applied retroactively. Therefore, any overcharge award is limited to four years prior to the filing of the complaint and treble damages are limited to two years prior to such filing. In addition, in such circumstances the rent for the purpose of calculating any overcharge will be the rent charged on the base date four years prior to the filing of the complaint, plus subsequent lawful increases and adjustments.

2. What if the tenant filed an overcharge complaint after the June 14, 2019 effective date of the HSTPA?

Response: The same principles stated in the above response should apply as to any portion of the complaint that occurred prior to that date. Therefore, the law in effect at the time the alleged overcharges occurred should be utilized. The Court of Appeals in the Regina decision issued April 2, 2020 stated that because applying the HSTPA to past conduct "would not comport with our retroactivity jurisprudence or the requirements of due process, we resolve these claims pursuant to the law in effect when the purported overcharges occurred."

3. What if a complaint is filed now and part of the overcharge alleged is pre-HSTPA's enactment on June 14, 2019, and the claim alleges the overcharge continues to date?

Response: Based upon the principles previously stated, the pre-HSTPA claim should be based on the law in effect at that time. It remains for the courts and DHCR to determine how that conflict between the new and old law will be resolved. It is our position that since the pre-HSTPA claims should be decided on the prior law, a valid argument can be made that the starting point for calculations should be the base date of four years prior to the filing of the complaint, rather than six years under the new law.

4. What if I believe that, based on this new decision, DHCR or a court mistakenly decided a case using the HSTPA. The award was for damages going back six years prior to the filing of the complaint and treble damages for that period. If the old law would have been used (base date four years prior to the filing of the complaint) there would have been no overcharge. Can I do anything?



Response: In many instances, the answer is yes. Please contact us and we will be glad to review your available options.

If you have any questions regarding this communication or wish to discuss a particular case you believe is impacted by yesterday's Court of Appeals ruling please email us and include your phone number.