

1371

2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. PERKINS, DIAZ, DUANE, HASSELL-THOMPSON, KRUEGER, OPPENHEIMER, PARKER, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the multiple residence law and the multiple dwelling law, in relation to the correction of habitability-impairing conditions by the tenant

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The multiple residence law is amended by adding a new
2 section 305-b to read as follows:
3 S 305-B. RIGHT OF TENANT TO OFFSET PAYMENTS FOR HABITABILITY-IMPAIRING
4 CONDITIONS; CERTAIN CASES. 1. ANY TENANT ACTING ALONE OR TOGETHER WITH
5 OTHER TENANTS OF A MULTIPLE DWELLING WHEREIN THERE EXISTS ONE OR MORE
6 HABITABILITY-IMPAIRING CONDITIONS DUE TO THE OWNER'S FAILURE TO MAINTAIN
7 THE PREMISES, MAY CONTRACT AND PAY FOR THE CORRECTION OF SUCH CONDITION
8 IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. ANY PAYMENT SO MADE
9 SHALL BE DEDUCTIBLE FROM RENT PROVIDING THE FOLLOWING PROVISIONS HAVE
10 BEEN SUBSTANTIALLY COMPLIED WITH BY THE TENANT OR SOMEONE ACTING ON HIS
11 OR HER BEHALF:
12 A. THE LANDLORD OR HIS OR HER AGENT WAS GIVEN AT LEAST SEVEN DAYS
13 WRITTEN NOTICE THAT ACTION WOULD BE TAKEN UNDER THIS SECTION IF CORREC-
14 TIVE MEASURES WERE NOT RENDERED.
15 B. REASONABLE EFFORTS WERE MADE TO HAVE THE CONDITION REMEDIED BY THE
16 LANDLORD'S USUAL TRADESMAN, IF KNOWN TO THE TENANT.
17 C. REPAIR OF THE CONDITION WAS MADE BY A TRADESMAN REGULARLY ENGAGED
18 IN THE APPROPRIATE TRADE AT A REASONABLE PRICE.
19 D. THE CONTRACTOR PROVIDED A WRITTEN STATEMENT CONTAINING THE FOLLOW-
20 ING:
21 (1) THE NAME OF THE PERSON OR PERSONS WHO REQUESTED THE SERVICES; AND
22 (2) THE DATE, TIME OF AND PREMISES AT WHICH REPAIRS WERE MADE; AND

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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(3) THE COST OF LABOR AND MATERIALS; AND

(4) A CERTIFICATION THAT THE SERVICES WERE NECESSARY; AND

(5) THE AMOUNTS AND FROM WHOM ANY PAYMENTS WERE RECEIVED.

E. AFTER RENDITION OF SERVICES, THE LANDLORD WAS SENT BY THE TENANT A COPY OF THE BILL FROM THE CONTRACTOR AND A STATEMENT OF THE AMOUNTS TO BE DEDUCTED FROM THE TENANT'S OR TENANTS' RENT FOR THE MONTH.

F. A TENANT SHALL NOT BE REQUIRED TO COMPLY WITH THE PROVISIONS OF PARAGRAPH A OR B OF THIS SUBDIVISION UNLESS THE OWNER HAS CONTINUOUSLY KEPT POSTED IN A CONSPICUOUS PLACE AT THE PREMISES A NOTICE CONTAINING HIS OR HER NAME, ADDRESS AND TELEPHONE NUMBER OR THAT OF HIS OR HER AGENT AND THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE SUPPLIER OF SUCH SERVICES TO THE PREMISES.

2. THE DEPARTMENT CHARGED WITH THE ENFORCEMENT OF LAWS, ORDINANCES AND REGULATIONS IN RELATION TO MULTIPLE DWELLINGS SHALL:

A. MAINTAIN AND, TO THE EXTENT PRACTICABLE, UPDATE AT LEAST BI-WEEKLY AN INDEX REFLECTING THE RANGE OF APPLICABLE WAGE RATES OF SUCH SERVICES WITHIN THE JURISDICTION OF THE DEPARTMENT DURING THE LAST TWO WEEK PERIOD FOR WHICH STATISTICS ARE AVAILABLE;

B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF CONTRACTORS WHICH HAVE AGREED TO MAKE SUCH REPAIRS IN THE CIRCUMSTANCES, AND TO RENDER SUCH ASSISTANCE AS IS OTHERWISE REQUIRED HEREBY TO ENABLE TENANTS TO OBTAIN THE BENEFITS, CONTEMPLATED BY THIS SECTION; AND

C. RECEIVE AND COMPILE COMPLAINTS FROM TENANTS WHO WERE UNABLE TO PERSUADE THEIR LANDLORDS TO TAKE CORRECTIVE MEASURES FOR HABITABILITY-IMPAIRING CONDITIONS AND WERE THEREFORE FORCED TO RESORT TO THE PROVISIONS OF THIS SECTION.

3. THE PAYMENT FOR SUCH SERVICES AT A PRICE WITHIN THE RANGE OF PRICES PERMITTED BY PARAGRAPH C OF SUBDIVISION ONE OF THIS SECTION SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN A REASONABLE PRICE.

4. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH D OF SUBDIVISION ONE OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STATED THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF SUCH STATEMENT SHALL CONSIST IN THE ORAL TESTIMONY OF ANY PERSON NAMED AS A PAYER OF ALL OR PART OF THE AMOUNT INDICATED THEREON RELATING THE FACTS AND CIRCUMSTANCES IN WHICH THE STATEMENT WAS RENDERED.

5. ANY TENANT WHO HAS IN GOOD FAITH SECURED AND PAID FOR SUCH SERVICES OTHERWISE IN CONFORMANCE WITH THE PROVISIONS OF THIS SECTION AND AGAINST WHOM AN ACTION OR PROCEEDING TO RECOVER POSSESSION OF THE PREMISES FOR NONPAYMENT OF RENT OR ANY OTHER ACTION OR PROCEEDING ATTRIBUTABLE AT LEAST IN PART TO THE TENANT SEEKING OR TAKING A DEDUCTION FROM RENT AS ALLOWED BY THIS SECTION SHALL, IN ADDITION TO ANY OTHER AMOUNTS, BE ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEY'S FEES AGAINST AN OWNER BRINGING SUCH ACTION OR PROCEEDING.

6. NO OWNER OR AGENT SHALL BE ENTITLED TO RECOVER ANY AMOUNTS IN DAMAGES FROM ANY CONTRACTOR WHO ATTEMPTS IN GOOD FAITH AND ACTS REASONABLY TO CARRY OUT THE INTENDMENT OF THIS SECTION EXCEPT DAMAGES ARISING OUT OF GROSS NEGLIGENCE.

7. THE REMEDY PROVIDED IN THIS SECTION SHALL NOT BE EXCLUSIVE AND A COURT MAY PROVIDE SUCH OTHER RELIEF AS MAY BE JUST AND PROPER IN THE CIRCUMSTANCES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR DENY ANY EXISTING CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE OR COMMON LAW RIGHT OF A TENANT TO CONTRACT AND PAY FOR SUCH SERVICES FOR THE MULTIPLE DWELLING IN WHICH HE OR SHE RESIDES OR TO PAY FOR THE COST OF ANY OTHER GOODS AND SERVICES FOR SUCH MULTIPLE DWELLING. THIS SECTION SHALL NOT BE CONSTRUED TO PRECLUDE ANY DEFENSE, COUNTERCLAIM OR CAUSE OF

ACTION THAT MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO PROVIDE HEAT OR ANY OTHER SERVICE.

8. ANY AGREEMENT BY A TENANT OF A DWELLING WAIVING OR MODIFYING HIS OR HER RIGHTS AS SET FORTH IN THIS SECTION SHALL BE VOID AS CONTRARY TO PUBLIC POLICY.

9. THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED SO AS TO GIVE EFFECT TO THE PURPOSES SET FORTH IN THIS SECTION.

10. NOTHING CONTAINED IN THIS SECTION AND NO PAYMENT MADE PURSUANT TO THIS SECTION SHALL BE DEEMED TO DISCHARGE THE LIABILITY OF A RENTER WITH AN INTEREST IN REAL PROPERTY PURSUANT TO SUBDIVISION TWO OF SECTION THREE HUNDRED FOUR OF THE REAL PROPERTY TAX LAW FROM TAXES LEVIED ON SUCH INTEREST.

S 2. The multiple dwelling law is amended by adding a new section 302-d to read as follows:

S 302-D. RIGHT OF TENANT TO OFFSET PAYMENTS FOR HABITABILITY-IMPAIRING CONDITIONS; CERTAIN CASES. 1. ANY TENANT ACTING ALONE OR TOGETHER WITH OTHER TENANTS OF A MULTIPLE DWELLING WHEREIN THERE EXISTS ONE OR MORE HABITABILITY-IMPAIRING CONDITIONS DUE TO THE OWNER'S FAILURE TO MAINTAIN THE PREMISES, MAY CONTRACT AND PAY FOR THE CORRECTION OF SUCH CONDITION IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. ANY PAYMENT SO MADE SHALL BE DEDUCTIBLE FROM RENT PROVIDING THE FOLLOWING PROVISIONS HAVE BEEN SUBSTANTIALLY COMPLIED WITH BY THE TENANT OR SOMEONE ACTING ON HIS OR HER BEHALF:

A. REASONABLE EFFORTS WERE MADE TO CONTACT THE OWNER OR HIS OR HER AGENT IN WRITING TO INFORM THE OWNER OF SUCH CONDITION.

B. REASONABLE EFFORTS WERE MADE TO HAVE THE CONDITION REMEDIED BY THE LANDLORD'S USUAL TRADESMAN, IF KNOWN TO THE TENANT.

C. REPAIR OF THE CONDITION WAS MADE BY A TRADESMAN REGULARLY ENGAGED IN THE APPROPRIATE TRADE AT A REASONABLE PRICE.

D. THE CONTRACTOR PROVIDED A WRITTEN STATEMENT CONTAINING THE FOLLOWING:

(1) THE NAME OF THE PERSON OR PERSONS WHO REQUESTED THE SERVICES; AND

(2) THE DATE, TIME OF AND PREMISES AT WHICH REPAIRS WERE MADE; AND

(3) THE COST OF LABOR AND MATERIALS; AND

(4) A CERTIFICATION THAT THE SERVICES WERE NECESSARY; AND

(5) THE AMOUNTS AND FROM WHOM ANY PAYMENTS WERE RECEIVED.

E. A TENANT SHALL NOT BE REQUIRED TO COMPLY WITH THE PROVISIONS OF PARAGRAPH A OR B OF THIS SUBDIVISION UNLESS THE OWNER HAS CONTINUOUSLY KEPT POSTED IN A CONSPICUOUS PLACE AT THE PREMISES A NOTICE CONTAINING HIS OR HER NAME, ADDRESS AND TELEPHONE NUMBER OR THAT OF HIS OR HER AGENT AND THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE SUPPLIER OF SUCH SERVICES TO THE PREMISES.

2. THE DEPARTMENT CHARGED WITH THE ENFORCEMENT OF LAWS, ORDINANCES AND REGULATIONS IN RELATION TO MULTIPLE DWELLINGS SHALL:

A. MAINTAIN AND, TO THE EXTENT PRACTICABLE, UPDATE AT LEAST BI-WEEKLY AN INDEX REFLECTING THE RANGE OF APPLICABLE WAGE RATES OF SUCH SERVICES WITHIN THE JURISDICTION OF THE DEPARTMENT DURING THE LAST TWO WEEK PERIOD FOR WHICH STATISTICS ARE AVAILABLE; AND

B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF CONTRACTORS WHICH HAVE AGREED TO MAKE SUCH REPAIRS IN THE CIRCUMSTANCES, AND TO RENDER SUCH ASSISTANCE AS IS OTHERWISE REQUIRED HEREBY TO ENABLE TENANTS TO OBTAIN THE BENEFITS, CONTEMPLATED BY THIS SECTION.

3. THE PAYMENT FOR SUCH SERVICES AT A PRICE WITHIN THE RANGE OF PRICES PERMITTED BY PARAGRAPH C OF SUBDIVISION ONE OF THIS SECTION SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN A REASONABLE PRICE.

1 4. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY
2 STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH D OF
3 SUBDIVISION ONE OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STATED
4 THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF SUCH
5 STATEMENT SHALL CONSIST IN THE ORAL TESTIMONY OF ANY PERSON NAMED AS A
6 PAYER OF ALL OR PART OF THE AMOUNT INDICATED THEREON RELATING THE FACTS
7 AND CIRCUMSTANCES IN WHICH THE STATEMENT WAS RENDERED.

8 5. ANY TENANT WHO HAS IN GOOD FAITH SECURED AND PAID FOR SUCH SERVICES
9 OTHERWISE IN CONFORMANCE WITH THE PROVISIONS OF THIS SECTION AND AGAINST
10 WHOM AN ACTION OR PROCEEDING TO RECOVER POSSESSION OF THE PREMISES FOR
11 NONPAYMENT OF RENT OR ANY OTHER ACTION OR PROCEEDING ATTRIBUTABLE AT
12 LEAST IN PART TO THE TENANT SEEKING OR TAKING A DEDUCTION FROM RENT AS
13 ALLOWED BY THIS SECTION SHALL, IN ADDITION TO ANY OTHER AMOUNTS, BE
14 ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEY'S FEES AGAINST AN
15 OWNER BRINGING SUCH ACTION OR PROCEEDING.

16 6. NO OWNER OR AGENT SHALL BE ENTITLED TO RECOVER ANY AMOUNTS IN
17 DAMAGES FROM ANY CONTRACTOR WHO ATTEMPTS IN GOOD FAITH AND ACTS REASON-
18 ABLY TO CARRY OUT THE INTENDMENT OF THIS SECTION EXCEPT DAMAGES ARISING
19 OUT OF GROSS NEGLIGENCE.

20 7. THE REMEDY PROVIDED IN THIS SECTION SHALL NOT BE EXCLUSIVE AND A
21 COURT MAY PROVIDE SUCH OTHER RELIEF AS MAY BE JUST AND PROPER IN THE
22 CIRCUMSTANCES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR
23 DENY ANY EXISTING CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE OR COMMON
24 LAW RIGHT OF A TENANT TO CONTRACT AND PAY FOR SUCH SERVICES FOR THE
25 MULTIPLE DWELLING IN WHICH HE OR SHE RESIDES OR TO PAY FOR THE COST OF
26 ANY OTHER GOODS AND SERVICES FOR SUCH MULTIPLE DWELLING. THIS SECTION
27 SHALL NOT BE CONSTRUED TO PRECLUDE ANY DEFENSE, COUNTERCLAIM OR CAUSE OF
28 ACTION THAT MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO
29 PROVIDE HEAT OR ANY OTHER SERVICE.

30 8. ANY AGREEMENT BY A TENANT OF A DWELLING WAIVING OR MODIFYING HIS OR
31 HER RIGHTS AS SET FORTH IN THIS SECTION SHALL BE VOID AS CONTRARY TO
32 PUBLIC POLICY.

33 9. THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED SO AS
34 TO GIVE EFFECT TO THE PURPOSES SET FORTH IN THIS SECTION.

35 10. NOTHING CONTAINED IN THIS SECTION AND NO PAYMENT MADE PURSUANT TO
36 THIS SECTION SHALL BE DEEMED TO DISCHARGE THE LIABILITY OF A RENTER WITH
37 AN INTEREST IN REAL PROPERTY PURSUANT TO SUBDIVISION TWO OF SECTION
38 THREE HUNDRED FOUR OF THE REAL PROPERTY TAX LAW FROM TAXES LEVIED ON
39 SUCH INTEREST.

40 S 3. This act shall take effect immediately.