

415

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Housing

AN ACT to amend the administrative code of the city of New York, the multiple dwelling law, the multiple residence law and the real property law, in relation to the "tenant rights omnibus act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "tenant rights omnibus act".
3 S 2. Section 26-413 of the administrative code of the city of New York
4 is amended by adding a new subdivision f to read as follows:
5 F. (1) IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE
6 PROVISION OF LAW, WHERE AN OWNER OR LESSOR SEEKS TO RECOVER POSSESSION
7 OF A DWELLING UNIT PURSUANT TO ITEM TEN OF SUBPARAGRAPH (I) OF PARAGRAPH
8 TWO OF SUBDIVISION E OF SECTION 26-403 OF THIS CHAPTER, ON THE GROUND
9 THAT THE DWELLING UNIT IS NOT OCCUPIED BY THE TENANT AS SUCH TENANT'S
10 PRIMARY RESIDENCE, SUCH OWNER OR LESSOR SHALL COMMENCE THE ACTION OR
11 PROCEEDING IN A COURT OF COMPETENT JURISDICTION ONLY UPON A GOOD FAITH
12 BELIEF THAT SUCH DWELLING UNIT IS NOT THE PRIMARY RESIDENCE OF SUCH
13 TENANT.
14 (2) IF ANY OWNER OR LESSOR COMMENCES AN ACTION OR PROCEEDING TO
15 RECOVER POSSESSION OF A DWELLING UNIT IN VIOLATION OF PARAGRAPH ONE OF
16 THIS SUBDIVISION, SUCH OWNER OR LESSOR SHALL BE LIABLE TO SUCH TENANT
17 FOR THREE TIMES THE MONTHLY RENT CHARGED SUCH TENANT, OR THREE TIMES THE
18 DAMAGES, IF ANY, SUSTAINED BY SUCH TENANT, WHICHEVER IS GREATER, PLUS
19 REASONABLE ATTORNEY'S FEES AND COSTS AS DETERMINED BY SUCH COURT.
20 S 3. Section 26-515 of the administrative code of the city of New York
21 is amended by adding a new subdivision e to read as follows:
22 E. (1) IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE
23 PROVISION OF LAW, WHERE AN OWNER OR LESSOR SEEKS TO RECOVER POSSESSION

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

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1 OF A DWELLING UNIT PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF
2 SUBDIVISION A OF SECTION 26-504 OF THIS CHAPTER, ON THE GROUND THAT THE
3 DWELLING UNIT IS NOT OCCUPIED BY THE TENANT AS SUCH TENANT'S PRIMARY
4 RESIDENCE, SUCH OWNER OR LESSOR SHALL COMMENCE THE ACTION OR PROCEEDING
5 IN A COURT OF COMPETENT JURISDICTION ONLY UPON A GOOD FAITH BELIEF THAT
6 SUCH DWELLING UNIT IS NOT THE PRIMARY RESIDENCE OF SUCH TENANT.

7 (2) IF ANY OWNER OR LESSOR COMMENCES AN ACTION OR PROCEEDING TO
8 RECOVER POSSESSION OF A DWELLING UNIT IN VIOLATION OF PARAGRAPH ONE OF
9 THIS SUBDIVISION, SUCH OWNER OR LESSOR SHALL BE LIABLE TO SUCH TENANT
10 FOR THREE TIMES THE MONTHLY RENT CHARGED SUCH TENANT, OR THREE TIMES THE
11 DAMAGES, IF ANY, SUSTAINED BY SUCH TENANT, WHICHEVER IS GREATER, PLUS
12 REASONABLE ATTORNEY'S FEES AND COSTS AS DETERMINED BY SUCH COURT.

13 S 4. Paragraphs a and b of subdivision 4 of section 3 of the multiple
14 dwelling law, as amended by chapter 516 of the laws of 1983, are amended
15 to read as follows:

16 a. Any city, town or village may make local laws, ordinances, resol-
17 utions or regulations not less restrictive than those provided in this
18 chapter and may provide for their enforcement by legal or equitable
19 actions or proceedings, OR BY ADMINISTRATIVE PROCEEDINGS, and prescribe
20 the penalties, sanctions and remedies for violations thereof. In the
21 enforcement and administration of this chapter in a city of three
22 hundred twenty-five thousand or more persons, the penalties, sanctions
23 and remedies enacted by local law may be applied, notwithstanding their
24 inconsistency with this chapter, or the provisions of this chapter.

25 b. In a city of three hundred twenty-five thousand or more persons,
26 such local laws may authorize such actions or proceedings against the
27 owner, lessee of a whole multiple dwelling, agent or other person having
28 control of such dwelling, and any responsible party, or against the
29 dwelling in rem. Such local laws may further authorize (1) that civil OR
30 ADMINISTRATIVELY IMPOSED penalties may be enforced against the person
31 liable therefor, and that in addition to the methods of enforcement for
32 judgments established in the civil practice law and rules, a lien may be
33 imposed against the premises and the rents therefrom; (2) that such
34 civil OR ADMINISTRATIVELY IMPOSED penalties may be enforced against the
35 dwelling by the imposition of a lien against the rents therefrom.

36 S 5. Paragraph c of subdivision 4 of section 3 of the multiple dwell-
37 ing law, as amended by chapter 516 of the laws of 1978, is amended to
38 read as follows:

39 c. Such local laws may also authorize that all liens upon rents,
40 whether authorized by state or local law, may be satisfied without
41 further judicial proceedings by the collection of rents due or to become
42 due; AND MAY FURTHER AUTHORIZE THAT ADMINISTRATIVELY IMPOSED PENALTIES
43 MAY BE DOCKETED AND ENFORCED IN THE SAME MANNER AS A JUDGMENT IN A CIVIL
44 ACTION WITHOUT FURTHER JUDICIAL PROCEEDINGS.

45 S 6. Section 304 of the multiple residence law is amended by adding a
46 new subdivision 3 to read as follows:

47 3. IN ADDITION TO THE PENALTIES IMPOSED IN SUBDIVISION ONE OF THIS
48 SECTION, ANY CITY, TOWN OR VILLAGE MAY PROVIDE FOR THE ENFORCEMENT OF
49 THE PROVISIONS OF THIS CHAPTER OR OF LOCAL LAWS, ORDINANCES, RESOLUTIONS
50 OR REGULATIONS PROMULGATED PURSUANT HERETO BY ADMINISTRATIVE PROCEEDINGS
51 AND MAY AUTHORIZE ADMINISTRATIVELY IMPOSED PENALTIES WHICH MAY BE DOCK-
52 ETED AND ENFORCED IN THE SAME MANNER AS A JUDGMENT IN A CIVIL ACTION
53 WITHOUT FURTHER JUDICIAL PROCEEDINGS.

54 S 7. The multiple dwelling law is amended by adding a new section
55 302-d to read as follows:

1 S 302-D. RIGHT OF TENANT TO OFFSET PAYMENTS FOR REPAIRS OF HAZARDOUS
2 CONDITIONS; CERTAIN CASES. 1. AS USED IN THIS SECTION, UNLESS ANOTHER
3 MEANING CLEARLY APPEARS FROM THE CONTEXT:

4 A. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OR AGENCY OF A CITY WITH A
5 POPULATION OF ONE MILLION OR MORE THAT IS CHARGED WITH ENFORCEMENT OF
6 HOUSING LAWS;

7 B. "HAZARDOUS VIOLATION" SHALL MEAN A VIOLATION OF THIS CHAPTER, THE
8 CITY HOUSING MAINTENANCE CODE OR ARTICLE EIGHTEEN OF THE EXECUTIVE LAW
9 OR THE RULES AND REGULATIONS PROMULGATED PURSUANT THERETO IDENTIFIED OR
10 CLASSIFIED BY THE CITY AS HAZARDOUS TO THE LIFE, HEALTH AND SAFETY OF
11 THE OCCUPANTS OF A DWELLING;

12 C. "IMMEDIATELY HAZARDOUS VIOLATION" SHALL MEAN A VIOLATION OF THIS
13 CHAPTER, THE CITY HOUSING MAINTENANCE CODE OR ARTICLE EIGHTEEN OF THE
14 EXECUTIVE LAW OR THE RULES AND REGULATIONS PROMULGATED PURSUANT THERETO
15 IDENTIFIED OR CLASSIFIED BY THE CITY AS IMMEDIATELY HAZARDOUS TO THE
16 LIFE, HEALTH AND SAFETY OF THE OCCUPANTS OF A DWELLING;

17 D. "CITY" SHALL MEAN A CITY TO WHICH THIS CHAPTER APPLIES.

18 2. IN A CITY, ANY TENANT ACTING ALONE OR TOGETHER WITH OTHER TENANTS
19 IN A MULTIPLE DWELLING, WHEREIN THERE EXISTS A CONDITION CONSTITUTING A
20 HAZARDOUS OR IMMEDIATELY HAZARDOUS VIOLATION, MAY CONTRACT AND PAY FOR
21 THE REPAIR OF SUCH CONDITION IN ACCORDANCE WITH THE PROVISIONS OF THIS
22 SECTION.

23 3. ANY PAYMENT SO MADE SHALL BE DEDUCTIBLE FROM RENT PROVIDING THE
24 FOLLOWING PROVISIONS HAVE BEEN SUBSTANTIALLY COMPLIED WITH BY THE TENANT
25 OR HIS AGENT:

26 A. THE LANDLORD OR HIS AGENT HAVE BEEN SENT NOTICE OF SUCH HAZARDOUS
27 OR IMMEDIATELY HAZARDOUS VIOLATION POSTED BY CERTIFIED MAIL, RETURN
28 RECEIPT REQUESTED.

29 B. IN THE CASE OF AN IMMEDIATELY HAZARDOUS VIOLATION, SUCH VIOLATION
30 HAS BEEN CERTIFIED BY THE DEPARTMENT AND SEVEN DAYS HAVE PASSED AFTER
31 WRITTEN NOTICE WAS FIRST OFFERED FOR DELIVERY BY THE POSTAL SERVICE TO
32 THE LANDLORD OR HIS AGENT WITHOUT COMPLETION OF REPAIRS OR COMMENCEMENT
33 OF REPAIRS OF SUCH VIOLATION BY THE LANDLORD AND PROVISION IN WRITING TO
34 THE TENANT OF A REASONABLE SCHEDULE FOR COMPLETION OF SUCH REPAIRS.

35 C. IN THE CASE OF A HAZARDOUS VIOLATION, SUCH VIOLATION HAS BEEN
36 CERTIFIED BY THE DEPARTMENT AND THIRTY DAYS HAVE PASSED AFTER WRITTEN
37 NOTICE WAS FIRST OFFERED FOR DELIVERY BY THE POSTAL SERVICE TO THE LAND-
38 LORD OR HIS AGENT WITHOUT COMPLETION OF REPAIRS OR COMMENCEMENT OF
39 REPAIRS OF SUCH VIOLATION BY THE LANDLORD AND PROVISION IN WRITING TO
40 THE TENANT OF A REASONABLE SCHEDULE FOR COMPLETION OF SUCH REPAIRS.

41 4. WHEN A TENANT OR GROUP OF TENANTS CONTRACTS FOR REPAIR WORK PURSU-
42 ANT TO THE PROVISIONS OF THIS SECTION, THE FOLLOWING CONDITIONS SHALL BE
43 MET:

44 A. IF A TENANT OR GROUP OF TENANTS DO NOT HIRE AN OUTSIDE CONTRACTOR,
45 THEY MAY DEDUCT COSTS FOR MATERIALS.

46 B. IF A TENANT OR GROUP OF TENANTS HIRE AN OUTSIDE CONTRACTOR TO
47 PERFORM REPAIRS THEY MAY DEDUCT CHARGES FOR MATERIALS AND LABOR,
48 PROVIDED THAT REASONABLE EFFORTS ARE MADE TO HAVE THE REPAIR WORK DONE
49 BY QUALIFIED WORKMEN AT PREVAILING RATES.

50 C. TENANTS MUST RECEIVE AN ITEMIZED BILL FROM THE PERSON, FIRM OR
51 CORPORATION FROM WHOM MATERIALS OR LABOR ARE PURCHASED.

52 D. WHERE A LICENSE TO PERFORM SERVICES IS REQUIRED BY LAW, A TENANT OR
53 GROUP OF TENANTS SHALL HIRE AN OUTSIDE LICENSED CONTRACTOR.

54 E. ANY PERSON, FIRM, CORPORATION OR EMPLOYEE THEREOF PROVIDING
55 SERVICES UNDER THE PROVISIONS OF THIS SECTION MUST BE LICENSED TO

1 PERFORM THE REPAIRS REQUESTED BY A TENANT OR GROUP OF TENANTS, WHERE A
2 LICENSE TO PROVIDE SUCH SERVICES IS REQUIRED BY LAW.

3 5. THE MAXIMUM AMOUNT OF MONEY AN INDIVIDUAL TENANT MAY DEDUCT FOR
4 REPAIR WORK UNDER THE PROVISIONS OF THIS SECTION SHALL BE ONE THOUSAND
5 DOLLARS OR THE SUM OF TWO MONTHS RENT, WHICHEVER IS GREATER. THE MAXIMUM
6 AMOUNT OF MONEY TWO OR MORE TENANTS ACTING TOGETHER MAY DEDUCT FOR
7 REPAIR WORK FROM THEIR COMBINED RENTS UNDER THE PROVISIONS OF THIS
8 SECTION SHALL BE THREE THOUSAND DOLLARS; PROVIDED, HOWEVER, SUCH MAXIMUM
9 AMOUNT MAY BE TEN THOUSAND DOLLARS IF IN ADDITION TO THE OTHER
10 PROVISIONS OF THIS SECTION, THE TENANTS HAVE POSTED BY CERTIFIED MAIL,
11 RETURN RECEIPT REQUESTED, TO THE LANDLORD OR HIS AGENT AN ITEMIZED ESTI-
12 MATE FOR REPAIR OF AN IMMEDIATELY HAZARDOUS VIOLATION PREPARED BY A
13 QUALIFIED PERSON, FIRM OR CORPORATION AND, WITHIN EIGHT DAYS, THE LAND-
14 LORD HAS NEITHER COMMENCED REPAIR WORK NOR PRESENTED A WRITTEN SCHEDULE
15 FOR REASONABLE COMPLETION OF THE REPAIR WORK NECESSARY TO REMOVE THE
16 IMMEDIATELY HAZARDOUS VIOLATION.

17 6. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY
18 STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH B OF
19 SUBDIVISION FOUR OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STAT-
20 ED THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF
21 SUCH STATEMENT SHALL CONSIST OF THE ORAL TESTIMONY OF ANY PERSON NAMED
22 AS A PAYER OF ALL OR PART OF THE AMOUNT INDICATED THEREON RELATING THE
23 FACTS AND CIRCUMSTANCES IN WHICH THE STATEMENT WAS RENDERED.

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

32 8. NO OWNER OR AGENT SHALL BE ENTITLED TO RECOVER ANY AMOUNTS IN
33 DAMAGES FROM ANY TENANT OR GROUP OF TENANTS WHO ATTEMPT IN GOOD FAITH
34 AND ACT REASONABLY IN CARRYING OUT THE INTENDMENT OF THIS SECTION.

35 9. NO OWNER OR AGENT SHALL BE ENTITLED TO SELF-CERTIFICATION IF SUCH
36 OWNER OR AGENT IS FOUND TO HAVE FALSELY SELF-CERTIFIED WITHIN THE IMME-
37 DIATELY PRECEDING TWELVE MONTH PERIOD TO THE NEW YORK CITY DEPARTMENT OF
38 HOUSING, PRESERVATION AND DEVELOPMENT.

39 10. THE REMEDY PROVIDED IN THIS SECTION SHALL NOT BE EXCLUSIVE AND A
40 COURT MAY PROVIDE SUCH OTHER RELIEF AS MAY BE JUST AND PROPER IN THE
41 CIRCUMSTANCES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR
42 DENY ANY EXISTING CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE OR COMMON
43 LAW RIGHT OF A TENANT TO CONTRACT AND PAY FOR ANY GOODS AND SERVICES FOR
44 SUCH MULTIPLE DWELLING. THIS SECTION SHALL NOT BE CONSTRUED TO PRECLUDE
45 ANY DEFENSE, COUNTERCLAIM OR CAUSE OF ACTION ASSERTED BY A TENANT THAT
46 MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO PROVIDE ANY
47 SERVICE.

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

51 12. THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED SO AS
52 TO GIVE EFFECT TO THE PURPOSE SET FORTH HEREIN.

53 S 8. The real property law is amended by adding a new section 235-g to
54 read as follows:

55 S 235-G. TENANT RIGHT TO WITHHOLD RENT FOR FAILURE TO PROVIDE HEAT. IF
56 ANY OWNER OF A MULTIPLE DWELLING RESPONSIBLE FOR PROVIDING HEAT TO THE

1 TENANTS OF SUCH DWELLING SHALL FAIL TO PROVIDE SUCH SERVICE WITHIN TWEN-
2 TY-FOUR HOURS OF A NOTIFICATION BY THE TENANT TO THE OWNER, HIS OR HER
3 AGENT, EMPLOYEE OR REPRESENTATIVE, THAT SUCH TENANT IS RECEIVING INSUF-
4 FICIENT HEAT DURING THE MONTHS OF NOVEMBER THROUGH MARCH, THE TENANT
5 SHALL HAVE THE RIGHT TO DEDUCT ONE-TENTH OF ONE MONTH'S RENT FROM HIS OR
6 HER RENT PAYMENTS FOR EACH DAY ON WHICH THE OWNER SHALL HAVE FAILED TO
7 PROVIDE HEAT.

8 S 9. This act shall take effect immediately and shall apply to all
9 actions or proceedings pending on or commenced after such date, provided
10 that the amendments to section 26-413 of the city rent and rehabili-
11 tation law made by section two of this act shall remain in full force
12 and effect only as long as the public emergency requiring the regulation
13 and control of residential rents and evictions continues, as provided in
14 subdivision 3 of section 1 of the local emergency housing rent control
15 act and provided further that the amendments to section 26-515 of the
16 rent stabilization law of nineteen hundred sixty-nine made by section
17 three of this act shall expire on the same date as such law expires and
18 shall not affect the expiration of such law as provided under section
19 26-520 of such law; provided, however, that in any city which has not
20 heretofore made the classifications referred to in paragraphs b and c of
21 subdivision 1 of section 302-d of the multiple dwelling law, as added by
22 section seven of this act such classifications shall be made within six
23 months of the effective date of such section and such section shall not
24 be deemed to take effect in such city until such classifications are
25 made; provided that the division of housing and community renewal shall
26 notify the legislative bill drafting commission upon the occurrence of
27 the enactment of the legislation provided for in section seven of this
28 act in order that the commission may maintain an accurate and timely
29 effective data base of the official text of the laws of the state of New
30 York in furtherance of effectuating the provisions of section 44 of the
31 legislative law and section 70-b of the public officers law.