S T A T E O F N E W Y O R K

7785

I N S E N A T E

May 10, 2010

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to the installation of radiator covers

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

Section 1. Section 235-b of the real property law, as added by chapter 597 of the laws of 1975, subdivision 3 as amended by chapter 403 of the laws of 1983, paragraph (c) of subdivision 3 as added by chapter 116 of the laws of 1997, is amended to read as follows:

S 235-b. Warranty of habitability. 1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety. When any such condition has been caused by the misconduct of the tenant or lessee or persons under his direction or control, it shall not constitute a breach of such covenants and warranties.

2. (A) IF A CHILD OF AGE TWELVE OR YOUNGER RESIDES WITHIN A TENANT'S DWELLING A LANDLORD SHALL, AT THE WRITTEN REQUEST OF THE TENANT, BE RESPONSIBLE FOR THE INSTALLATION OF A RADIATOR COVER ON ANY UNCOVERED RADIATOR THAT: CARRIES STEAM, WATER, OR OTHER FLUIDS AT TEMPERATURES EXCEEDING ONE HUNDRED SIXTY-FIVE DEGREES FAHRENHEIT; ARE NOT CURRENTLY COVERED IN A MANNER THAT ENSURES THAT THE TEMPERATURE OF THE OUTER SURFACE DOES NOT EXCEED ONE HUNDRED NINE DEGREES FAHRENHEIT; AND ARE LOCATED IN THE TENANT'S DWELLING. THE LANDLORD SHALL HAVE NINETY DAYS AFTER RECEIPT OF SUCH WRITTEN REQUEST TO COMPLETE THE INSTALLATION OF A RADIATOR COVER OR COVERS.

(B) ANY FAILURE OF THE LANDLORD TO INSTALL A RADIATOR COVER, PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE DEEMED TO SUBJECT THE OCCUPANTS OF THE DWELLING TO CONDITIONS DANGEROUS, HAZARDOUS, OR DETRI-

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

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MENTAL TO THEIR LIFE, HEALTH, OR SAFETY. IN ANY CASE IN WHICH A TENANT SHALL MAKE A PAYMENT IN ORDER TO INSTALL A REQUESTED RADIATOR COVER OR COVERS, FOLLOWING THE FAILURE OF THE LANDLORD TO INSTALL SUCH COVERS WITHIN NINETY DAYS OF RECEIVING A WRITTEN REQUEST PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE TENANT MAY DEDUCT FROM THE RENT THE REASONABLE COST FOR THE INSTALLATION AND SHALL NOT BE LIABLE FOR EVICTION ON THE GROUND OF THAT DEDUCTION.

[2] 3. Any agreement by a lessee or tenant of a dwelling waiving or modifying his rights as set forth in this section shall be void as contrary to public policy.

[3] 4. In determining the amount of damages sustained by a tenant as a result of a breach of the warranty set forth in the section, the court;

(a) need not require any expert testimony; [and]

(b) shall, to the extent the warranty is breached or cannot be cured by reason of a strike or other labor dispute which is not caused primarily by the individual landlord or lessor and such damages are attributable to such strike, exclude recovery to such extent, except to the extent of the net savings, if any, to the landlord or lessor by reason of such strike or labor dispute allocable to the tenant's premises, provided, however, that the landlord or [lesser] LESSOR has made a good faith attempt, where practicable, to cure the breach[.]; AND

(c) where the premises is subject to regulation pursuant to the local emergency housing rent control law, the emergency tenant protection act of nineteen seventy-four, the rent stabilization law of nineteen hundred sixty-nine or the city rent and rehabilitation law, reduce the amount awarded hereunder by the total amount of any rent reduction ordered by the state division of housing and community renewal pursuant to such laws or act, awarded to the tenant, from the effective date of such rent reduction order, that relates to one or more matters for which relief is awarded hereunder.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.