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

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:

Section 1. Short title. This act shall be known and may be cited as the "tenant rights omnibus act".

S 2. Section 26-413 of the administrative code of the city of New York is amended by adding a new subdivision f to read as follows:

F. (1) IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE PROVISION OF LAW, WHERE AN OWNER OR LESSOR SEEKS TO RECOVER POSSESSION OF A DWELLING UNIT PURSUANT TO ITEM TEN OF SUBPARAGRAPH (I) OF PARAGRAPH TWO OF SUBDIVISION E OF SECTION 26-403 OF THIS CHAPTER, ON THE GROUND THAT THE DWELLING UNIT IS NOT OCCUPIED BY THE TENANT AS SUCH TENANT'S PRIMARY RESIDENCE, SUCH OWNER OR LESSOR SHALL COMMENCE THE ACTION OR PROCEEDING IN A COURT OF COMPETENT JURISDICTION ONLY UPON A GOOD FAITH BELIEF THAT SUCH DWELLING UNIT IS NOT THE PRIMARY RESIDENCE OF SUCH TENANT.

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

S 3. Section 26-515 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

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

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

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

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

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

S 5. Paragraph c of subdivision 4 of section 3 of the multiple dwelling law, as amended by chapter 516 of the laws of 1978, is amended to read as follows:

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

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

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

S 7. 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 REPAIRS OF HAZARDOUS CONDITIONS; CERTAIN CASES. 1. AS USED IN THIS SECTION, UNLESS ANOTHER MEANING CLEARLY APPEARS FROM THE CONTEXT:

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

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

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

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

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

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

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

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

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

4. WHEN A TENANT OR GROUP OF TENANTS CONTRACTS FOR REPAIR WORK PURSUANT TO THE PROVISIONS OF THIS SECTION, THE FOLLOWING CONDITIONS SHALL BE MET:

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

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

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

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

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

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

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

6. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH B OF SUBDIVISION FOUR OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STATED THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF SUCH STATEMENT SHALL CONSIST OF 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.

7. ANY TENANT WHO HAS IN GOOD FAITH SECURED AND PAID FOR REPAIRS, 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.

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

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

10. 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 ANY GOODS AND SERVICES FOR SUCH MULTIPLE DWELLING. THIS SECTION SHALL NOT BE CONSTRUED TO PRECLUDE ANY DEFENSE, COUNTERCLAIM OR CAUSE OF ACTION ASSERTED BY A TENANT THAT MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO PROVIDE ANY SERVICE.

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

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

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

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

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

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