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

5672

2009-2010 Regular Sessions

I N A S S E M B L Y

February 17, 2009

Introduced by M. of A. ROSENTHAL, DINOWITZ, GREENE, ORTIZ -- Multi-Sponsored by -- M. of A. BRENNAN, COLTON, CYMBROWITZ, DIAZ, FARRELL, GLICK, GOTTFRIED, JACOBS, MAYERSOHN, O'DONNELL, PHEFFER, J. RIVERA, SCARBOROUGH, TOWNS, WEISENBERG -- read once and referred to the Committee on Housing

AN ACT to amend the multiple dwelling law, in relation to the right of tenants to offset payments for repairs of hazardous conditions in certain cases in cities subject to such law

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

Section 1. 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

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

LBD05941-01-9

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. 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.

10. 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.

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

S 2. This act shall take effect immediately; 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 one of this act such classifications shall be made within six months of the effective date of this act and this act shall not be deemed to take effect in such city until such classifications are made.