

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 235-b of the real property law, as added by chapter
2 597 of the laws of 1975, subdivision 3 as amended by chapter 403 of the
3 laws of 1983, paragraph (c) of subdivision 3 as added by chapter 116 of
4 the laws of 1997, is amended to read as follows:
5 S 235-b. Warranty of habitability. 1. In every written or oral lease
6 or rental agreement for residential premises the landlord or lessor
7 shall be deemed to covenant and warrant that the premises so leased or
8 rented and all areas used in connection therewith in common with other
9 tenants or residents are fit for human habitation and for the uses
10 reasonably intended by the parties and that the occupants of such prem-
11 ises shall not be subjected to any conditions which would be dangerous,
12 hazardous or detrimental to their life, health or safety. When any such
13 condition has been caused by the misconduct of the tenant or lessee or
14 persons under his direction or control, it shall not constitute a breach
15 of such covenants and warranties.
16 2. (A) IF A CHILD OF AGE TWELVE OR YOUNGER RESIDES WITHIN A TENANT'S
17 DWELLING A LANDLORD SHALL, AT THE WRITTEN REQUEST OF THE TENANT, BE
18 RESPONSIBLE FOR THE INSTALLATION OF A RADIATOR COVER ON ANY UNCOVERED
19 RADIATOR THAT: CARRIES STEAM, WATER, OR OTHER FLUIDS AT TEMPERATURES
20 EXCEEDING ONE HUNDRED SIXTY-FIVE DEGREES FAHRENHEIT; ARE NOT CURRENTLY
21 COVERED IN A MANNER THAT ENSURES THAT THE TEMPERATURE OF THE OUTER
22 SURFACE DOES NOT EXCEED ONE HUNDRED NINE DEGREES FAHRENHEIT; AND ARE
23 LOCATED IN THE TENANT'S DWELLING. THE LANDLORD SHALL HAVE NINETY DAYS
24 AFTER RECEIPT OF SUCH WRITTEN REQUEST TO COMPLETE THE INSTALLATION OF A
25 RADIATOR COVER OR COVERS.
26 (B) ANY FAILURE OF THE LANDLORD TO INSTALL A RADIATOR COVER, PURSUANT
27 TO PARAGRAPH (A) OF THIS SUBDIVISION, SHALL BE DEEMED TO SUBJECT THE
28 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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1 MENTAL TO THEIR LIFE, HEALTH, OR SAFETY. IN ANY CASE IN WHICH A TENANT
2 SHALL MAKE A PAYMENT IN ORDER TO INSTALL A REQUESTED RADIATOR COVER OR
3 COVERS, FOLLOWING THE FAILURE OF THE LANDLORD TO INSTALL SUCH COVERS
4 WITHIN NINETY DAYS OF RECEIVING A WRITTEN REQUEST PURSUANT TO PARAGRAPH
5 (A) OF THIS SUBDIVISION, THE TENANT MAY DEDUCT FROM THE RENT THE REASON-
6 ABLE COST FOR THE INSTALLATION AND SHALL NOT BE LIABLE FOR EVICTION ON
7 THE GROUND OF THAT DEDUCTION.

8 [2] 3. Any agreement by a lessee or tenant of a dwelling waiving or
9 modifying his rights as set forth in this section shall be void as
10 contrary to public policy.

11 [3] 4. In determining the amount of damages sustained by a tenant as
12 a result of a breach of the warranty set forth in the section, the
13 court;

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

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

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

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