

1461

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 10, 2011

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Introduced by M. of A. ROSENTHAL, DINOWITZ, V. LOPEZ, BROOK-KRASNY, BOYLAND, MILLMAN -- Multi-Sponsored by -- M. of A. BRENNAN, CAHILL, CYMBROWITZ, FARRELL, GLICK, GOTTFRIED, HOOPER, HOYT, JACOBS, KELLNER, MAYERSOHN, O'DONNELL, PHEFFER, J. RIVERA -- read once and referred to the Committee on Housing

AN ACT to amend the multiple dwelling law, the multiple residence law and the real property law, in relation to tenant's right to set off against rent for payments made due to landlord's failure to supply heat in certain cases

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

1     Section 1. Section 302-c of the multiple dwelling law, as added by  
2 chapter 85 of the laws of 1980, is amended to read as follows:  
3     S 302-c. Right of tenant to offset payments for heat failure; certain  
4 cases. 1. Any tenant acting alone or together with other tenants of a  
5 multiple dwelling employing an oil fired OR OTHER heating device for  
6 which the owner is responsible and wherein there exists a lack of heat  
7 due to the owner's failure TO REPAIR OR MAINTAIN THE HEATING DEVICE OR  
8 to have oil supplied to the premises, may contract and pay for the  
9 delivery of such oil OR SUCH MAINTENANCE OR REPAIRS, AS THE CASE MAY BE,  
10 in accordance with the provisions of this section. Any payment so made  
11 shall be deductible from rent [providing] PROVIDED the following  
12 provisions have been substantially complied with by the tenant or some-  
13 one acting on his behalf:  
14     a. Reasonable efforts were made to contact the owner or his agent to  
15 inform the owner of such failure TO REPAIR OR MAINTAIN THE HEATING  
16 DEVICE OR to supply oil.  
17     b. Reasonable efforts were made to have the normal REPAIR AND MAINTENANCE  
18 SERVICE AGENCY UNDERTAKE THE SAME OR TO HAVE THE NORMAL fuel  
19 supplier to the premises deliver the requested fuel, AS THE CASE MAY BE.

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

LBD01768-01-1

1 c. Delivery of fuel oil to the premises, IF THAT BE THE CASE, was  
2 secured from a fuel supplier regularly engaged in such business at a  
3 price within the range of prices listed by the department in the index  
4 provided for in subdivision three of this section.

5 d. REPAIRS OR MAINTENANCE, IF THAT BE THE CASE, TO THE HEATING DEVICE  
6 WAS SECURED FROM A SERVICE AGENCY REGULARLY ENGAGED IN SUCH BUSINESS AT  
7 A PRICE SUBSTANTIALLY SIMILAR TO THE PRICES LISTED BY THE DEPARTMENT IN  
8 THE INDEX PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION.

9 E. The REPAIR AND MAINTENANCE SERVICE AGENCY OR fuel supplier from  
10 whom SERVICE OR oil is secured provided a written statement containing  
11 the following:

12 (1) The name of the person or persons who requested the REPAIR OR  
13 MAINTENANCE SERVICE OR delivery; and

14 (2) The date, time of and premises to which THE REPAIR OR MAINTENANCE  
15 SERVICE OR delivery was made; and

16 (3) [The] IF OIL WAS DELIVERED, amount, grade and price of the oil  
17 [delivered]; and

18 (4) [A] IF OIL WAS DELIVERED, certification that the usable fuel  
19 supply before the delivery was exhausted; and

20 (5) IF REPAIR OR MAINTENANCE SERVICE WAS PROVIDED, THE SEPARATE CHARG-  
21 ES FOR EQUIPMENT AND PARTS USED AND LABOR EXPENDED, ITEMIZED AND SEPA-  
22 Rately STATED; AND

23 (6) The charge, if any, for refiring the burner; and

24 [(6)] (7) The amounts and from whom any payments were received.

25 [e] F. AFTER SUCH REPAIR OR MAINTENANCE WORK HAS BEEN UNDERTAKEN, IF  
26 THAT BE THE CASE, REASONABLE EFFORTS WERE MADE BY THE TENANT OR TENANTS  
27 TO NOTIFY ALL OTHER TENANTS THAT SUCH WORK HAS BEEN UNDERTAKEN, INCLUD-  
28 ING POSTING A NOTICE IN A PUBLIC AREA OF THE BUILDING WHICH LISTS THE  
29 DATE, TIME AND EXTENT OF SUCH WORK. A tenant shall not be required to  
30 comply with the provisions of paragraph a or b hereof unless the owner  
31 has continuously kept posted in a conspicuous place at the premises a  
32 notice containing his name, address and telephone number or that of his  
33 agent and the name, address and telephone number of the REPAIR AND MAIN-  
34 TENANCE SERVICE AGENCY FOR THE HEATING DEVICE OR THE fuel supplier to  
35 the premises AS THE CASE MAY BE.

36 [f] G. For purposes of this section, a multiple dwelling shall be  
37 considered to lack heat if, during the months between October first and  
38 May thirty-first, while ITS HEATING DEVICE IS INOPERATIVE DUE TO A  
39 BREAKDOWN OR MALFUNCTION OR WHILE its usable fuel supply was exhausted,  
40 the outdoor temperature fell below fifty-five degrees Fahrenheit at any  
41 time during the hours between six o'clock in the morning and ten o'clock  
42 in the evening.

43 2. The deduction from rent allowed by this section shall also include  
44 a reasonable charge, if any, made by the supplier for refiring the oil  
45 burner at the premises.

46 3. The department charged with the enforcement of laws, ordinances and  
47 regulations in relation to multiple dwellings shall:

48 a. Maintain and, to the extent practicable, update at least bi-weekly  
49 an index reflecting the range of prices of fuel oil according to grade  
50 and quantity paid per gallon on deliveries within the jurisdiction of  
51 the department during the last two week period for which statistics are  
52 available; and

53 b. Maintain and keep current and available a list of suppliers which  
54 have agreed to make deliveries of fuel oil in the circumstances, and to  
55 render such assistance as [is] MAY otherwise BE required [hereby] to  
56 enable tenants to obtain the benefits[,] contemplated by this section.

1 4. THE DEPARTMENT CHARGED WITH THE ENFORCEMENT OF LAWS, ORDINANCES  
2 AND REGULATIONS IN RELATION TO MULTIPLE DWELLINGS SHALL:

3 A. TO THE EXTENT PRACTICABLE MAINTAIN AND UPDATE AT LEAST MONTHLY AN  
4 INDEX REFLECTING THE RANGE OF PRICES CHARGED FOR EMERGENCY REPAIR AND  
5 MAINTENANCE OF OIL FIRED AND OTHER HEATING DEVICES INCLUDING USUAL  
6 CHARGES FOR EQUIPMENT, PARTS AND LABOR COMMONLY USED OR EXPENDED IN  
7 EFFECTING SUCH REPAIR AND MAINTENANCE; AND

8 B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF REPAIR AND MAIN-  
9 TENANCE SERVICE AGENCIES WHICH HAVE AGREED TO PROVIDE SUCH SERVICES IN  
10 SUCH CIRCUMSTANCES AND TO RENDER SUCH ASSISTANCE AS MAY OTHERWISE BE  
11 REASONABLY REQUIRED TO ENABLE TENANTS TO OBTAIN THE BENEFITS CONTEM-  
12 PLATED BY THIS SECTION.

13 5. The payment FOR REPAIRS AND MAINTENANCE OR for fuel oil at a price  
14 within the range of prices permitted by paragraph c OR D of subdivision  
15 one of this section, AS THE CASE MAY BE, shall be conclusively presumed  
16 to have been a reasonable price.

17 [5] 6. The introduction into evidence in any action or proceeding of  
18 any statement rendered in compliance with the provisions of paragraph  
19 [d] E of subdivision one of this section shall be presumptive of the  
20 facts stated therein. Sufficient foundation for the allowance into  
21 evidence of such statement shall consist of the oral testimony of any  
22 person named as a payer of all or part of the amount indicated thereon  
23 relating the facts and circumstances in which the statement was  
24 rendered.

25 [6] 7. Any tenant who has in good faith secured and paid for REPAIRS,  
26 MAINTENANCE OR fuel oil otherwise in conformance with the provisions of  
27 this section and against whom an action or proceeding to recover  
28 possession of the premises for nonpayment of rent or any other action or  
29 proceeding attributable at least in part to the tenant seeking or taking  
30 a deduction from rent as allowed by this section shall, in addition to  
31 any other amounts, be entitled to recover reasonable costs and attor-  
32 ney's fees against an owner bringing such action or proceeding.

33 [7] 8. No owner or agent shall be entitled to recover any amounts in  
34 damages from any REPAIR AND MAINTENANCE SERVICE AGENCY OR fuel oil  
35 supplier OR AN AGENT OR EMPLOYEE THEREOF who attempts in good faith and  
36 acts reasonably to carry out the intentment of this section except  
37 damages arising out of gross negligence.

38 [8] 9. The remedy provided in this section shall not be exclusive and  
39 a court may provide such other relief as may be just and proper in the  
40 circumstances. Nothing in this section shall be construed to limit or  
41 deny any existing constitutional, statutory, administrative or common  
42 law right of a tenant to contract and pay for the delivery of fuel oil  
43 for the multiple dwelling in which he resides or to pay for the cost of  
44 any other goods and services for such multiple dwelling. This section  
45 shall not be construed to preclude any defense, counterclaim or cause of  
46 action asserted by a tenant that may otherwise exist with respect to an  
47 owner's failure to provide heat or any other service.

48 [9] 10. Any agreement by a tenant of a dwelling waiving or modifying  
49 his rights as set forth in this section shall be void as contrary to  
50 public policy.

51 [10] 11. The provisions of this section shall be liberally construed  
52 so as to give effect to the purposes set forth herein.

53 S 2. Subdivision 11 of section 302-c of the multiple dwelling law, as  
54 added by chapter 893 of the laws of 1982, is renumbered subdivision 12.

55 S 3. Section 305-c of the multiple residence law, as added by chapter  
56 85 of the laws of 1980, is amended to read as follows:

1 S 305-c. Right of tenant to offset payments for heat failure; certain  
2 cases. 1. Any tenant acting alone or together with other tenants of a  
3 multiple dwelling employing an oil fired OR OTHER heating device for  
4 which the owner is responsible and wherein there exists a lack of heat  
5 due to the owner's failure TO REPAIR OR MAINTAIN THE HEATING DEVICE OR  
6 to have oil supplied to the premises, may contract and pay for the  
7 delivery of such oil OR SUCH MAINTENANCE OR REPAIRS, AS THE CASE MAY BE,  
8 in accordance with the provisions of this section. Any payment so made  
9 shall be deductible from rent [providing] PROVIDED the following  
10 provisions have been substantially complied with by the tenant or some-  
11 one acting on his behalf:

12 a. Reasonable efforts were made to contact the owner or his agent to  
13 inform the owner of such failure TO REPAIR OR MAINTAIN THE HEATING  
14 DEVICE OR to supply oil.

15 b. Reasonable efforts were made to have the normal REPAIR AND MAINTENANCE  
16 SERVICE AGENCY UNDERTAKE THE SAME OR TO HAVE THE NORMAL fuel  
17 supplier to the premises deliver the requested fuel, AS THE CASE MAY BE.

18 c. Delivery of fuel oil to the premises, IF THAT BE THE CASE, was  
19 secured from a fuel supplier regularly engaged in such business at a  
20 price within the range of prices listed by the department in the index  
21 provided for in subdivision three of this section.

22 d. REPAIRS OR MAINTENANCE, IF THAT BE THE CASE, TO THE HEATING DEVICE  
23 WAS SECURED FROM A SERVICE AGENCY REGULARLY ENGAGED IN SUCH BUSINESS AT  
24 A PRICE SUBSTANTIALLY SIMILAR TO THE PRICES LISTED BY THE DEPARTMENT IN  
25 THE INDEX PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION.

26 e. The REPAIR AND MAINTENANCE SERVICE AGENCY OR fuel supplier from  
27 whom SERVICE OR oil is secured provided a written statement containing  
28 the following:

29 (1) The name of the person or persons who requested the REPAIR OR  
30 MAINTENANCE SERVICE OR delivery; and

31 (2) The date, time of and premises to which THE REPAIR OR MAINTENANCE  
32 SERVICE OR delivery was made; and

33 (3) [The] IF OIL WAS DELIVERED, amount, grade and price of the oil  
34 [delivered]; and

35 (4) [A] IF OIL WAS DELIVERED, certification that the usable fuel  
36 supply before the delivery was exhausted; and

37 (5) IF REPAIR OR MAINTENANCE SERVICE WAS PROVIDED, THE SEPARATE CHARGES  
38 FOR EQUIPMENT AND PARTS USED AND LABOR EXPENDED, ITEMIZED AND SEPARATELY  
39 STATED; AND

40 (6) The charge, if any, for refiring the burner; and

41 [(6)] (7) The amounts and from whom any payments were received.

42 [e] F. AFTER SUCH REPAIR OR MAINTENANCE WORK HAS BEEN UNDERTAKEN, IF  
43 THAT BE THE CASE, REASONABLE EFFORTS WERE MADE BY THE TENANT OR TENANTS  
44 TO NOTIFY ALL OTHER TENANTS THAT SUCH WORK HAS BEEN UNDERTAKEN, INCLUDING  
45 POSTING A NOTICE IN A PUBLIC AREA OF THE BUILDING WHICH LISTS THE  
46 DATE, TIME AND EXTENT OF SUCH WORK. A tenant shall not be required to  
47 comply with the provisions of paragraph a or b hereof unless the owner  
48 has continuously kept posted in a conspicuous place at the premises a  
49 notice containing his name, address and telephone number or that of his  
50 agent and the name, address and telephone number of the REPAIR AND MAINTENANCE  
51 SERVICE AGENCY FOR THE HEATING DEVICE OR THE fuel supplier to  
52 the premises AS THE CASE MAY BE.

53 [f] G. For purposes of this section, a multiple dwelling shall be  
54 considered to lack heat if, during the months between October first and  
55 May thirty-first, while ITS HEATING DEVICE IS INOPERATIVE DUE TO A  
56 BREAKDOWN OR MALFUNCTION OR WHILE its usable fuel supply was exhausted,

1 the outdoor temperature fell below fifty-five degrees Fahrenheit at any  
2 time during the hours between six o'clock in the morning and ten o'clock  
3 in the evening.

4 2. The deduction from rent allowed by this section shall also include  
5 a reasonable charge, if any, made by the supplier for refiring the oil  
6 burner at the premises.

7 3. The department charged with the enforcement of laws, ordinances and  
8 regulations in relation to multiple dwellings shall:

9 a. Maintain and, to the extent practicable, update at least bi-weekly  
10 an index reflecting the range of prices of fuel oil according to grade  
11 and quantity paid per gallon on deliveries within the jurisdiction of  
12 the department during the last two week period for which statistics are  
13 available; and

14 b. Maintain and keep current and available a list of suppliers which  
15 have agreed to make deliveries of fuel oil in the circumstances, and to  
16 render such assistance as [is] MAY otherwise BE required [hereby] to  
17 enable tenants to obtain the benefits[,] contemplated by this section.

18 4. THE DEPARTMENT CHARGED WITH THE ENFORCEMENT OF LAWS, ORDINANCES  
19 AND REGULATIONS IN RELATION TO MULTIPLE DWELLINGS SHALL:

20 A. TO THE EXTENT PRACTICABLE MAINTAIN AND UPDATE AT LEAST MONTHLY AN  
21 INDEX REFLECTING THE RANGE OF PRICES CHARGED FOR EMERGENCY REPAIR AND  
22 MAINTENANCE OF OIL FIRED AND OTHER HEATING DEVICES INCLUDING USUAL  
23 CHARGES FOR EQUIPMENT, PARTS AND LABOR COMMONLY USED OR EXPENDED IN  
24 EFFECTING SUCH REPAIR AND MAINTENANCE; AND

25 B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF REPAIR AND MAIN-  
26 TENANCE SERVICE AGENCIES WHICH HAVE AGREED TO PROVIDE SUCH SERVICES IN  
27 SUCH CIRCUMSTANCES AND TO RENDER SUCH ASSISTANCE AS MAY OTHERWISE BE  
28 REASONABLY REQUIRED TO ENABLE TENANTS TO OBTAIN THE BENEFITS CONTEM-  
29 PLATED BY THIS SECTION.

30 5. The payment FOR REPAIRS AND MAINTENANCE OR for fuel oil at a price  
31 within the range of prices permitted by paragraph c OR D of subdivision  
32 one of this section, AS THE CASE MAY BE, shall be conclusively presumed  
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35 any statement rendered in compliance with the provisions of paragraph  
36 [d] E of subdivision one of this section shall be presumptive of the  
37 facts stated therein. Sufficient foundation for the allowance into  
38 evidence of such statement shall consist [in] OF the oral testimony of  
39 any person named as a payer of all or part of the amount indicated ther-  
40 eon relating the facts and circumstances in which the statement was  
41 rendered.

42 [6] 7. Any tenant who has in good faith secured and paid for REPAIRS,  
43 MAINTENANCE OR fuel oil otherwise in conformance with the provisions of  
44 this section and against whom an action or proceeding to recover  
45 possession of the premises for nonpayment of rent or any other action or  
46 proceeding attributable at least in part to the tenant seeking or taking  
47 a deduction from rent as allowed by this section shall, in addition to  
48 any other amounts, be entitled to recover reasonable costs and attor-  
49 ney's fees against an owner bringing such action or proceeding.

50 [7] 8. No owner or agent shall be entitled to recover any amounts in  
51 damages from any REPAIR AND MAINTENANCE SERVICE AGENCY OR fuel oil  
52 supplier OR AN AGENT OR EMPLOYEE THEREOF who attempts in good faith and  
53 acts reasonably to carry out the intendment of this section except  
54 damages arising out of gross negligence.

55 [8] 9. The remedy provided in this section shall not be exclusive and  
56 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 the delivery of fuel oil for the multiple dwelling in which he resides or to pay for the cost of any other 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 heat or any other service.

[9] 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.

[10] 11. The provisions of this section shall be liberally construed so as to give effect to the purposes set forth herein.

S 4. Subdivision 11 of section 305-c of the multiple residence law, as added by chapter 893 of the laws of 1982, is renumbered subdivision 12.

S 5. Section 235 of the real property law, as amended by chapter 85 of the laws of 1980, is amended to read as follows:

S 235. Wilful violations. 1. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, the lease or rental agreement whereof by its terms, expressed or implied, requires the furnishing of hot or cold water, heat, light, power, elevator service, telephone service or any other service or facility to any occupant of said building, who wilfully or intentionally fails to furnish such water, heat, light, power, elevator service, telephone service or other service or facility at any time when the same are necessary to the proper or customary use of such building, or part thereof, or any lessor, agent, manager, superintendent or janitor who wilfully and intentionally interferes with the quiet enjoyment of the leased premises by such occupant, is guilty of a violation.

2. Any lessor, agent, manager, superintendent or janitor of any building, or part thereof, who wilfully or intentionally acts to prevent or obstruct the PROVISION OF REPAIRS OR MAINTENANCE TO AN OIL FIRED OR OTHER HEATING DEVICE OR THE delivery of fuel oil ordered in compliance with either section three hundred two-c of the multiple dwelling law or section three hundred five-c of the multiple residence law or the refiring of an oil burner after such [a] PROVISION OF SERVICE OR delivery OF OIL shall be guilty of a violation.

S 6. This act shall take effect immediately, provided that sections two and four of this act shall take effect on the same date as chapter 471 of the laws of 1978 takes effect pursuant to chapter 893 of the laws of 1982.