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

3120

2011-2012 Regular Sessions

I N S E N A T E

February 9, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

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:

Section 1. Section 302-c of the multiple dwelling law, as added by chapter 85 of the laws of 1980, is amended to read as follows:

S 302-c. Right of tenant to offset payments for heat failure; certain cases. 1. Any tenant acting alone or together with other tenants of a multiple dwelling employing an oil fired OR OTHER heating device for which the owner is responsible and wherein there exists a lack of heat due to the owner's failure TO REPAIR OR MAINTAIN THE HEATING DEVICE OR to have oil supplied to the premises, may contract and pay for the delivery of such oil OR SUCH MAINTENANCE OR REPAIRS, AS THE CASE MAY BE, in accordance with the provisions of this section. Any payment so made shall be deductible from rent [providing] PROVIDED the following provisions have been substantially complied with by the tenant or someone acting on his behalf:

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

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

c. Delivery of fuel oil to the premises, IF THAT BE THE CASE, was secured from a fuel supplier regularly engaged in such business at a

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

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price within the range of prices listed by the department in the index provided for in subdivision three of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF REPAIR AND MAINTENANCE SERVICE AGENCIES WHICH HAVE AGREED TO PROVIDE SUCH SERVICES IN SUCH CIRCUMSTANCES AND TO RENDER SUCH ASSISTANCE AS MAY OTHERWISE BE REASONABLY REQUIRED TO ENABLE TENANTS TO OBTAIN THE BENEFITS CONTEMPLATED BY THIS SECTION.

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

[5] 6. The introduction into evidence in any action or proceeding of any statement rendered in compliance with the provisions of paragraph [d] E of subdivision one 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.

[6] 7. Any tenant who has in good faith secured and paid for REPAIRS, MAINTENANCE OR fuel oil 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.

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

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

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

S 305-c. Right of tenant to offset payments for heat failure; certain cases. 1. Any tenant acting alone or together with other tenants of a

multiple dwelling employing an oil fired OR OTHER heating device for which the owner is responsible and wherein there exists a lack of heat due to the owner's failure TO REPAIR OR MAINTAIN THE HEATING DEVICE OR to have oil supplied to the premises, may contract and pay for the delivery of such oil OR SUCH MAINTENANCE OR REPAIRS, AS THE CASE MAY BE, in accordance with the provisions of this section. Any payment so made shall be deductible from rent [providing] PROVIDED the following provisions have been substantially complied with by the tenant or someone acting on his behalf:

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

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

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

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

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

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

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

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

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

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

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

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

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

[f] G. For purposes of this section, a multiple dwelling shall be considered to lack heat if, during the months between October first and May thirty-first, while ITS HEATING DEVICE IS INOPERATIVE DUE TO A BREAKDOWN OR MALFUNCTION OR WHILE its usable fuel supply was exhausted, the outdoor temperature fell below fifty-five degrees Fahrenheit at any

time during the hours between six o'clock in the morning and ten o'clock in the evening.

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

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

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

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

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

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

B. MAINTAIN AND KEEP CURRENT AND AVAILABLE A LIST OF REPAIR AND MAINTENANCE SERVICE AGENCIES WHICH HAVE AGREED TO PROVIDE SUCH SERVICES IN SUCH CIRCUMSTANCES AND TO RENDER SUCH ASSISTANCE AS MAY OTHERWISE BE REASONABLY REQUIRED TO ENABLE TENANTS TO OBTAIN THE BENEFITS CONTEMPLATED BY THIS SECTION.

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

[5] 6. The introduction into evidence in any action or proceeding of any statement rendered in compliance with the provisions of paragraph [d] E of subdivision one of this section shall be presumptive of the facts stated therein. Sufficient foundation for the allowance into evidence of such statement shall consist [in] 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.

[6] 7. Any tenant who has in good faith secured and paid for REPAIRS, MAINTENANCE OR fuel oil 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.

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

[8] 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 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.