

1461

2011-2012 Regular Sessions

I N A S S E M B L Y

January 10, 2011

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.

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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
33 to have been a reasonable price.

34 [5] 6. The introduction into evidence in any action or proceeding of
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

1 circumstances. Nothing in this section shall be construed to limit or
2 deny any existing constitutional, statutory, administrative or common
3 law right of a tenant to contract and pay for the delivery of fuel oil
4 for the multiple dwelling in which he resides or to pay for the cost of
5 any other goods and services for such multiple dwelling. This section
6 shall not be construed to preclude any defense, counterclaim or cause of
7 action ASSERTED BY A TENANT that may otherwise exist with respect to an
8 owner's failure to provide heat or any other service.

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

12 [10] 11. The provisions of this section shall be liberally construed
13 so as to give effect to the purposes set forth herein.

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

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

18 S 235. Wilful violations. 1. Any lessor, agent, manager, superinten-
19 dent or janitor of any building, or part thereof, the lease or rental
20 agreement whereof by its terms, expressed or implied, requires the
21 furnishing of hot or cold water, heat, light, power, elevator service,
22 telephone service or any other service or facility to any occupant of
23 said building, who wilfully or intentionally fails to furnish such
24 water, heat, light, power, elevator service, telephone service or other
25 service or facility at any time when the same are necessary to the prop-
26 er or customary use of such building, or part thereof, or any lessor,
27 agent, manager, superintendent or janitor who wilfully and intentionally
28 interferes with the quiet enjoyment of the leased premises by such occu-
29 pant, is guilty of a violation.

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

38 S 6. This act shall take effect immediately, provided that sections
39 two and four of this act shall take effect on the same date as chapter
40 471 of the laws of 1978 takes effect pursuant to chapter 893 of the
41 laws of 1982.