

435

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I N S E N A T E

(PREFILED)

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Introduced by Sens. KRUEGER, DUANE, HUNTLEY, SERRANO -- 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 administrative code of the city of New York, the multiple dwelling law, the multiple residence law and the real property law, in relation to the "tenant rights omnibus act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "tenant rights omnibus act".
3 S 2. Section 26-413 of the administrative code of the city of New York
4 is amended by adding a new subdivision f to read as follows:
5 F. (1) IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE
6 PROVISION OF LAW, WHERE AN OWNER OR LESSOR SEEKS TO RECOVER POSSESSION
7 OF A DWELLING UNIT PURSUANT TO ITEM TEN OF SUBPARAGRAPH (I) OF PARAGRAPH
8 TWO OF SUBDIVISION E OF SECTION 26-403 OF THIS CHAPTER, ON THE GROUND
9 THAT THE DWELLING UNIT IS NOT OCCUPIED BY THE TENANT AS SUCH TENANT'S
10 PRIMARY RESIDENCE, SUCH OWNER OR LESSOR SHALL COMMENCE THE ACTION OR
11 PROCEEDING IN A COURT OF COMPETENT JURISDICTION ONLY UPON A GOOD FAITH
12 BELIEF THAT SUCH DWELLING UNIT IS NOT THE PRIMARY RESIDENCE OF SUCH
13 TENANT.
14 (2) IF ANY OWNER OR LESSOR COMMENCES AN ACTION OR PROCEEDING TO
15 RECOVER POSSESSION OF A DWELLING UNIT IN VIOLATION OF PARAGRAPH ONE OF
16 THIS SUBDIVISION, SUCH OWNER OR LESSOR SHALL BE LIABLE TO SUCH TENANT
17 FOR THREE TIMES THE MONTHLY RENT CHARGED SUCH TENANT, OR THREE TIMES THE
18 DAMAGES, IF ANY, SUSTAINED BY SUCH TENANT, WHICHEVER IS GREATER, PLUS
19 REASONABLE ATTORNEY'S FEES AND COSTS AS DETERMINED BY SUCH COURT.
20 S 3. Section 26-515 of the administrative code of the city of New York
21 is amended by adding a new subdivision e to read as follows:

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

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1 E. (1) IN ADDITION TO THE REQUIREMENTS OF ANY OTHER APPLICABLE
2 PROVISION OF LAW, WHERE AN OWNER OR LESSOR SEEKS TO RECOVER POSSESSION
3 OF A DWELLING UNIT PURSUANT TO SUBPARAGRAPH (F) OF PARAGRAPH ONE OF
4 SUBDIVISION A OF SECTION 26-504 OF THIS CHAPTER, ON THE GROUND THAT THE
5 DWELLING UNIT IS NOT OCCUPIED BY THE TENANT AS SUCH TENANT'S PRIMARY
6 RESIDENCE, SUCH OWNER OR LESSOR SHALL COMMENCE THE ACTION OR PROCEEDING
7 IN A COURT OF COMPETENT JURISDICTION ONLY UPON A GOOD FAITH BELIEF THAT
8 SUCH DWELLING UNIT IS NOT THE PRIMARY RESIDENCE OF SUCH TENANT.

9 (2) IF ANY OWNER OR LESSOR COMMENCES AN ACTION OR PROCEEDING TO
10 RECOVER POSSESSION OF A DWELLING UNIT IN VIOLATION OF PARAGRAPH ONE OF
11 THIS SUBDIVISION, SUCH OWNER OR LESSOR SHALL BE LIABLE TO SUCH TENANT
12 FOR THREE TIMES THE MONTHLY RENT CHARGED SUCH TENANT, OR THREE TIMES THE
13 DAMAGES, IF ANY, SUSTAINED BY SUCH TENANT, WHICHEVER IS GREATER, PLUS
14 REASONABLE ATTORNEY'S FEES AND COSTS AS DETERMINED BY SUCH COURT.

15 S 4. Paragraphs a and b of subdivision 4 of section 3 of the multiple
16 dwelling law, as amended by chapter 516 of the laws of 1983, are amended
17 to read as follows:

18 a. Any city, town or village may make local laws, ordinances, resol-
19 utions or regulations not less restrictive than those provided in this
20 chapter and may provide for their enforcement by legal or equitable
21 actions or proceedings, OR BY ADMINISTRATIVE PROCEEDINGS, and prescribe
22 the penalties, sanctions and remedies for violations thereof. In the
23 enforcement and administration of this chapter in a city of three
24 hundred twenty-five thousand or more persons, the penalties, sanctions
25 and remedies enacted by local law may be applied, notwithstanding their
26 inconsistency with this chapter, or the provisions of this chapter.

27 b. In a city of three hundred twenty-five thousand or more persons,
28 such local laws may authorize such actions or proceedings against the
29 owner, lessee of a whole multiple dwelling, agent or other person having
30 control of such dwelling, and any responsible party, or against the
31 dwelling in rem. Such local laws may further authorize (1) that civil OR
32 ADMINISTRATIVELY IMPOSED penalties may be enforced against the person
33 liable therefor, and that in addition to the methods of enforcement for
34 judgments established in the civil practice law and rules, a lien may be
35 imposed against the premises and the rents therefrom; (2) that such
36 civil OR ADMINISTRATIVELY IMPOSED penalties may be enforced against the
37 dwelling by the imposition of a lien against the rents therefrom.

38 S 5. Paragraph c of subdivision 4 of section 3 of the multiple dwell-
39 ing law, as amended by chapter 516 of the laws of 1978, is amended to
40 read as follows:

41 c. Such local laws may also authorize that all liens upon rents,
42 whether authorized by state or local law, may be satisfied without
43 further judicial proceedings by the collection of rents due or to become
44 due; AND MAY FURTHER AUTHORIZE THAT ADMINISTRATIVELY IMPOSED PENALTIES
45 MAY BE DOCKETED AND ENFORCED IN THE SAME MANNER AS A JUDGMENT IN A CIVIL
46 ACTION WITHOUT FURTHER JUDICIAL PROCEEDINGS.

47 S 6. Section 304 of the multiple residence law is amended by adding a
48 new subdivision 3 to read as follows:

49 3. IN ADDITION TO THE PENALTIES IMPOSED IN SUBDIVISION ONE OF THIS
50 SECTION, ANY CITY, TOWN OR VILLAGE MAY PROVIDE FOR THE ENFORCEMENT OF
51 THE PROVISIONS OF THIS CHAPTER OR OF LOCAL LAWS, ORDINANCES, RESOLUTIONS
52 OR REGULATIONS PROMULGATED PURSUANT HERETO BY ADMINISTRATIVE PROCEEDINGS
53 AND MAY AUTHORIZE ADMINISTRATIVELY IMPOSED PENALTIES WHICH MAY BE DOCK-
54 ETED AND ENFORCED IN THE SAME MANNER AS A JUDGMENT IN A CIVIL ACTION
55 WITHOUT FURTHER JUDICIAL PROCEEDINGS.

1 S 7. The multiple dwelling law is amended by adding a new section
2 302-d to read as follows:

3 S 302-D. RIGHT OF TENANT TO OFFSET PAYMENTS FOR REPAIRS OF HAZARDOUS
4 CONDITIONS; CERTAIN CASES. 1. AS USED IN THIS SECTION, UNLESS ANOTHER
5 MEANING CLEARLY APPEARS FROM THE CONTEXT:

6 A. "DEPARTMENT" SHALL MEAN THE DEPARTMENT OR AGENCY OF A CITY WITH A
7 POPULATION OF ONE MILLION OR MORE THAT IS CHARGED WITH ENFORCEMENT OF
8 HOUSING LAWS;

9 B. "HAZARDOUS VIOLATION" SHALL MEAN A VIOLATION OF THIS CHAPTER, THE
10 CITY HOUSING MAINTENANCE CODE OR ARTICLE EIGHTEEN OF THE EXECUTIVE LAW
11 OR THE RULES AND REGULATIONS PROMULGATED PURSUANT THERETO IDENTIFIED OR
12 CLASSIFIED BY THE CITY AS HAZARDOUS TO THE LIFE, HEALTH AND SAFETY OF
13 THE OCCUPANTS OF A DWELLING;

14 C. "IMMEDIATELY HAZARDOUS VIOLATION" SHALL MEAN A VIOLATION OF THIS
15 CHAPTER, THE CITY HOUSING MAINTENANCE CODE OR ARTICLE EIGHTEEN OF THE
16 EXECUTIVE LAW OR THE RULES AND REGULATIONS PROMULGATED PURSUANT THERETO
17 IDENTIFIED OR CLASSIFIED BY THE CITY AS IMMEDIATELY HAZARDOUS TO THE
18 LIFE, HEALTH AND SAFETY OF THE OCCUPANTS OF A DWELLING;

19 D. "CITY" SHALL MEAN A CITY TO WHICH THIS CHAPTER APPLIES.

20 2. IN A CITY, ANY TENANT ACTING ALONE OR TOGETHER WITH OTHER TENANTS
21 IN A MULTIPLE DWELLING, WHEREIN THERE EXISTS A CONDITION CONSTITUTING A
22 HAZARDOUS OR IMMEDIATELY HAZARDOUS VIOLATION, MAY CONTRACT AND PAY FOR
23 THE REPAIR OF SUCH CONDITION IN ACCORDANCE WITH THE PROVISIONS OF THIS
24 SECTION.

25 3. ANY PAYMENT SO MADE SHALL BE DEDUCTIBLE FROM RENT PROVIDING THE
26 FOLLOWING PROVISIONS HAVE BEEN SUBSTANTIALLY COMPLIED WITH BY THE TENANT
27 OR HIS AGENT:

28 A. THE LANDLORD OR HIS AGENT HAVE BEEN SENT NOTICE OF SUCH HAZARDOUS
29 OR IMMEDIATELY HAZARDOUS VIOLATION POSTED BY CERTIFIED MAIL, RETURN
30 RECEIPT REQUESTED.

31 B. IN THE CASE OF AN IMMEDIATELY HAZARDOUS VIOLATION, SUCH VIOLATION
32 HAS BEEN CERTIFIED BY THE DEPARTMENT AND SEVEN DAYS HAVE PASSED AFTER
33 WRITTEN NOTICE WAS FIRST OFFERED FOR DELIVERY BY THE POSTAL SERVICE TO
34 THE LANDLORD OR HIS AGENT WITHOUT COMPLETION OF REPAIRS OR COMMENCEMENT
35 OF REPAIRS OF SUCH VIOLATION BY THE LANDLORD AND PROVISION IN WRITING TO
36 THE TENANT OF A REASONABLE SCHEDULE FOR COMPLETION OF SUCH REPAIRS.

37 C. IN THE CASE OF A HAZARDOUS VIOLATION, SUCH VIOLATION HAS BEEN
38 CERTIFIED BY THE DEPARTMENT AND THIRTY DAYS HAVE PASSED AFTER WRITTEN
39 NOTICE WAS FIRST OFFERED FOR DELIVERY BY THE POSTAL SERVICE TO THE LAND-
40 LORD OR HIS AGENT WITHOUT COMPLETION OF REPAIRS OR COMMENCEMENT OF
41 REPAIRS OF SUCH VIOLATION BY THE LANDLORD AND PROVISION IN WRITING TO
42 THE TENANT OF A REASONABLE SCHEDULE FOR COMPLETION OF SUCH REPAIRS.

43 4. WHEN A TENANT OR GROUP OF TENANTS CONTRACTS FOR REPAIR WORK PURSU-
44 ANT TO THE PROVISIONS OF THIS SECTION, THE FOLLOWING CONDITIONS SHALL BE
45 MET:

46 A. IF A TENANT OR GROUP OF TENANTS DO NOT HIRE AN OUTSIDE CONTRACTOR,
47 THEY MAY DEDUCT COSTS FOR MATERIALS.

48 B. IF A TENANT OR GROUP OF TENANTS HIRE AN OUTSIDE CONTRACTOR TO
49 PERFORM REPAIRS THEY MAY DEDUCT CHARGES FOR MATERIALS AND LABOR,
50 PROVIDED THAT REASONABLE EFFORTS ARE MADE TO HAVE THE REPAIR WORK DONE
51 BY QUALIFIED WORKMEN AT PREVAILING RATES.

52 C. TENANTS MUST RECEIVE AN ITEMIZED BILL FROM THE PERSON, FIRM OR
53 CORPORATION FROM WHOM MATERIALS OR LABOR ARE PURCHASED.

54 D. WHERE A LICENSE TO PERFORM SERVICES IS REQUIRED BY LAW, A TENANT OR
55 GROUP OF TENANTS SHALL HIRE AN OUTSIDE LICENSED CONTRACTOR.

1 E. ANY PERSON, FIRM, CORPORATION OR EMPLOYEE THEREOF PROVIDING
2 SERVICES UNDER THE PROVISIONS OF THIS SECTION MUST BE LICENSED TO
3 PERFORM THE REPAIRS REQUESTED BY A TENANT OR GROUP OF TENANTS, WHERE A
4 LICENSE TO PROVIDE SUCH SERVICES IS REQUIRED BY LAW.

5 5. THE MAXIMUM AMOUNT OF MONEY AN INDIVIDUAL TENANT MAY DEDUCT FOR
6 REPAIR WORK UNDER THE PROVISIONS OF THIS SECTION SHALL BE ONE THOUSAND
7 DOLLARS OR THE SUM OF TWO MONTHS RENT, WHICHEVER IS GREATER. THE MAXIMUM
8 AMOUNT OF MONEY TWO OR MORE TENANTS ACTING TOGETHER MAY DEDUCT FOR
9 REPAIR WORK FROM THEIR COMBINED RENTS UNDER THE PROVISIONS OF THIS
10 SECTION SHALL BE THREE THOUSAND DOLLARS; PROVIDED, HOWEVER, SUCH MAXIMUM
11 AMOUNT MAY BE TEN THOUSAND DOLLARS IF IN ADDITION TO THE OTHER
12 PROVISIONS OF THIS SECTION, THE TENANTS HAVE POSTED BY CERTIFIED MAIL,
13 RETURN RECEIPT REQUESTED, TO THE LANDLORD OR HIS AGENT AN ITEMIZED ESTI-
14 MATE FOR REPAIR OF AN IMMEDIATELY HAZARDOUS VIOLATION PREPARED BY A
15 QUALIFIED PERSON, FIRM OR CORPORATION AND, WITHIN EIGHT DAYS, THE LAND-
16 LORD HAS NEITHER COMMENCED REPAIR WORK NOR PRESENTED A WRITTEN SCHEDULE
17 FOR REASONABLE COMPLETION OF THE REPAIR WORK NECESSARY TO REMOVE THE
18 IMMEDIATELY HAZARDOUS VIOLATION.

19 6. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY
20 STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH B OF
21 SUBDIVISION FOUR OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STAT-
22 ED THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF
23 SUCH STATEMENT SHALL CONSIST OF THE ORAL TESTIMONY OF ANY PERSON NAMED
24 AS A PAYER OF ALL OR PART OF THE AMOUNT INDICATED THEREON RELATING THE
25 FACTS AND CIRCUMSTANCES IN WHICH THE STATEMENT WAS RENDERED.

26 7. ANY TENANT WHO HAS IN GOOD FAITH SECURED AND PAID FOR REPAIRS,
27 OTHERWISE IN CONFORMANCE WITH THE PROVISIONS OF THIS SECTION AND AGAINST
28 WHOM AN ACTION OR PROCEEDING TO RECOVER POSSESSION OF THE PREMISES FOR
29 NONPAYMENT OF RENT OR ANY OTHER ACTION OR PROCEEDING ATTRIBUTABLE AT
30 LEAST IN PART TO THE TENANT SEEKING OR TAKING A DEDUCTION FROM RENT AS
31 ALLOWED BY THIS SECTION SHALL, IN ADDITION TO ANY OTHER AMOUNTS, BE
32 ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEY'S FEES AGAINST AN
33 OWNER BRINGING SUCH ACTION OR PROCEEDING.

34 8. NO OWNER OR AGENT SHALL BE ENTITLED TO RECOVER ANY AMOUNTS IN
35 DAMAGES FROM ANY TENANT OR GROUP OF TENANTS WHO ATTEMPT IN GOOD FAITH
36 AND ACT REASONABLY IN CARRYING OUT THE INTENDMENT OF THIS SECTION.

37 9. NO OWNER OR AGENT SHALL BE ENTITLED TO SELF-CERTIFICATION IF SUCH
38 OWNER OR AGENT IS FOUND TO HAVE FALSELY SELF-CERTIFIED WITHIN THE IMME-
39 DIATELY PRECEDING TWELVE MONTH PERIOD TO THE NEW YORK CITY DEPARTMENT OF
40 HOUSING, PRESERVATION AND DEVELOPMENT.

41 10. THE REMEDY PROVIDED IN THIS SECTION SHALL NOT BE EXCLUSIVE AND A
42 COURT MAY PROVIDE SUCH OTHER RELIEF AS MAY BE JUST AND PROPER IN THE
43 CIRCUMSTANCES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR
44 DENY ANY EXISTING CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE OR COMMON
45 LAW RIGHT OF A TENANT TO CONTRACT AND PAY FOR ANY GOODS AND SERVICES FOR
46 SUCH MULTIPLE DWELLING. THIS SECTION SHALL NOT BE CONSTRUED TO PRECLUDE
47 ANY DEFENSE, COUNTERCLAIM OR CAUSE OF ACTION ASSERTED BY A TENANT THAT
48 MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO PROVIDE ANY
49 SERVICE.

50 11. ANY AGREEMENT BY A TENANT OF A DWELLING WAIVING OR MODIFYING HIS
51 RIGHTS AS SET FORTH IN THIS SECTION SHALL BE VOID AS CONTRARY TO PUBLIC
52 POLICY.

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

55 S 8. The real property law is amended by adding a new section 235-h to
56 read as follows:

1 S 235-H. TENANT RIGHT TO WITHHOLD RENT FOR FAILURE TO PROVIDE HEAT. IF
2 ANY OWNER OF A MULTIPLE DWELLING RESPONSIBLE FOR PROVIDING HEAT TO THE
3 TENANTS OF SUCH DWELLING SHALL FAIL TO PROVIDE SUCH SERVICE WITHIN TWEN-
4 TY-FOUR HOURS OF A NOTIFICATION BY THE TENANT TO THE OWNER, HIS OR HER
5 AGENT, EMPLOYEE OR REPRESENTATIVE, THAT SUCH TENANT IS RECEIVING INSUF-
6 FICIENT HEAT DURING THE MONTHS OF NOVEMBER THROUGH MARCH, THE TENANT
7 SHALL HAVE THE RIGHT TO DEDUCT ONE-TENTH OF ONE MONTH'S RENT FROM HIS OR
8 HER RENT PAYMENTS FOR EACH DAY ON WHICH THE OWNER SHALL HAVE FAILED TO
9 PROVIDE HEAT.

10 S 9. This act shall take effect immediately and shall apply to all
11 actions or proceedings pending on or commenced after such date, provided
12 that the amendments to section 26-413 of the city rent and rehabili-
13 tation law made by section two of this act shall remain in full force
14 and effect only as long as the public emergency requiring the regulation
15 and control of residential rents and evictions continues, as provided in
16 subdivision 3 of section 1 of the local emergency housing rent control
17 act; and provided further that the amendments to section 26-515 of the
18 rent stabilization law of nineteen hundred sixty-nine made by section
19 three of this act shall expire on the same date as such law expires and
20 shall not affect the expiration of such law as provided under section
21 26-520 of such law; provided, however, that in any city which has not
22 heretofore made the classifications referred to in paragraphs b and c of
23 subdivision 1 of section 302-d of the multiple dwelling law, as added by
24 section seven of this act such classifications shall be made within six
25 months of the effective date of such section and such section shall not
26 be deemed to take effect in such city until such classifications are
27 made; provided that the division of housing and community renewal shall
28 notify the legislative bill drafting commission upon the occurrence of
29 the enactment of the legislation provided for in section seven of this
30 act in order that the commission may maintain an accurate and timely
31 effective data base of the official text of the laws of the state of New
32 York in furtherance of effectuating the provisions of section 44 of the
33 legislative law and section 70-b of the public officers law.