

907

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KRUEGER, DUANE, HUNTLEY, SERRANO, STAVISKY -- 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, in relation to the right of tenants to offset payments for repairs of hazardous conditions in certain cases in cities subject to such law

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

1 Section 1. The multiple dwelling law is amended by adding a new
2 section 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

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

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1 THE REPAIR OF SUCH CONDITION IN ACCORDANCE WITH THE PROVISIONS OF THIS
2 SECTION.

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

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

9 B. IN THE CASE OF AN IMMEDIATELY HAZARDOUS VIOLATION, SUCH VIOLATION
10 HAS BEEN CERTIFIED BY THE DEPARTMENT AND SEVEN DAYS HAVE PASSED AFTER
11 WRITTEN NOTICE WAS FIRST OFFERED FOR DELIVERY BY THE POSTAL SERVICE TO
12 THE LANDLORD OR HIS AGENT WITHOUT COMPLETION OF REPAIRS OR COMMENCEMENT
13 OF REPAIRS OF SUCH VIOLATION BY THE LANDLORD AND PROVISION IN WRITING TO
14 THE TENANT OF A REASONABLE SCHEDULE FOR COMPLETION OF SUCH REPAIRS.

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

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

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

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

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

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

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

38 5. THE MAXIMUM AMOUNT OF MONEY AN INDIVIDUAL TENANT MAY DEDUCT FOR
39 REPAIR WORK UNDER THE PROVISIONS OF THIS SECTION SHALL BE ONE THOUSAND
40 DOLLARS OR THE SUM OF TWO MONTHS RENT, WHICHEVER IS GREATER. THE MAXIMUM
41 AMOUNT OF MONEY TWO OR MORE TENANTS ACTING TOGETHER MAY DEDUCT FOR
42 REPAIR WORK FROM THEIR COMBINED RENTS UNDER THE PROVISIONS OF THIS
43 SECTION SHALL BE THREE THOUSAND DOLLARS; PROVIDED, HOWEVER, SUCH MAXIMUM
44 AMOUNT MAY BE TEN THOUSAND DOLLARS IF IN ADDITION TO THE OTHER
45 PROVISIONS OF THIS SECTION, THE TENANTS HAVE POSTED BY CERTIFIED MAIL,
46 RETURN RECEIPT REQUESTED, TO THE LANDLORD OR HIS AGENT AN ITEMIZED ESTI-
47 MATE FOR REPAIR OF AN IMMEDIATELY HAZARDOUS VIOLATION PREPARED BY A
48 QUALIFIED PERSON, FIRM OR CORPORATION AND, WITHIN EIGHT DAYS, THE LAND-
49 LORD HAS NEITHER COMMENCED REPAIR WORK NOR PRESENTED A WRITTEN SCHEDULE
50 FOR REASONABLE COMPLETION OF THE REPAIR WORK NECESSARY TO REMOVE THE
51 IMMEDIATELY HAZARDOUS VIOLATION.

52 6. THE INTRODUCTION INTO EVIDENCE IN ANY ACTION OR PROCEEDING OF ANY
53 STATEMENT RENDERED IN COMPLIANCE WITH THE PROVISIONS OF PARAGRAPH B OF
54 SUBDIVISION FOUR OF THIS SECTION SHALL BE PRESUMPTIVE OF THE FACTS STAT-
55 ED THEREIN. SUFFICIENT FOUNDATION FOR THE ALLOWANCE INTO EVIDENCE OF
56 SUCH STATEMENT SHALL CONSIST OF THE ORAL TESTIMONY OF ANY PERSON NAMED

1 AS A PAYER OF ALL OR PART OF THE AMOUNT INDICATED THEREON RELATING THE
2 FACTS AND CIRCUMSTANCES IN WHICH THE STATEMENT WAS RENDERED.

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

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

14 9. THE REMEDY PROVIDED IN THIS SECTION SHALL NOT BE EXCLUSIVE AND A
15 COURT MAY PROVIDE SUCH OTHER RELIEF AS MAY BE JUST AND PROPER IN THE
16 CIRCUMSTANCES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR
17 DENY ANY EXISTING CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE OR COMMON
18 LAW RIGHT OF A TENANT TO CONTRACT AND PAY FOR ANY GOODS AND SERVICES FOR
19 SUCH MULTIPLE DWELLING. THIS SECTION SHALL NOT BE CONSTRUED TO PRECLUDE
20 ANY DEFENSE, COUNTERCLAIM OR CAUSE OF ACTION ASSERTED BY A TENANT THAT
21 MAY OTHERWISE EXIST WITH RESPECT TO AN OWNER'S FAILURE TO PROVIDE ANY
22 SERVICE.

23 10. ANY AGREEMENT BY A TENANT OF A DWELLING WAIVING OR MODIFYING HIS
24 RIGHTS AS SET FORTH IN THIS SECTION SHALL BE VOID AS CONTRARY TO PUBLIC
25 POLICY.

26 11. THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED SO AS
27 TO GIVE EFFECT TO THE PURPOSE SET FORTH HEREIN.

28 S 2. This act shall take effect immediately; provided, however, that
29 in any city which has not heretofore made the classifications referred
30 to in paragraphs b and c of subdivision 1 of section 302-d of the multi-
31 ple dwelling law, as added by section one of this act such classifica-
32 tions shall be made within six months of the effective date of this act
33 and this act shall not be deemed to take effect in such city until such
34 classifications are made.