

# STATE OF NEW YORK

1310

2019-2020 Regular Sessions

## IN ASSEMBLY

January 14, 2019

Introduced by M. of A. L. ROSENTHAL, DINOWITZ, JAFFEE -- Multi-Sponsored  
by -- M. of A. CAHILL, CYMBROWITZ, EPSTEIN, GLICK, GOTTFRIED, PERRY,  
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 Assem-  
bly, 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 § 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 mainte-  
18 nance 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.

20 c. Delivery of fuel oil to the premises, if that be the case, was  
21 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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1 price within the range of prices listed by the department in the index  
2 provided for in subdivision three of this section.

3 d. Repairs or maintenance, if that be the case, to the heating device  
4 was secured from a service agency regularly engaged in such business at  
5 a price substantially similar to the prices listed by the department in  
6 the index provided for in subdivision four of this section.

7 e. The repair and maintenance service agency or fuel supplier from  
8 whom service or oil is secured provided a written statement containing  
9 the following:

10 (1) The name of the person or persons who requested the repair or  
11 maintenance service or delivery; and

12 (2) The date, time of and premises to which the repair or maintenance  
13 service or delivery was made; and

14 (3) [~~The~~] If oil was delivered, amount, grade and price of the oil  
15 [~~delivered~~]; and

16 (4) [~~A~~] If oil was delivered, certification that the usable fuel  
17 supply before the delivery was exhausted; and

18 (5) If repair or maintenance service was provided, the separate charg-  
19 es for equipment and parts used and labor expended, itemized and sepa-  
20 rately stated; and

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

22 [~~+6+~~] (7) The amounts and from whom any payments were received.

23 [~~e~~] f. After such repair or maintenance work has been undertaken, if  
24 that be the case, reasonable efforts were made by the tenant or tenants  
25 to notify all other tenants that such work has been undertaken, includ-  
26 ing posting a notice in a public area of the building which lists the  
27 date, time and extent of such work. A tenant shall not be required to  
28 comply with the provisions of paragraph a or b hereof unless the owner  
29 has continuously kept posted in a conspicuous place at the premises a  
30 notice containing his name, address and telephone number or that of his  
31 agent and the name, address and telephone number of the repair and main-  
32 tenance service agency for the heating device or the fuel supplier to  
33 the premises as the case may be.

34 [~~f~~] g. For purposes of this section, a multiple dwelling shall be  
35 considered to lack heat if, during the months between October first and  
36 May thirty-first, while its heating device is inoperative due to a  
37 breakdown or malfunction or while its usable fuel supply was exhausted,  
38 the outdoor temperature fell below fifty-five degrees Fahrenheit at any  
39 time during the hours between six o'clock in the morning and ten o'clock  
40 in the evening.

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

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

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

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

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

1 a. To the extent practicable maintain and update at least monthly an  
2 index reflecting the range of prices charged for emergency repair and  
3 maintenance of oil fired and other heating devices including usual  
4 charges for equipment, parts and labor commonly used or expended in  
5 effecting such repair and maintenance; and

6 b. Maintain and keep current and available a list of repair and main-  
7 tenance service agencies which have agreed to provide such services in  
8 such circumstances and to render such assistance as may otherwise be  
9 reasonably required to enable tenants to obtain the benefits contem-  
10 plated by this section.

11 5. The payment for repairs and maintenance or for fuel oil at a price  
12 within the range of prices permitted by paragraph c or d of subdivision  
13 one of this section, as the case may be, shall be conclusively presumed  
14 to have been a reasonable price.

15 [5] 6. The introduction into evidence in any action or proceeding of  
16 any statement rendered in compliance with the provisions of paragraph  
17 [4] e of subdivision one of this section shall be presumptive of the  
18 facts stated therein. Sufficient foundation for the allowance into  
19 evidence of such statement shall consist of the oral testimony of any  
20 person named as a payer of all or part of the amount indicated thereon  
21 relating the facts and circumstances in which the statement was  
22 rendered.

23 [6] 7. Any tenant who has in good faith secured and paid for repairs,  
24 maintenance or fuel oil otherwise in conformance with the provisions of  
25 this section and against whom an action or proceeding to recover  
26 possession of the premises for nonpayment of rent or any other action or  
27 proceeding attributable at least in part to the tenant seeking or taking  
28 a deduction from rent as allowed by this section shall, in addition to  
29 any other amounts, be entitled to recover reasonable costs and attor-  
30 ney's fees against an owner bringing such action or proceeding.

31 [7] 8. No owner or agent shall be entitled to recover any amounts in  
32 damages from any repair and maintenance service agency or fuel oil  
33 supplier or an agent or employee thereof who attempts in good faith and  
34 acts reasonably to carry out the intentment of this section except  
35 damages arising out of gross negligence.

36 [8] 9. The remedy provided in this section shall not be exclusive and  
37 a court may provide such other relief as may be just and proper in the  
38 circumstances. Nothing in this section shall be construed to limit or  
39 deny any existing constitutional, statutory, administrative or common  
40 law right of a tenant to contract and pay for the delivery of fuel oil  
41 for the multiple dwelling in which he resides or to pay for the cost of  
42 any other goods and services for such multiple dwelling. This section  
43 shall not be construed to preclude any defense, counterclaim or cause of  
44 action asserted by a tenant that may otherwise exist with respect to an  
45 owner's failure to provide heat or any other service.

46 [9] 10. Any agreement by a tenant of a dwelling waiving or modifying  
47 his rights as set forth in this section shall be void as contrary to  
48 public policy.

49 [10] 11. The provisions of this section shall be liberally construed  
50 so as to give effect to the purposes set forth herein.

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

53 § 3. Section 305-c of the multiple residence law, as added by chapter  
54 85 of the laws of 1980, is amended to read as follows:

55 § 305-c. Right of tenant to offset payments for heat failure; certain  
56 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

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

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

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

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

13 b. Maintain and keep current and available a list of suppliers which  
14 have agreed to make deliveries of fuel oil in the circumstances, and to  
15 render such assistance as [~~is~~] may otherwise be required [~~hereby~~] to  
16 enable tenants to obtain the benefits[~~7~~] contemplated by this section.

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

19 a. To the extent practicable maintain and update at least monthly an  
20 index reflecting the range of prices charged for emergency repair and  
21 maintenance of oil fired and other heating devices including usual  
22 charges for equipment, parts and labor commonly used or expended in  
23 effecting such repair and maintenance; and

24 b. Maintain and keep current and available a list of repair and main-  
25 tenance service agencies which have agreed to provide such services in  
26 such circumstances and to render such assistance as may otherwise be  
27 reasonably required to enable tenants to obtain the benefits contem-  
28 plated by this section.

29 5. The payment for repairs and maintenance or for fuel oil at a price  
30 within the range of prices permitted by paragraph c or d of subdivision  
31 one of this section, as the case may be, shall be conclusively presumed  
32 to have been a reasonable price.

33 [~~5~~] 6. The introduction into evidence in any action or proceeding of  
34 any statement rendered in compliance with the provisions of paragraph  
35 [~~a~~] e of subdivision one of this section shall be presumptive of the  
36 facts stated therein. Sufficient foundation for the allowance into  
37 evidence of such statement shall consist [~~in~~] of the oral testimony of  
38 any person named as a payer of all or part of the amount indicated ther-  
39 eon relating the facts and circumstances in which the statement was  
40 rendered.

41 [~~6~~] 7. Any tenant who has in good faith secured and paid for repairs,  
42 maintenance or fuel oil otherwise in conformance with the provisions of  
43 this section and against whom an action or proceeding to recover  
44 possession of the premises for nonpayment of rent or any other action or  
45 proceeding attributable at least in part to the tenant seeking or taking  
46 a deduction from rent as allowed by this section shall, in addition to  
47 any other amounts, be entitled to recover reasonable costs and attor-  
48 ney's fees against an owner bringing such action or proceeding.

49 [~~7~~] 8. No owner or agent shall be entitled to recover any amounts in  
50 damages from any repair and maintenance service agency or fuel oil  
51 supplier or an agent or employee thereof who attempts in good faith and  
52 acts reasonably to carry out the intendment of this section except  
53 damages arising out of gross negligence.

54 [~~8~~] 9. The remedy provided in this section shall not be exclusive and  
55 a court may provide such other relief as may be just and proper in the  
56 circumstances. Nothing in this section shall be construed to limit or

1 deny any existing constitutional, statutory, administrative or common  
2 law right of a tenant to contract and pay for the delivery of fuel oil  
3 for the multiple dwelling in which he resides or to pay for the cost of  
4 any other goods and services for such multiple dwelling. This section  
5 shall not be construed to preclude any defense, counterclaim or cause of  
6 action asserted by a tenant that may otherwise exist with respect to an  
7 owner's failure to provide heat or any other service.

8 [9] 10. Any agreement by a tenant of a dwelling waiving or modifying  
9 his rights as set forth in this section shall be void as contrary to  
10 public policy.

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

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

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

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

29 2. Any lessor, agent, manager, superintendent or janitor of any build-  
30 ing, or part thereof, who wilfully or intentionally acts to prevent or  
31 obstruct the provision of repairs or maintenance to an oil fired or  
32 other heating device or the delivery of fuel oil ordered in compliance  
33 with either section three hundred two-c of the multiple dwelling law or  
34 section three hundred five-c of the multiple residence law or the refir-  
35 ing of an oil burner after such [a] provision of service or delivery of  
36 oil shall be guilty of a violation.

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