§ 302-a. Abatement of rent in the case of serious violations.

1. The provisions of this section shall apply to all cities with a population of four hundred thousand or more.

2. a. A "rent impairing" violation within the meaning of this section shall designate a condition in a multiple dwelling which, in the opinion of the department, constitutes, or if not promptly corrected, will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof.

b. The determination as to which violations are "rent impairing" shall be made in the following manner. Within six months after the enactment of this section, the department shall promulgate a list of conditions constituting violations of the provisions of this chapter and of any regulations promulgated pursuant to the provisions of subdivision four of section three of this chapter. Such list shall contain a brief description of the condition constituting the violation, the section of this chapter or regulation violated, and the order number assigned thereto. The department may from time to time change the number or description of violations on such list, as may seem appropriate to the department. Such list shall be available at all times to the public.

c. At the time of the promulgation of the list of violations, the department shall also designate, by reference to the order number, those violations which it proposes to classify as rent impairing as above defined. Within thirty days thereafter, the department shall hold a public hearing at which all persons interested may be heard as to the propriety of the classification of such violations as rent impairing. At least twenty days' notice of such hearing shall be given by publication in the city record or other publication in which official notices of the city are regularly published. Within a reasonable time after the hearing, the department shall make and publish a list of those violations which are classified as rent impairing. Any person interested may, within four months thereafter, seek a review by the supreme court of the propriety of the classification of any of such violations as "Rent Impairing" by a special proceeding pursuant to article

seventy-eight of the civil practice law and rules. No other body or officer shall have the power to review said classification.

d. The department may at any time change the number or description of rent impairing violations but no such change shall be made except in the manner above set forth after notice and public hearing.

3. a. If (i) the official records of the department shall note that a rent impairing violation exists in respect to a multiple dwelling and that notice of such violation has been given by the department, by mail, to the owner last registered with the department and (ii) such note of the violation is not cancelled or removed of record within six months after the date of such notice of such violation, then for the period that such violation remains uncorrected after the expiration of said six months, no rent shall be recovered by any owner for any premises in such multiple dwelling used by a resident thereof for human habitation in which the condition constituting such rent impairing violation exists, provided, however, that if the violation is one that requires approval of plans by the department for the corrective work and if plans for such corrective work shall have been duly filed within three months from the date of notice of such violation by the department to the owner last registered with the department, the six-months period aforementioned shall not begin to run until the date that plans for the corrective work are approved by the department; if plans are not filed within said three-months period or if so filed, they are disapproved and amendments are not duly filed within thirty days after the date of notification of the disapproval by the department to the person having filed the plans, the six-months period shall be computed as if no plans whatever had been filed under this proviso. If a condition constituting a rent impairing violation exists in the part of a multiple dwelling used in common by the residents or in the part under the control of the owner thereof, the violation shall be deemed to exist in the respective premises of each resident of the multiple dwelling.

b. The provisions of subparagraph a shall not apply if (i) the condition referred to in the department's notice to the owner last registered with the department did not in fact exist, notwithstanding

the notation thereof in the records of the department; (ii) the condition which is the subject of the violation has in fact been corrected, though the note thereof in the department has not been removed or cancelled; (iii) the violation has been caused by the resident from whom rent is sought to be collected or by members of his family or by his guests or by another resident of the multiple dwelling or the members of the family of such other resident or by his guests, or (iv) the resident proceeded against for rent has refused entry to the owner for the purpose of correcting the condition giving rise to the violation.

c. To raise a defense under subparagraph a in any action to recover rent or in any special proceeding for the recovery of possession because of non-payment of rent, the resident must affirmatively plead and prove the material facts under subparagraph a, and must also deposit with the clerk of the court in which the action or proceeding is pending at the time of filing of the resident's answer the amount of rent sought to be recovered in the action or upon which the proceeding to recover possession is based, to be held by the clerk of the court until final disposition of the action or proceeding at which time the rent deposited shall be paid to the owner, if the owner prevails, or be returned to the resident if the resident prevails. Such deposit of rent shall vitiate any right on the part of the owner to terminate the lease or rental agreement of the resident because of nonpayment of rent.

d. If a resident voluntarily pays rent or an installment of rent when he would be privileged to withhold the same under subparagraph a, he shall not thereafter have any claim or cause of action to recover back the rent or installment of rent so paid. A voluntary payment within the meaning hereof shall mean payment other than one made pursuant to a judgment in an action or special proceeding.

e. If upon the trial of any action to recover rent or any special proceeding for the recovery of possession because of non-payment of rent it shall appear that the resident has raised a defense under this section in bad faith, or has caused the violation or has refused entry to the owner for the purpose of correcting the condition giving rise to

the violation, the court, in its discretion, may impose upon the resident the reasonable costs of the owner, including counsel fees, in maintaining the action or proceeding not to exceed one hundred dollars.