§ 305-c. Right of tenant to offset payments for heat failure; certain cases. 1. Any tenant acting alone or together with other tenants of a multiple dwelling employing an oil fired heating device for which the owner is responsible and wherein there exists a lack of heat due to the owner's failure to have oil supplied to the premises, may contract and pay for the delivery of such oil in accordance with the provisions of this section. Any payment so made shall be deductible from rent providing 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 supply oil.

b. Reasonable efforts were made to have the normal fuel supplier to the premises deliver the requested fuel.

c. Delivery of fuel oil to the premises 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. The fuel supplier from whom oil is secured provided a written statement containing the following:

(1) The name of the person or persons who requested the delivery; and

(2) The date, time of and premises to which delivery was made; and

(3) The amount, grade and price of the oil delivered; and

(4) A certification that the usable fuel supply before the delivery was exhausted; and

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

(6) The amounts and from whom any payments were received.

e. 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 fuel supplier to the premises.

f. 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 usable fuel supply was exhausted, the outdoor temperature fell below fifty-five degrees Fahrenheit at any time during the hours between six o'clock in the morning and ten o'clock in the evening.

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

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

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

b. Maintain and keep current and available a list of suppliers which have agreed to make deliveries of fuel oil in the circumstances, and to render such assistance as is otherwise required hereby to enable tenants to obtain the benefits, contemplated by this section.

4. The payment for fuel oil at a price within the range of prices permitted by paragraph c of subdivision one of this section shall be conclusively presumed to have been a reasonable price.

5. The introduction into evidence in any action or proceeding of any statement rendered in compliance with the provisions of paragraph d of subdivision one of this section shall be presumptive of the facts stated therein. Sufficient foundation for the allowance into evidence of such statement shall consist in the oral testimony of any person named as a payer of all or part of the amount indicated thereon relating the facts and circumstances in which the statement was rendered.

6. Any tenant who has in good faith secured and paid for fuel oil otherwise in conformance with the provisions of this section and against whom an action or proceeding to recover possession of the premises for nonpayment of rent or any other action or proceeding attributable at least in part to the tenant seeking or taking a deduction from rent as allowed by this section shall, in addition to any other amounts, be entitled to recover reasonable costs and attorney's fees against an owner bringing such action or proceeding.

7. No owner or agent shall be entitled to recover any amounts in damages from any fuel oil supplier who attempts in good faith and acts reasonably to carry out the intendment of this section except damages arising out of gross negligence.

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

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

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

* 11. Nothing contained in this section and no payment made pursuant to this section shall be deemed to discharge the liability of a renter with an interest in real property pursuant to subdivision two of section three hundred four of the real property tax law from taxes levied on such interest.

* NB (Effective pending ruling by Commissioner of Internal Revenue of

the United States)