



SPONSOR: Sen. Pinkney

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1
TO
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 191

AMEND House Substitute No. 1 for House Bill No. 191 on line 38 by adding “following” before “circumstances”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 50 through 56 in their entirety and substituting in lieu thereof the following:

“(a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant’s bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement or seek any remedy allowed under §§ 5307 through 5308A of this title. If such condition renders the premises uninhabitable or poses an imminent threat to the health, ~~safety~~ safety, or welfare of the tenant or any member of the ~~family~~ tenant’s household, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court or seek any remedy allowed under §§ 5307 through 5308A of this title.”

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 61 through 110 in their entirety and substituting in lieu thereof the following:

“(c) If the condition referred to in subsection (a) of this section was caused wilfully or negligently by the landlord, ~~the tenant may recover the greater of~~ all of the following applies:

(1) The tenant may recover the greater of the following:

a. The difference between rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental ~~term; or term.~~

~~(2)~~ b. An amount equal to 1 month’s rent and the security deposit.

(2) It is an unlawful practice under § 2513 of Title 6 and a violation of subchapter II of Chapter

25 of Title 6 if all of the following are true:

a. The condition was not the direct result of a condition caused by the carelessness of the tenant, a member of the tenant's household, or any other person on the premises with the tenant's consent.

b. The landlord had actual or constructive notice of the condition.

c. The landlord failed to correct the condition in a timely manner.

d. The condition created a risk to the health, safety, or welfare of the tenant, a member of the tenant's household, an occupant, or a guest on the premises.

§ 5307. Serious Conditions; landlord obligation and tenant's ~~Tenant's remedies relating to the rental unit; repair and deduction from rent.~~

(a) If the landlord of a rental unit, after receiving notice in writing by the tenant or by any governmental entity, fails to repair, maintain maintain, or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code code, or ordinance, or as agreed to in the a-rental agreement, agreement; and, if after being notified in writing by the tenant to do so, the landlord must do one of the following:

(1) ~~Fails to remedy~~ Remedy such failure within 30 days from the receipt of the ~~notice; or notice.~~

(2) ~~Fails to initiate~~ Initiate reasonable corrective measures where appropriate, including, ~~but not limited to,~~ the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the ~~notice; notice.~~

~~Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding \$400, or 1/2 of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.~~

(b) If the landlord fails to comply with subsection (a) of this section and the tenant alleges that the conditions threaten the life, health, or safety of the occupants, the tenant may do one of the following:

1. Immediately withhold the rent or any part thereof.

2. Seek abatement as an affirmative action in the Justice of the Peace Court.

3. File an action for rent escrow in the Justice of the Peace Court under § 5308A of this title.

4. Terminate the lease after providing notice to the landlord.

(c) Procedure for an action filed under this section.

The tenant may file a complaint with the Justice of the Peace Court under § 5308A of this Title.

51 (d) A tenant may raise the existence of any conditions that threaten the life, health, or safety of the
52 occupants as an affirmative defense to any action based upon a claim of unpaid rent filed by the landlord.

53 (e) As used in this section:

54 (1) Conditions that threaten the life, health, or safety of the tenant or a member of the tenant's
55 household include any of the following:

56 a. Lack of adequate sewage disposal.

57 b. Infestation of pests, including rodents and insects.

58 c. The existence of any structural defect which presents a serious and substantial threat to the
59 safety of occupants.

60 d. Lead paint which presents a serious and substantial threat to the safety of the tenant or a
61 member of the tenant's household.

62 e. The existence of any other condition which presents a health, safety, or fire hazard.

63 (2) Non-threatening conditions include any of the following:

64 a. Any defect that merely reduces the aesthetic value of the premises such as lack of fresh paint,
65 attractive floor coverings, or other decorative elements.

66 b. Small cracks in the walls, floors, or ceilings which do not otherwise pose a safety hazard.

67 ~~(b)~~(f) In no event may a tenant repair or cause anything to be repaired at the landlord's expense
68 when the condition complained of was caused by the want of due care by the tenant, a member of the
69 tenant's ~~family~~ household, or another person on the premises with the tenant's consent.

70 ~~(e) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the~~
71 ~~remedies provided in this section.~~

72 ~~(d)~~(g) The tenant is liable for any damage to persons or property where such damage was caused by the
73 tenant or by someone authorized by the tenant in making said repairs.

74 (h) Rent withholding under this section does not act as a bar to any subsequent recovery of damages.

75 (i) Any affirmative action or affirmative defense raised under this section does not in any way impede on
76 the right of the landlord to seek possession of the property under other appropriate sections of this code.

77 (j) A tenant may raise the existence of any conditions under this section as an affirmative defense to an
78 action for summary possession filed by the landlord which may be considered by the Court under § 5308A of this
79 title.

(k) The landlord may avoid liability under this section if all conditions that threaten the life, health, or safety of the occupants were corrected, written notice of repairs was provide to the tenant, and one of the following applies:

(1) The landlord provided equivalent substitute housing until conditions were remedied.

(2) The landlord proved impossibility of performance and provided equivalent substitute housing for a period of no less than 30 days to allow the tenant time to find alternative housing.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 on line 112 by adding “sewer” between “water” and “or electricity”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 119 through 126 in their entirety and substituting in lieu thereof the following:

~~“(2) Upon written notice to the landlord, keep $\frac{2}{3}$ per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance. Withhold the rent and seek abatement as an affirmative action in the Justice of the Peace Court if, after 48 hours, the conditions have not been corrected.~~

(3) File an action in the Justice of the Peace Court pursuant to § 5308A.

(4) Upon notice to the landlord, obtain equivalent substitute housing for as long as the condition under subsection (a) of this section persists, during which time the rent abates, and the landlord is liable for any additional expense incurred by the tenant in securing substitute housing.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 on line 139 by adding “, sewer” between “water,” and “or electricity”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 on line 151 by deleting “or rent was abated” and by adding “, sewer” between “water,” and “or electricity”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 on line 154 by adding “, sewer” between “water,” and “or electricity”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 156 through 218 in their entirety and substituting in lieu thereof the following:

“§ 5308A. Rent Escrow.

(a) Procedure for an action to withhold rent payments in escrow.

(1) The tenant must file a complaint in the Justice of the Peace Court alleging any of the following:

a. A condition of the leased premises does one of the following:

110 1. Deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain
111 under § 5306 of this title.

112 2. Renders the premises uninhabitable or poses an imminent threat to the life, health, or safety or
113 welfare of the tenant or any member of the tenant's household under § 5306 of this title.

114 3. Threatens the life, health, or safety of the tenant or a member of the tenant's household under
115 § 5307 of this title.

116 b. The landlord substantially fails to provide hot water, heat, water, sewer, or electricity to a tenant, or
117 fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's
118 bargain in violation the rental agreement, a provision of this code, or an applicable housing code and such failure
119 continues for 48 hours or more after the landlord receives actual or written notice of the failure under § 5308 of
120 this title.

121 (2) The tenant must include the following with the complaint:

122 a. A copy of the written notice sent to the landlord, if applicable.

123 b. A copy of the most recent lease or a statement of the monthly base rent if tenant does not have
124 a copy of the lease.

125 c. Any other evidence the tenant would like the court to consider with the complaint.

126 (3) Within 3 days of the filing of the complaint, the court shall issue an emergency order based on the
127 information provided in the complaint. The court must do all of the following:

128 1. Find whether the conditions violate § 5307 or § 5308 of this title or whether the conditions
129 present a threat to the life, health, or safety of the tenant or a member of the tenant's household.

130 2. A rental amount based on the lease or statement provided by the tenant.

131 (4) If the court is unable to make a finding based on the complaint, the court may schedule an emergency
132 hearing.

133 (5) At the time the order is issued under paragraph (a)(3) of this section, the court must establish an
134 escrow account through the court for the tenant based on the order.

135 (6) The tenant must continue to pay rent as required under the terms of the lease as determined by the
136 emergency order. Such rent is to be paid to the escrow of the Justice of the Peace Court.

137 (7) Within 30 days of the order establishing the emergency escrow, the court must schedule a hearing to
138 consider the merits of the complaint.

(8) At the hearing scheduled to consider the merits, the court shall make findings of fact and issue an order that may include any of the following:

a. Dismissal of the action and an order that the rent paid into the escrow of the Justice of the Peace court be paid to the landlord under the terms of the lease within 90 days or by a date determined by the court in the court's discretion.

b. Abatement of some or all of the rent due under the terms of the lease for the time the conditions at issue were present.

c. Award of reasonable attorney's fees to the tenant if the landlord failed to provide equivalent substitute housing until the conditions were remedied if any of the following apply:

1. The conditions created a substantial risk to the life, health, and safety of the tenant or a member of the tenant's household.

2. The conditions were caused by the gross negligence of the landlord.

3. The property was condemned by any governmental entity.

d. Award of damages under § 5313 of this title if the conditions of the property constitute a constructive ouster.

(b) Either party may appeal the court's order under § 5717 of this title.

(c) If a tenant raises the existence of any conditions that threaten the life, health, or safety of the occupants as an affirmative defense to any action based upon a claim of unpaid rent filed by the landlord, the court must issue an order that complies with paragraph (a)(8) of this section and also must do the following:

(1) Issue such an order at the subsequent hearing for summary possession or schedule a subsequent under this section.

(2) If the tenant withheld rent after providing notice to the landlord but the Court dismisses the claim for abatement or escrow, the Court shall give the tenant 90 days or such other time as the Court deems equitable to pay any withheld rent owed under the terms of the lease. The Court shall make a determination of withheld rent owed and enter such amount into court record. The amount of withheld rent may not include late fees or any charge other than rent.

(d) All rent payments provided to the Justice of the Peace Court under this section may be held in either a non-interest bearing account or in a properly established and reported IOLTA account.

(e) An action brought under this section does not act as a bar to any subsequent recovery of damages to either party.

(f) Any action or defense raised under this section does not do any of the following:

(1) Affect the right of the landlord to seek possession of the property under other appropriate sections of this Code.

(2) Affect the right of the tenant to seek further action under other sections of this Code.

§ 5308B. Implementation of Rent Escrow.

(a) The Justice of the Peace Court shall phase in, over a period of time not to exceed 2 years from [the effective date of this Act], in a manner the Court determines appropriate, the rent escrow provision required to be provided under § 5308A of this title.

(b) The court shall consider all of the following in determining how services are prioritized during the implementation period:

(1) Prioritizing “covered individuals” under § 5601 of this title.

(2) Prioritizing households with income below 100% of federal poverty guidelines.

(3) Prioritizing targeted zip codes with high eviction rates.

(4) The availability of funding.

SYNOPSIS

This amendment clarifies the procedures for establishing rent escrow in the Justice of the Peace Court, including clarifying the remedies available to tenants when a threatening condition exists, clarifying what does and does not constitute a threatening condition, and recognizing that often a written lease is not available to tenants or may never have existed. It also creates a gradual implementation of the program with guidelines on how to prioritize elements of its implementation.

Author: Senator Pinkney