



SPONSOR: Sen. Pinkney

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 4
TO
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 191

AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 13 through 15 in their entirety.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 on line 35 by adding “, sewer,” between “heat,” and “electricity”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 38 in its entirety and substituting in lieu thereof the following:

“following apply:”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 47 in its entirety and substituting in lieu thereof the following:

“(d) Evidence of compliance with the applicable building and housing codes ~~shall be~~ is prima facie evidence that the”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 52 through 53 in their entirety and substituting in lieu thereof the following:

“condition within 15 days following receipt of notice, the tenant may terminate the rental agreement, withhold paying the rent, or seek abatement as an affirmative action in the Justice of the Peace Court in accordance with §§ 5307, 5308, and 5308A of this title. If such condition renders the premises uninhabitable or poses an imminent threat to the health, ~~safety~~”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 55 through 56 in their entirety and substituting in lieu thereof the following:

“the landlord, immediately terminate the rental agreement without proceeding in a the Justice of the Peace Court, withhold paying the rent, or seek abatement as an affirmative action in the Justice of the Peace Court, in accordance with §§ 5307, 5308, and 5308A of this title.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 57 in its entirety and substituting in lieu thereof the following:

“(b) The tenant may not terminate the rental agreement under this section or withhold paying rent”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 60 in its entirety and substituting in lieu thereof the following:

“wrongfully, the tenant ~~shall~~ remains obligated under the rental agreement.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 62 in its entirety and substituting in lieu thereof the following:

“the tenant may recover the greater of the following.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting line 64 in its entirety and substituting in lieu thereof the following:

“equivalent substitute housing for the remainder of the rental ~~term; or term~~.”.

FURTHER AMEND House Substitute No. 1 for House Bill No. 191 by deleting lines 66 through 220 in their entirety and substituting in lieu thereof the following:

“§ 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~~ 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 $\frac{1}{2}$ 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) The landlord must keep tenant informed of any actions taken under subsection (a) of this section and notify tenant of completion of repairs.

(c) If the landlord fails to comply with subsections (a) and (b) of this section and the condition threatens the life, health, or safety of the occupants, the tenant may do any of the following:

(1) Immediately withhold paying the rent or any part thereof until the landlord complies with subsections (a) and (b) of this section.

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

(3) Terminate the lease following the expiration of time outlined for landlord action in subsection (a) of this section but only after providing notice to the landlord.

(d) A tenant may raise 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.

(e) As used in this section:

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

a. Lack of adequate sewage disposal.

b. Infestation of pests, including rodents and insects.

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

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

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

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

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

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

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

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

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

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

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

84 (j) The landlord may avoid liability under this section under either of the following circumstances:

85 (1) If all conditions were remedied and notice of repairs was
86 provided to the tenant and one of the following applies:

87 a. The landlord provided equivalent substitute housing or rent was abated until conditions were remedied.

88 b. The landlord proves impossibility of performance and provided equivalent substitute housing for a
89 period of no less than 60 days to allow the tenant to find alternative housing.

90 (2) The landlord proves impossibility of performance, the landlord complied with paragraph (a)(2) of this section,
91 and the condition was not caused by intentional, reckless, willful, wanton, or negligent actions or inactions of the landlord.

92 § 5308. Essential services; landlord obligation and tenant remedies.

93 (a) If the landlord substantially fails to provide hot water, heat, ~~water~~ water, sewer, or electricity to a tenant, or
94 fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in
95 violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing
96 code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the
97 failure, the tenant may do any of the following :

98 (1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental
99 agreement unless the landlord does both of the following:

100 a. Immediately provides equivalent substitute housing.

101 b. Adheres to timelines outlined for landlord action in subsection (a) of § 5307.

102 ~~(2) Upon written notice to the landlord, keep $\frac{2}{3}$ per diem rent accruing during any period when hot water, heat,~~
103 ~~water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of~~
104 ~~impossibility of performance. Withhold paying the rent or any part thereof.~~

105 (3) Seek abatement as an affirmative action in the Justice of the Peace Court.

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

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit and the landlord still fails to provide water, hot water, heat and electricity to the rental unit as specified in the applicable city or county housing code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement; or

(2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water or electricity is not supplied, during which time the rent shall abate, and the landlord shall be liable for any additional expense incurred by the tenant, up to ¹/₂ of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or

(3) Upon written notice to the landlord, tenant may withhold ²/₃ per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section and the court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the court awards damages or double damages and court costs excluding attorneys' fees, then the court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within 10 days from the date of the court's judgment. If such damages are not paid in accordance with the court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

(b) A tenant may raise the lack of hot water, heat, water, sewer, or electricity as an affirmative defense to any action filed by the landlord.

(c) The landlord may avoid liability under this section if one of the following applies:

(1) The landlord provided equivalent substitute housing or rent was abated until hot water, heat, water, sewer or electricity was restored.

(2) The landlord proves impossibility of performance and the lack of hot water, heat, water, sewer, or electricity was not caused by intentional, reckless, willful, wanton, or negligent actions or inactions of the landlord.

(3) The lack of hot water, heat, water, sewer, or electricity was caused by the tenant's actions or by the tenant failing to perform an act that was the tenant's responsibility.

§ 5308A. Procedure for actions related to this chapter.

(a) This section applies to any action under in the Justice of the Peace Court in which §§ 5306, 5307, or 5308 of this title apply, including any affirmative actions filed for abatement or any summary possession actions in which the tenant raises conditions of the unit or lack of essential services are raised as an affirmative defense.

(b) Procedure for an action filed for abatement under this chapter.

(1) The tenant may file a complaint with the Justice of the Peace Court alleging that the conditions threaten the life, health, or safety of the occupant or lack of essential services under §§ 5307 or 5308 of this title.

(2) The tenant shall include with the complaint a copy of the notice sent to the landlord.

(3) The court shall schedule a hearing to determine whether the conditions present a threat to the life, health, or safety of the occupants.

(4) The court shall make appropriate findings of fact and order any of the following:

a. The action be dismissed and provide the tenant 90 days or such other time as the Court finds equitable to pay any withheld rent owed under the terms of the lease or any applicable court costs. The Court shall make a determination of rent owed and enter such amount into the court record. The amount of rent owed may not include late fees or any charge other than rent.

b. Abatement of some or all of the rent and waiver of all applicable court costs for the time the conditions presented a threat to the life, health, or safety of the occupants or for the time when there was a lack of essential services.

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 in the unit created a substantial risk to the life, health, and safety of the tenant.

2. The conditions were a lack of hot water, heat, water, sewer, or electricity.

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

4. 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.

(c) Procedure for any action filed by the landlord when conditions are raised as an affirmative defense to such action.

168 (1) If a tenant raises the existence of an issue under §§ 5307 or 5308 of this section as an affirmative defense to
169 any action filed by the landlord, the court must issue an order that complies with paragraph (b)(4) of this section and also
170 must do the following:

171 a. Issue such an order at the subsequent hearing for summary possession or schedule a subsequent hearing
172 under this section.

173 b. If the tenant withheld rent after providing notice to the landlord, but the Court dismisses the claim for
174 abatement, the Court must give the tenant 90 days or such other time as the court finds equitable to pay any
175 withheld rent owed under the terms of the lease. The Court shall make a determination of rent owed and enter such
176 amount into the court record. The amount of rent owed may not include any late fees or any charges other than
177 rent.

178 (2) If the Court makes an additional factual finding that the tenant acted in bad faith in withholding the rent, the
179 Court may dismiss the affirmative defense and proceed with the summary possession action in its normal course under
180 Chapter 57 of this title and award to landlord additional remedies as the Court finds appropriate.

181 (d) An action brought under this section or an affirmative defense raised under this section does not act as a bar to
182 any subsequent recovery of damages to either party.”.

183 Section 3. This Act takes effect 60 days after its enactment.

SYNOPSIS

This Amendment removes the provisions for court-managed escrow while clarifying procedures regarding tenants' ability to withhold paying rent, with notice to the landlord, when there are significant health and safety issues involving the rental property. It also clarifies procedures for rent abatement actions in such cases. Since there is no escrow program for the Justice of the Peace Court to implement, this Amendment changes the effective date of the Act to 60 days after enactment. This Amendment differs from Senate Amendment No. 3 in that it clarifies language regarding tenant actions in § 5307 including making it clear that a tenant may not withhold rent or receive abatement if a condition was caused by the tenant, a member of the tenant's household, or a guest of the tenant, and allows a landlord to raise impossibility of performance as a defense.

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