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HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 349

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO TENANT OBLIGATIONS AND LANDLORD REMEDIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 55, Title 25 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 § 5514B. Fee in lieu of security deposit.

4 (a) A landlord may choose to offer the tenant an option to pay a fee in lieu of a security deposit.

5 (b) When a landlord offers a tenant the option of paying a fee in lieu of a security deposit:

6 (1) The landlord shall offer the tenant the option to pay a security deposit instead.

7 (2) The landlord may not use a prospective tenant's choice to pay a fee in lieu of a security deposit as a  
8 criterion in the determination of whether to approve an application for occupancy.

9 (3) The landlord shall thereafter offer all new tenants in that property the option to pay a fee in lieu of a  
10 security deposit unless the landlord chooses to terminate the fee option for all future tenants.

11 (4) A landlord may not charge a fee in lieu of a security deposit that is more than the reasonable cost of  
12 obtaining and administering such insurance coverage for the landlord's losses due to any unpaid amount due from the  
13 tenant to the landlord under the lease, including rent, fees, and costs of repairing damages in excess of normal wear and  
14 tear.

15 (5) The landlord may not pursue legal action against a tenant or demand a security deposit from a tenant that  
16 fails to pay the monthly fee in lieu of a security deposit before the monthly fee is 90 days past due.

17 (c) At the time a landlord offers to a tenant the option of paying a fee in lieu of a security deposit, the landlord  
18 shall notify the tenant in writing of all of the following:

19 (1) The tenant has the option to pay a security deposit instead.

(2) The tenant has the option to terminate the agreement to pay the fee in lieu of a security deposit at any time and stop paying the fee, and to pay a security deposit under § 5514 in the amount that is otherwise offered to new tenants for substantially similar housing on the date the tenant chooses to terminate the agreement to pay the fee in lieu of a security deposit.

(3) The amount of the fee or deposit for each option described by subparagraph (a) and (b).

(4) The terms of any insurance coverage purchased by the landlord for landlord's losses associated with any unpaid amounts due from the tenant to the landlord pursuant to the lease, including rent, fees, or unit damage in excess of normal wear and tear, and including the amount of exclusions or caps, if any, on coverage of any amounts due from the tenant to the landlord pursuant to the lease.

(5) If the landlord's insurance provider requires the landlord to first attempt reimbursement from the tenant before filing a claim, the payment of the fee in lieu of a security deposit does not preclude the insurer or the landlord from proceeding against the tenant to recover any unpaid amounts due to the landlord pursuant to the lease and unpaid costs to repair damage to the property for which the tenant is responsible pursuant to the lease but never to include any sums for normal wear and tear, together with reasonable attorneys' fees.

(d) The required disclosures to the tenant must be in substantially the following form:

YOU MAY PAY A MONTHLY FEE INSTEAD OF A SECURITY DEPOSIT. This fee is not a security deposit and will not be refunded when you move. By paying this fee the landlord is permitting you to move into the housing unit without paying a security deposit. If you do not make all payments or you damage the premises beyond wear resulting from its ordinary use, you may be required by the landlord, or a third-party, to pay the unpaid amounts, including costs of repairing the damages in excess of normal wear and tear. The monthly payment will be used by the landlord to purchase an insurance policy in the landlord's name for the benefit of the landlord.

Delaware state law allows a landlord to provide tenants two different options:

(1) Pay the full security deposit upon signing the lease.

(2) If offered by the landlord, pay a monthly fee in lieu of a security deposit. If you choose this option, you will not pay a security deposit or last month's rent in advance. Your recurring monthly charge will be \$ \_\_\_\_\_ IN ADDITION to your monthly rent payment, instead of a security deposit or last month's rent in the amount of \$ \_\_\_\_\_.

IF YOU CHOOSE TO PAY A MONTHLY FEE IN LIEU OF A SECURITY DEPOSIT, THE AMOUNT YOU WILL PAY OVER THE LEASE TERM COMPARED TO THE ONE-TIME DEPOSIT PAYMENT IS AS FOLLOWS:

Monthly nonrefundable fee: \$ \_\_\_\_\_ Total cost of monthly fees over the lease term: \$ \_\_\_\_\_

One-time refundable security deposit: \$ \_\_\_\_\_

In the event your tenancy terminates, and you have not paid rent or other amounts due pursuant to the lease, and you have not paid to repair damages beyond normal wear and tear, insurance coverage will pay your landlord up to:

\$ \_\_\_\_\_ for any unpaid rent and fees, and

\$ \_\_\_\_\_ for any damages.

Total Coverage: \$ \_\_\_\_\_

IMPORTANT: IF YOU CHOOSE TO PAY A MONTHLY FEE IN LIEU OF A SECURITY DEPOSIT:

(1) YOU ARE NOT AN INSURED PARTY UNDER THE INSURANCE POLICY PURCHASED BY THE LANDLORD USING YOUR FEES.

(2) YOU ARE NOT A BENEFICIARY TO ANY INSURANCE COVERAGE OR ANY INSURANCE BENEFITS UNDER THE INSURANCE POLICY THAT THE LANDLORD PURCHASES USING YOUR FEES.

(3) YOU ARE STILL OBLIGATED TO PAY RENT AND ALL PAYMENTS REQUIRED BY THE LEASE, INCLUDING COSTS TO REPAIR DAMAGES BEYOND NORMAL WEAR AND TEAR.

The landlord may seek payment from you before filing any claims with the insurance provider. If you fail to pay the landlord for unpaid rent or other unpaid payments or the costs to repair damages beyond normal wear and tear, and an insurer pays the landlord instead, then the insurer may seek reimbursement from you for its payments to the landlord.

If you choose to pay a recurring monthly fee in lieu of a security deposit, you are permitted at any time to pay the landlord a refundable security deposit in the amount of \$ \_\_\_\_\_ and stop paying the recurring fee beginning in the month following payment of the refundable security deposit.

(e) The office of the attorney general shall make a form that satisfies the requirements of paragraph (d) of this section available in the 12 most spoken languages in this state. The Delaware State Housing Authority shall review the form and provide comment to the office of the attorney general.

(f) A fee in lieu of a security deposit must be a recurring fee of equivalent amount and payable at the time each rent payment is due under the lease.

(g) A fee in lieu of a security deposit does not constitute rent and failure to pay may not constitute a cause for an action for summary position under § 5502 or § 5513 of this Title. However, nothing in this section precludes the landlord from proceeding in a civil action against, and the landlord has the right to proceed against a tenant to recover unpaid fees in lieu of a security deposit.

(h) A fee collected under this section is not a security deposit as defined in § 5514.

(i) A fee collected under this section must be utilized by the landlord to purchase from a lawful insurer, coverage for landlord's losses associated with any unpaid amounts due from the tenant to the landlord pursuant to the lease, including

rent, fees, or unit damage in excess of normal wear and tear, provided that a landlord may not charge a fee that is more than the cost of obtaining and administering such insurance.

(1) In the event the landlord fails to purchase or maintain the insurance provided for in this subsection (i) of this section, and if the tenant pays the monthly fee as agreed, the landlord shall credit the total insurance coverage stated in the disclosure to any indebtedness owed by the tenant upon the tenant vacating the unit. However, if through no fault of the landlord, the insurer is suddenly unable to do business in this state or is otherwise incapable of fulfilling its obligation, the landlord is not required to credit the insurance coverage stated in the disclosure to any indebtedness owed by the tenant upon the tenant vacating the unit.

(2) The landlord may not discontinue or alter the terms of insurance during the term of the rental agreement. However, if the landlord decides to discontinue providing the option of paying a fee in lieu of a security deposit, the landlord shall do all of the following:

- a. Provide 60 days' notice to the tenant prior to end of term or period.
- b. Reduce the deposit by the amount of a tenant's previous fee payments in lieu of the deposit.
- c. Offer the tenant an installment plan to pay any remaining balance for the security deposit over three months.

(j)(1) If a third-party compensates a landlord for a valid claim associated with the landlord's losses pursuant to the lease, including rent, fees, or unit damage in excess of normal wear and tear:

- a. The landlord may not seek reimbursement of the amounts from the tenant that the third-party paid to the landlord.
- b. In the event the third-party may seek reimbursement from the tenant, the third-party may only seek reimbursement for the amounts paid to the landlord that were owed by the tenant to the landlord pursuant to the lease, and in no circumstances for amounts, if any, paid to the landlord for repair of wear resulting from normal wear and tear.
- c. The tenant is entitled to any defenses to payment against a third party as against the landlord, including any defenses under §5514.

(2) Any third-party that seeks reimbursement from the tenant with any request for reimbursement, the party must provide the tenant by first-class mail, and email if available, at the last known address as provided by the landlord:

- a. All documentation or other evidence submitted by the landlord
- b. All documentation or evidence of repair costs that the landlord submitted

c. A copy of any settled claims or other documents regarding payments made by the third-party to the landlord

d. Information about how to contact the third-party seeking reimbursement to dispute any claim.

(3) If the tenant fails to pay a request by third-party for reimbursement under this subsection, the party seeking reimbursement may not commence collection activities against the tenant less than 60 days after sending a request for reimbursement and providing documentation as required under paragraph (j)(2)b. of this section. However, if the tenant has disputed the claim, the party seeking reimbursement shall defer any collection activities for an additional 60 days to resolve the dispute.

(4) The landlord may not send an invoice to a tenant or undertake collection activity against the tenant for any amounts after submitting a claim to an insurer if any of the following occurs:

a. The insurer pays the claim.

b. The insurer denied the claim because it is not a loss pursuant to the lease.

c. The insurer denied the claim because the landlord submitted insufficient documentation or proof to substantiate the claim.

(5) A landlord may invoice the tenant and undertake collection activity against a tenant for landlord's losses if the insurer denies the claim because the loss is not covered pursuant to the insurance agreement, including if the value of the loss exceeded the insurance coverage loss limit.

(6) Any judicial action or other collection activity by a landlord to recover losses from a tenant who has paid a fee in lieu of a security deposit and has vacated the dwelling unit, including for unpaid rent, unpaid fees, or the costs of repairing damages in excess of wear resulting from normal wear and tear, must be commenced within one year of the termination of the rental agreement or the tenant's abandonment of the premises and shall otherwise comply with the requirements in §5514 of this title insofar as they relate to documentation of damages, standards for damages beyond wear resulting from normal wear and tear, or other standards of proof required to make a claim against a deposit.

a. Prior to undertaking collection activity for damages arising out of the tenancy after a tenant who has paid a fee in lieu of a security deposit vacates, the landlord shall do all of the following:

1. Notify the tenant of the damages or any unpaid rent or fees in a manner consistent with §5514 or other relevant law.

2. Forward to the tenant documentation substantiating the damages.

3. For the purposes of allowing ample time for the insurance company to consider the landlord's insurance policy, including coverage and sufficiency of the claims and documentation submitted, including

appeals, if any, of the insurer's claims decision, not undertake any collection activity for any debt against the tenant until 60 days after notifying the tenant and providing the documentation pursuant to (j)(6)a.1. and (j)(6)a.2. of this subsection, whichever is later.

b. Where the tenant has opted into paying a fee in lieu of a security deposit the landlord may not undertake collection activities against the tenant unless 60 days have passed after the landlord has submitted a claim to the insurer.

c. Nothing in this subsection may be construed to prohibit the landlord from sending an invoice to the tenant before submitting a claim to the insurer.

(k) A landlord found in material violation of this act is liable to the tenant in a civil action up to two times the monthly rent of the real property unit at issue, as well as court or arbitration costs and reasonable attorneys' fees.

(l) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. The tenant has 10 days after receipt of the itemized list of damages to object in writing to the itemized list of damages. Failure to object in writing within 10 days of the tenant's receipt of the list shall constitute the tenant's agreement on the damages specified by the landlord and provide grounds for sending an invoice to the tenant.

Section 2. Amend Chapter 53, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5310. "Assurance money" prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit may not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, surety bond fee or premium, a fee in lieu of a security deposit, pet deposit, or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord may not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" means any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, surety bond fee or premium, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

§ 5311. Fees.

169           Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord  
170   may not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. Nothing in this section  
171   shall prevent the tenant from electing, subject to the landlord's acceptance, to purchase an optional surety bond instead of or  
172   in combination with a security deposit. deposit, or from accepting the option of paying a fee in lieu of a security deposit  
173   offered by a landlord under §5514B.

#### SYNOPSIS

This Act allows a landlord to offer the tenant an option to pay a recurring fee in lieu of a security deposit. This option enables tenants who cannot afford a security deposit to find a rental. This Act requires landlords choosing to provide the option to one tenant in a multiunit property to provide the option to all new tenants in that property. This Act also establishes requirements for the landlord offering a tenant the option to pay a fee in lieu of a security deposit including the requirement to notify the tenant of their option to terminate the agreement to pay the recurring fee at any time and to pay a security deposit instead. This Act makes it clear that electing to pay the recurring fee does not eliminate, release, or limit the tenant's liability for damages under the lease. The recurring fee must be of equivalent amount and payable at the time each rent payment is due. This Act also clarifies the rights and responsibilities of a third-party who compensates a landlord for damages or unpaid indebtedness pursuant to the lease.

House Substitute No. 1 for House Bill No. 349 differs from House Bill No. 349 by providing more detailed notification requirements for a landlord offering a fee in lieu of a security deposit and requiring landlords to use fees collected in lieu of a security deposit be utilized by the landlord to purchase coverage for landlord's losses associated with any unpaid amounts due from the tenant to the landlord pursuant to the lease, including rent, fees, or unit damage in excess of wear resulting from normal wear and tear, provided that a landlord may not charge a fee that is more than the cost of obtaining and administering such insurance.