



SPONSOR: Rep. Dorsey Walker & Sen. Pinkney
Reps. Lambert, Longhurst

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 37

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

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

1 Section 1. Amend Chapter 53, Title 25 of the Delaware Code by making the deletions as shown by strike through
2 and insertions as shown by underlines as follows:

3 § 5317. Repair of dangerous defects; rent escrow.

4 (a) The purpose of this section is to provide tenants with an additional mechanism for encouraging the repair of
5 dangerous defects which exist within or as part of any residential dwelling unit, or upon the property used in common of
6 which the dwelling unit forms a part. The defects sought to be reached by this section are those which materially interfere
7 with the health or safety of a tenant or any member of the family or the use and enjoyment of the premises by the tenant or
8 any member of the family. This section does not extend to those defects which merely impair the aesthetic value of the
9 premises. The intent of this section is not to provide a remedy for dangerous conditions in the community at large which
10 exists apart from the leased premises or the property in common of which the leased premises forms a part.

11 (b) It is the public policy of this State that meaningful sanctions be imposed upon those who allow dangerous
12 conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these
13 conditions and halting their creation. An action for Rent Escrow is not an action for possession and shall not be used as
14 such.

15 (c) This section applies to residential dwelling units leased for the purpose of human habitation within this State.

16 (d) This section applies to all applicable dwelling units whether they are any of the following:

17 (1) Publicly or privately owned.

18 (2) Single or multiple units.

19 (e) This section provides a remedy and imposes an obligation upon landlords to repair and eliminate conditions
20 and defects which constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to
21 the life, health or safety of a tenant or any member of the family or the use and enjoyment of the premises by the tenant or
22 any member of the family, including any of the following:

(1) Lack of heat, light, electricity, or hot or cold running water, except where the tenant is responsible for the payment of the utilities and the lack thereof is the direct result of the tenant's failure to pay the charges.

(2) Lack of adequate sewage disposal facilities.

(3) Infestation of rodents in two or more dwelling units.

(4) The existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants.

(5) The existence of any condition which presents a health or fire hazard to the dwelling unit.

(6) Lead paint.

(f) This section does not provide a remedy for the landlord's failure to repair and eliminate minor defects or, in those locations governed by such codes, housing code violations of a non-dangerous nature. There is a rebuttable presumption that the following conditions, when they do not present a serious and substantial threat to the life, health, and safety of the occupants, are not covered by this section:

(1) Any defect which merely reduces the aesthetic value of the leased premises, such as the lack of fresh paint, rugs, carpets, paneling, or other decorative amenities.

(2) Small cracks in the walls, floors, or ceilings.

(3) The absence of linoleum or tile upon the floors, provided that they are otherwise safe and structurally sound.

(g) In order to employ the remedies provided by this section, the tenant shall notify the landlord of the existence of the defects or conditions. Notice shall be given using any of the following methods:

(1) By notifying the landlord in writing as detailed in § 5306(a) of this title or sending other communications listing the asserted conditions or defects.

(2) By actual notice of the defects or conditions.

(3) By a written violation, condemnation, or other notice from an appropriate State, county, municipal, or local government agency stating the asserted conditions or defects.

(h) The landlord has a reasonable time after receipt of notice in which to make the repairs or correct the conditions. The length of time deemed to be reasonable is a question of fact for the court, taking into account the severity of the defects or conditions and the danger which they present to the occupants. There is a rebuttable presumption that a period in excess of 30 days from receipt of notice is unreasonable.

(i) If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may bring an action of rent escrow to pay rent into court because of the asserted defects or

53 conditions, or the tenant may refuse to pay rent and raise the existence of the asserted defects or conditions as an
54 affirmative defense to an action for summary possession, an action for nonpayment of rent, or to any complaint proceeding
55 brought by the landlord to recover rent or the possession of the leased premises.

56 (j) Whether the issue of rent escrow is raised affirmatively or defensively, the tenant may request one or more of
57 the forms of relief set forth in this section.

58 (k) Relief under this section is conditioned upon all of the following:

59 (1) Giving proper notice, and where appropriate, the opportunity to correct, as described by subsection (h) of
60 this section.

61 (2) Payment by the tenant, into the court or other escrow account, of the amount of rent required by the lease,
62 unless this amount is modified by the court as provided in subsection (m) of this section.

63 (l) It is a sufficient defense to the allegations of the tenant that the tenant, the tenant's family, agent, employees, or
64 assignees or social guests have caused the asserted defects or conditions, or that the landlord or the landlord's agents were
65 denied reasonable and appropriate entry for the purpose of correcting or repairing the asserted conditions or defects.

66 (m) The court shall make appropriate findings of fact and make any order that the justice of the case may require,
67 including any one or a combination of the following:

68 (1) Order the termination of the lease and return of the leased premises to the landlord.

69 (2) Order that the action for rent escrow be dismissed and provide the tenant 90 days to redeem any rent or
70 utility payments due under the terms of the lease.

71 (3) Order that the amount of rent required by the lease, whether paid into court, deposited into an escrow
72 account, or paid to the landlord, be abated and reduced in an amount determined by the court to be fair and equitable to
73 represent the existence of the conditions or defects found by the court to exist.

74 (n) After rent escrow has been established, the court:

75 (1) Shall, after a hearing, if so ordered by the court or if a hearing is requested by the landlord, order that the
76 money in the escrow account be disbursed to the landlord after the necessary repairs have been made.

77 (2) May, after an appropriate hearing, order that some or all money in the escrow account be paid to the
78 landlord or the landlord's agent, the tenant or the tenant's agent, or any other appropriate person or agency for the
79 purpose of making the necessary repairs of the dangerous conditions or defects.

80 (3) May, after a hearing if one is requested by the landlord, appoint a special administrator who shall cause the
81 repairs to be made, and who shall apply to the court to pay for them out of the money in the escrow account.

82 (4) May, after an appropriate hearing, order that some or all money in the escrow account be disbursed to pay
83 any mortgage or deed of trust on the property in order to stay a foreclosure.

84 (5) May, after a hearing, if one is requested by the tenant, order, if no repairs are made or if no good faith
85 effort to repair is made within 90 days of the initial decision to place money in the escrow account, that the money in
86 the escrow account be disbursed to the tenant. Such an order will not discharge the right on the part of the tenant to pay
87 rent into court and an appeal will stay the forfeiture.

88 (6) May, after an appropriate hearing, order that the money in the escrow account be disbursed to the landlord
89 if the tenant does not regularly pay, into that account, the rent owed.

SYNOPSIS

It is the policy of this State that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises and that an effective mechanism be established for repairing these conditions and halting their creation. This Act allows tenants to bring an action of rent escrow to pay rent into the court because of asserted defects or conditions. Alternatively, the tenant may refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for summary possession or an action for nonpayment of rent. This Act requires the tenant to give proper notice and allow the landlord the opportunity to effect repairs. This Act requires the court to make appropriate findings of fact and to make any order that justice of the case may require, which may include termination of the lease and return of the leased premises to the landlord, order that the action for rent escrow be dismissed, order that the amount of rent be reduced in amount determined by the court to be fair and equitable, or order the landlord to make the repairs or correct the conditions complained of by the tenant.