



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

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 191

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

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 deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 5305. Landlord obligations relating to the rental unit.

4 (a) The landlord shall, at all times during the tenancy do all of the following:

5 (1) Comply with all applicable provisions of any state or local statute, code, ~~regulation~~ regulation, or
6 ordinance governing the maintenance, construction, ~~use~~ use, or appearance of the rental unit and the property of which
7 it is a ~~part~~; part.

8 (2) Provide a rental unit which ~~shall~~ does not endanger the health, ~~welfare~~ welfare, or safety of the tenants or
9 occupants and which is fit for the purpose for which it is expressly ~~rented~~; rented.

10 (3) Keep in a clean and sanitary condition all common areas of the buildings, grounds, ~~facilities~~ facilities, and
11 appurtenances thereto which are maintained by the ~~landlord~~; landlord.

12 (4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto
13 in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the ~~tenancy~~;
14 and tenancy.

15 (5) Maintain all electrical, ~~plumbing~~ plumbing, and other facilities supplied by the landlord in good working
16 order.

17 (b) If the rental agreement so specifies, the landlord shall do the following:

18 (1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, ~~rubbish~~ rubbish,
19 and garbage and arrange for the frequent removal of such ~~waste~~; and waste.

20 (2) Supply or cause to be supplied, water, hot water, ~~heat~~ heat, and electricity to the rental unit.

(c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, ~~alterations~~ alterations, or remodeling, but only if all of the circumstances are satisfied:

(1) The particular work to be performed by the tenant is for the primary benefit of the rental ~~unit; and unit~~.

(2) The work is not necessary to bring a noncomplying rental unit into compliance with a building or housing code, ~~ordinance~~ ordinance, or the ~~like; and like~~.

(3) Adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord treat any agreement under this subsection as a condition to any provision of rental ~~agreements; and agreements~~.

(4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.

(d) Evidence of compliance with the applicable building and housing codes shall be prima facie evidence that the landlord has complied with this chapter or with any other chapter of Part III of this title.

§ 5306. Tenant's remedies relating to the rental unit; termination.

(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 file an action to pay the rent due under the terms of the lease into the escrow account of the Justice of the Peace Court in accordance with §§5307 and 5308 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 the tenant may, after giving written notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court or file an action to pay rent into the escrow of the Justice of the Peace Court in accordance with §§5307 and 5308 of this title.

(b) The tenant may not terminate the rental agreement under this section or file an action to pay rent into the court's escrow under §§5307 and 5308 of this title for a condition caused by the want of due care by the tenant, a member of the ~~family~~ tenant's household, or any other person on the premises with the tenant's consent. If the Justice of the Peace Court determines that a tenant terminates or wrongfully paid rent to the court's escrow, the tenant shall remain obligated under the rental agreement.

(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:

(1) 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

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

§ 5307. Tenant's remedies relating to the rental unit for landlord's failure to repair, maintain, or keep in a sanitary condition; ~~repair and deduction from rent~~.

(a) If the landlord of a rental unit fails to repair, 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; and, if after being notified in writing by the tenant or any governmental entity to do so, the ~~landlord~~ landlord ~~Fails to~~ does not remedy such failure within 30 days from the receipt of the ~~notice~~; notice, or does not ~~Fails to~~ 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~~ Then the tenant may immediately do one of the following:

(1) 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.

(2) If the conditions threaten the life, health, or safety of the tenant or a member of the tenant's household, the tenant may file an action to pay rent into the escrow of the Justice of the Peace Court.

(b) Procedure for an action for filing to pay rent into the escrow of the Justice of the Peace Court.

(1) The tenant must file a complaint in the Justice of the Peace Court alleging that the conditions of the leased premises threaten the life, health, or safety of the occupant and must include with the complaint a copy of the written notice sent to the landlord.

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

(3) The tenant must continue to pay rent as required under the terms of the lease to the escrow of the Justice of the Peace Court.

(4) The court shall make findings of fact, and issue an order that may include any of the following:

a. The action be dismissed and the rent paid into the escrow of the Justice of the Peace Court shall 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 that the conditions presented a threat to the life, health, or safety of the occupants.

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; or

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

~~(b)~~ (c) In no event may a tenant repair or cause anything to be repaired at the landlord's expense 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.

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

~~(d)~~ (e) 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.

(f) A tenant may raise the existence of any conditions that threatens the life, health, or safety of the occupants as an affirmative defense to any action filed by the landlord.

(g) For the purposes of this section,

(1) Conditions that threaten the life, health, or safety of the occupant include any of the following:

a. Lack of adequate sewage disposal.

b. Infestation of pests, including vermin, rodents or insects, in two or more dwelling units.

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

d. Lead paint.

e. The existence of any other condition which presents a health 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 lack of fresh paint, attractive floor coverings, or other decorative elements.

b. Small cracks in the walls, floors, or ceilings.

(h) An action to pay rent to the escrow of the Justice of the Peace Court under this section does not act as a bar to any subsequent recovery of damages to either party.

(i) Any affirmative action or affirmative defense raised under this section shall not affect the right of the landlord to seek possession of the property under other sections of this Code or the tenant to seek further action under other sections of this Code.

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

(1) The landlord provided equivalent substitute housing or rent was abated until conditions were remedied.

(2) The landlord proves 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.

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

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

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

(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.~~ file an action to the pay rent due in accordance with the lease into the escrow of the Justice of the Peace Court if, after 48 hours, the conditions are not corrected or substitute housing is not supplied.

(3) Upon notice to the landlord of the tenant's intent to do the same, 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 the total amount of abated rent.

(b) Procedure for filing an action under this section.

(1) The tenant must file a complaint in the Justice of the Peace Court and include a copy of the written notice to the landlord informing of the lack of hot water, heat, water, or electricity.

(2) The Court may issue a summons for the landlord to appear forthwith.

(3) The court shall schedule a hearing on the matter.

(4) After a hearing, the court shall make findings of fact, and issue an order that may include any of the following:

a. Dismissal of the action and direction that the tenant shall pay to the landlord the full rent owed under the terms of the lease and award the landlord the full escrow amount within 30 days.

b. Abatement of some or all of the rent due under the terms of the lease for the time that the premises lacked hot water, heat, water, or electricity.

c. Award of reasonable attorney's fees to the tenant if there was a lack of hot water, heat, water, or electricity, and the landlord failed to provide equivalent substitute housing until the conditions were corrected.

d. Award the tenant moving costs if there was a lack of hot water, heat, water, or electricity whether or not the landlord provided equivalent substitute housing until the conditions were corrected.

~~(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 $\frac{1}{2}$ 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 $\frac{2}{3}$ 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) A tenant may raise the lack of hot water, heat, water, or electricity as an affirmative defense to any action filed by the landlord.

~~(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~~

168 ~~damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary~~
169 ~~possession, without further notice to the tenant.~~

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

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

173 (2) The landlord proves impossibility of performance.

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

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.