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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
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 51, Title 25 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 5141. Definitions.

4 The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this  
5 section, except where the context clearly indicates a different meaning:

6 (1) "Action" ~~shall mean~~ means any claim advanced in a court proceeding in which rights are determined.

7 (2) "Base monthly rent" means the amount of rent owed to the landlord each month under the rental  
8 agreement and does not include any of the following:

9 a. Utility services.

10 b. Metered services.

11 c. Fees.

12 d. Security Deposit.

13 (2) "Bed bug infestation" means the presence of bed bugs in real property rented for residential purposes.

14 (3) "Bed bug remediation" means action taken by the landlord that substantially reduces the presence of bed  
15 bugs in a dwelling unit for at least 60 days.

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

18 § 5305. Landlord obligations relating to the rental unit.

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

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

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

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

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

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

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

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

(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 under § 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 the tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court or file an action under § 5308A of this title.

(b) The tenant may not terminate the rental agreement under this section or file an action under §5308A 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 wrongfully, 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~~ 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 do one of the following:

80                   a. File an action in the Justice of the Peace Court under § 5308A of this title.

81                   b. Terminate the lease after providing notice to the landlord.

82           (3) As used in this section:

83                   a. Conditions that threaten the life, health, or safety of the tenant or a member of the tenant's household  
84 include any of the following:

85                           1. Lack of adequate sewage disposal.

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

87                           3. The existence of any structural defect which presents a serious and substantial threat to the safety  
88 of the tenant or a member of the tenant's household.

89                           4. Exposed lead paint which presents a serious and substantial threat to the safety of the tenant or a  
90 member of the tenant's household.

91                           5. The existence of any other condition which presents a health or fire hazard.

92                   b. Non-threatening conditions include any of the following:

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

95                           2. Small cracks in the walls, floors, or ceilings.

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

99           (c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided  
100 in this section or in § 5308A of this title.

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

103           (e) A tenant may raise the existence of any conditions that threaten the life, health, or safety of the occupants as an  
104 affirmative defense to an action for summary possession filed by the landlord which may be considered by the Court under  
105 § 5308B of this title.

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

108                   (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.~~ If the landlord has not corrected the conditions or provided substitute housing within 48 hours after the tenant has provided notice to the landlord, the tenant file an action in the Justice of the Peace Court pursuant to §5308A.

(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) ~~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.~~

(b) 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 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.~~

(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, or electricity was restored.

(2) The landlord proves impossibility of performance.

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

#### § 5308A. Action to withhold rent payments in 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 one of the following:

a. The conditions of the leased premises does one of the following:

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

2. Renders the premises uninhabitable or poses an imminent threat to the health, safety, or welfare of the tenant or any member of the tenant's household under § 5306(a).

3. Threatens the life, health, or safety of the tenant or a member of the tenant's household under § 5307(a)(2) of this title.

b. The landlord substantially fails to provide hot water, heat, 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 under § 5308(a) of this title.

(2) The tenant must also provide all of the following with the complaint, and failure to do so, may result in dismissal of the action:

a. Written confirmation of the amount of the monthly base rent owed to the landlord under the rental agreement by providing the rental agreement, if such agreement is in writing. If such agreement is not in writing, the tenant must allege that fact and the amount of the monthly base rent.

b. Payment by the tenant, into the court, of the monthly base rent required under the rental agreement.

c. Proof of notice to the landlord in writing of the conditions of the leased premises.

(2) The Court may issue a forthwith summons to the landlord in order to expedite the action brought under this section.

(3) The court shall schedule a hearing on the tenant's complaint.

(4) The tenant must continue to pay the base monthly rent as required under the terms of the rental agreement to the escrow of the Justice of the Peace Court.

(5) 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 base monthly rent paid into the escrow of the Justice of the Peace Court shall be paid to the landlord within 90 days or by a date determined by the Court in the Court's discretion.

b. Abatement of some or all of the base monthly rent due under the terms of the lease.

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.

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

3. There was a lack of hot water, heat, water, or electricity even if the landlord provided equivalent substitute housing until the conditions were corrected.

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

(c) All base monthly rent payments provided to the Justice of the Peace Court under this section shall be held in a non-interest bearing account.

(d) Any action brought by the tenant under this section does not alleviate the tenant's responsibility to pay for utility or metered services, fees, or deposits as required under the rental agreement.

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

200 (f) Any affirmative action or affirmative defense raised under this section shall not affect the right of the landlord  
201 to seek possession of the property under other sections of this Code, unless the Court orders escrow in lieu of summary  
202 possession under § 5308B of this title, or the tenant to seek further action under other sections of this Code.

203 § 5308B. Escrow in lieu of summary possession.

204 (a) A tenant may raise as an affirmative defense to an action for summary possession filed by the landlord that a  
205 condition exists that threatens the life, health, or safety of the tenant or a member of the tenant's household if the tenant can  
206 show all of the following:

207 (1) The existence of a condition that threatens the life, health, or safety of the tenant or a member of the  
208 tenant's household not caused by the tenant or a member of the tenant's household.

209 (2) The landlord had actual or constructive notice of the condition and has failed to remedy the condition..

210 (3) The tenant withheld rent in good faith as a means to compel the landlord to remedy the condition.

211 (b) If the Court determines that the tenant has satisfied all of the conditions in subsection (a) of this section, the  
212 Court may order that in lieu of summary possession, the tenant pay all base monthly rent owed to the landlord under the  
213 rental agreement into an escrow account established by the Court by a specific date, and if paid, may order the landlord to  
214 remedy the condition by a specific date. If the tenant and the landlord comply with the Court's order, then the Court must  
215 provide the amount held in the Court's escrow account to the landlord within 30 days, and no judgment for possession shall  
216 be entered.

217 (c) The affirmative defense raised by the tenant under this section does not alleviate the tenant's responsibility to  
218 pay for utility services or metered services as required under the rental agreement.

219 Section 3. This Act takes effect 180 days after its enactment into law in order to provide the Justice of the Peace Court  
220 sufficient time to enact rules to implement this Act.

#### SYNOPSIS

This substitute bill provides more clarity on the process by which a tenant may file an action in the Justice of the Peace Court to withhold rent payments in escrow. Specifically, the bill provides what the tenant must file in order to bring such action and how such actions proceed in court. This substitute bill also provides the remedy of termination of lease when the conditions of the rental unit threatens the life, health, or safety of the tenant or a member of the tenant's household. This substitute bill also clarifies the appeal process for actions to withhold rent payments in escrow. This substitute bill also provides a tenant the right to raise as an affirmative defense to an action for summary possession filed by the landlord that a condition exists that threatens the life, health, or safety of the tenant or a member of the tenant's household if the tenant satisfies specific requirements. If the Court determines that the tenant has satisfied those requirements, the Court may order that in lieu of summary possession, the tenant pay all base monthly rent owed to the landlord to an escrow account established by the Court. The Court may order the landlord to remedy the conditions alleged by a specific date. If both the landlord and tenant comply with the Court's order, the amount held in escrow will be paid to



the landlord within 30 days, and no judgment for possession shall be entered. Finally, this substitute bill provides that the Act will take effect 180 days after its enactment into law in order to provide the Justice of the Peace Court sufficient time to enact rules to implement the Act.