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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 349

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

WHEREAS, only 4 in 10 Americans have over \$1000 in savings to pay for an emergency or unexpected bill; and

WHEREAS, the unhoused population of America are often underbanked and unbanked and face even greater hurdles in saving up for a lump sum payment; and

WHEREAS, the COVID-19 pandemic has worsened the ability for Americans to save up for a large lump sum payment due to increased inflation and unemployment; and

WHEREAS, security deposits can place an undue burden on those who are seeking to escape abusive situations and urgently need a new place to live.

NOW, THEREFORE:

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

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

§ 5514B. Fee in lieu of security deposit.

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

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

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

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

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

(4) A landlord may not charge a fee in lieu of a security deposit that is more than the reasonable cost of obtaining and administering such insurance coverage for the landlord's losses due to any unpaid amount due from the

tenant to the landlord under the lease, including rent, fees, and costs of repairing damages in excess of ordinary wear and tear.

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

(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).

(d) If the tenant chooses to pay a fee in lieu of a security deposit, the agreement to collect the fee must be in writing, must be signed by the landlord or the landlord's legal representative, and the tenant, and must state all of the following:

(1) The fee is being paid only to waive the tenant's requirement to pay a security deposit.

(2) The fee, unless otherwise specified, is not refundable.

(3) Payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including the requirement that the tenant shall pay for all of the following:

a. Rent as rent becomes due.

b. The cost of repairing damages for which the tenant is legally liable under the lease, other than normal wear and tear.

c. Other fees and charges pursuant to the lease.

(e) 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.

(f) If a tenant fails to pay a fee in lieu of a security deposit pursuant to the agreement to pay a fee in lieu of a security deposit pursuant, a landlord may seek remedies under § 5513.

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

(h) A landlord receiving a fee in lieu of a security deposit may not sell, transfer, or subrogate a charge for damages or unpaid indebtedness pursuant to the lease to a third-party unless the landlord first notifies the tenant of the damage or unpaid indebtedness pursuant to the lease not later than the 20th day after the date the tenant surrendered possession of the dwelling. The notice must comply with §5514(f), and if a tenant vacates a premise without a forwarding address or email

address, a landlord is absolved of this requirement and shall be permitted to sell, transfer, or subrogate the charge for damages or unpaid indebtedness.

(i) If the tenant who chooses to pay a fee in lieu of a security deposit challenges the claim for damages or unpaid indebtedness pursuant to the lease and that challenge results in a determination by the landlord or by a court that the notice of indebtedness is incorrect, the amount of the indebtedness determined to be incorrect is void and the landlord may not sell, transfer, or subrogate the amount of the voided indebtedness. If the landlord has already sold, transferred, or subrogated a charge for indebtedness that is subsequently voided, the sale, transfer, or subrogation must be withdrawn. If a third-party has already compensated the landlord for a charge of indebtedness that was subsequently voided, the landlord shall return the payment.

(j) If a third-party compensates a landlord for damages or unpaid indebtedness pursuant to the lease or agreement for a fee in lieu of a security deposit from a tenant that opted to pay a fee in lieu of a security deposit:

(1) The landlord may not seek or collect reimbursement from the tenant of the amount paid by a third-party to the landlord.

(2) A third-party may, before the first anniversary of the termination of the tenant's occupancy, seek reimbursement from the tenant of only the amounts paid to the landlord.

(3) The tenant is entitled to any defenses to payment against a third-party as against the landlord.

(4) If a third-party seeks reimbursement of payments made to a landlord, the third-party must include in the reimbursement demand evidence of damages or unpaid indebtedness pursuant to the lease that the landlord submitted to the third-party, evidence of damage repair costs that the landlord submitted to the third-party, and documents showing payments were made by the third-party to the landlord.

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 shall 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 shall 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" shall mean 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

82 deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the
83 specific sums expended by the landlord in credit or other investigations.

84 § 5311. Fees.

85 Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord
86 shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. Nothing in this section
87 shall prevent the tenant from electing, subject to the landlord's acceptance, to purchase an optional surety bond instead of or
88 in combination with a security ~~deposit~~. deposit, or from accepting the option of paying a fee in lieu of a security deposit
89 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 to provide the option to all new tenants. 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.