

Part III
Residential Landlord-Tenant Code

Chapter 53

Landlord Obligations and Tenant Remedies

§ 5301. Landlord obligation; rental agreement.

(a) A rental agreement shall not provide that a tenant:

(1) Agrees to waive or forego rights or remedies under this Code;

(2) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees.

(70 Del. Laws, c. 513, § 2.)

§ 5302. Tenant remedy; termination at the beginning of term.

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first month of occupancy, so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior noncompliance, of which prior notice was given under subsection (a) of this section, recurs within 6 months, the tenant may terminate the rental agreement upon at least 15 days' written notice, which notice shall specify the breach and the date of termination of the rental agreement.

(c) 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, the tenant may terminate the rental agreement. The tenant must then initiate an action in the Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between the 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.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(70 Del. Laws, c. 513, § 2.)

§ 5303. Landlord obligation to supply possession of rental unit.

The landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession.

(70 Del. Laws, c. 513, § 2.)

§ 5304. Tenant's remedies for failure to supply possession.

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all moneys paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1

Title 25 - Property

month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in paragraph (a)(2) of this section.

(70 Del. Laws, c. 513, § 2.)

§ 5305. Landlord obligations relating to the rental unit.

(a) The landlord shall, at all times during the tenancy:

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

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

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

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

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

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

(2) Supply or cause to be supplied, water, hot water, 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 or remodeling, but only if:

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

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

(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

(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.

(70 Del. Laws, c. 513, § 2.)

§ 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. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

(b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family or any other person on the premises with the tenant's consent. If 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.

(70 Del. Laws, c. 513, § 2.)

§ 5307. Tenant's remedies relating to the rental unit; 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 or ordinance, or as agreed to in the a rental agreement; and, if after being notified in writing by the tenant to do so, the landlord:

Title 25 - Property

(1) Fails to remedy such failure within 30 days from the receipt of the notice; or

(2) 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;

Then the tenant may immediately 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 \$200, or $\frac{1}{2}$ 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.

(b) 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 or another person on the premises with the tenant's consent.

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

(d) 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.

(70 Del. Laws, c. 513, § 2.)

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

(a) If 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, the tenant may:

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

(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.

(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) 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.

(70 Del. Laws, c. 513, § 2.)

§ 5309. Fire and casualty damage; landlord obligation and tenant remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

Title 25 - Property

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and prepaid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

(70 Del. Laws, c. 513, § 2.)

§ 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, 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 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.

(b) Each landlord shall retain, for a period of 6 months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's office shall investigate the same, shall interview tenants of the landlord and shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding 6 months. If such investigation reveals good cause for the Attorney General's office to believe there has been a violation of this section, the Attorney General's office may issue such cease and desist orders in accordance with Chapter 25 of Title 29 as are required to remedy the violation.

(70 Del. Laws, c. 513, § 2; 77 Del. Laws, c. 282, § 15; 79 Del. Laws, c. 57, § 2.)

§ 5311. Fees.

Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. Nothing in this section shall prevent the tenant from electing, subject to the landlord's acceptance, to purchase an optional surety bond instead of or in combination with a security deposit.

(70 Del. Laws, c. 513, § 2; 79 Del. Laws, c. 57, § 3.)

§ 5312. Metering and charges for utility services [For applicability of subsection (i) of this section, see 80 Del. Laws, c. 71, § 2].

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to July 17, 1996, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for 1 year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption and bill the tenant for such estimated amount; provided however, that a landlord may not send more than 2 consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease and at the expiration or termination of the lease.

(g) (1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or

examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's office or its successor agency, the Attorney General's office may enter, by and through its agents, experts or examiners, upon any premises for the purpose of making the examination and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefor.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for measurement, the reading of meters, calculation and determination of charges for utility services or otherwise. The Consumer Protection Unit of the Attorney General's office shall have authority to enforce this section.

(i) The requirement of separate metering set forth in this section shall not apply to charges for utility services that are not calculated based on consumption. If the rental agreement so provides, a landlord may pass on to the tenant the actual cost of such utility services, as determined by the cost for such service charged to the landlord or to any company owned in whole or in part by the landlord, or, if permitted by the local government unit or public utility, a landlord may require the tenant contract directly with the local government unit or public utility for service to the tenant or rental unit. A landlord may prorate or apportion charges for such utility services among units in a multi-unit or apartment building, provided the total charged to all units does not exceed the actual cost of the utility services charged to the landlord. A landlord may bill a tenant for such utility services monthly or quarterly as set forth in the rental agreement, and a tenant who pays for utility services pursuant to this subsection shall be entitled to inspect the bills and records upon which such charges were calculated as set forth in subsection (d) of this section.

(70 Del. Laws, c. 513, § 2; 80 Del. Laws, c. 71, § 1.)

§ 5313. Unlawful ouster or exclusion of tenant.

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

(70 Del. Laws, c. 513, § 2.)

§ 5314. Tenant's right to early termination.

(a) Except as is otherwise provided in this part, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon 30 days' written notice, which 30-day period shall begin on the first day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty;

(6) By a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service; or

(7) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant.

(70 Del. Laws, c. 513, § 2; 75 Del. Laws, c. 293, § 2.)

§ 5315. Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

(25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 7.)

§ 5316. Protection for victims of domestic abuse, sexual offenses and/or stalking.

(a) A landlord may not pursue any action for summary possession, demand any increase in rent, decrease any services, or otherwise cause any tenant to quit a rental unit where said tenant is a victim of domestic abuse, sexual offenses, or stalking, and where said tenant has obtained or has sought assistance for domestic abuse, sexual offenses, or stalking from any court, police, medical emergency, domestic violence, or sexual offenses program or service.

(b) If the tenant proves that the landlord instituted any of the actions prohibited by subsection (a) of this section, above, within 90 days of any incident in which the tenant was a victim of domestic abuse, sexual offenses and/or stalking, it shall be a rebuttable presumption that said action is in violation of subsection (a) of this section, above.

(c) A landlord may rebut the presumption that the prohibited action is in violation of subsection (a) of this section, above, if:

(1) The landlord is seeking to recover possession of the rental unit on the basis of an appropriate notice to terminate which was given to the tenant prior to the incident of domestic abuse, sexual offenses, or stalking;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as the landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

(5) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation from the purchaser confirming that purchaser's intent to use the property in consistency with paragraphs (2), (3) or (4) of this subsection;

(6) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the prorata portion of the net increase in taxes or cost;

(7) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the rental units benefited by the improvement;

(8) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex;

(9) The landlord can establish, by competent evidence, that the domestic abuse, sexual assault and/or stalking constitutes a viable and substantial risk of serious physical injury to a tenant who currently resides in another unit of the same multi-unit building as the domestic violence, sexual assault or stalking victim; or

(10) The landlord, after being given notice of the tenant's victimization per § 5141(7) or (28) of this title, discontinues those actions prohibited by subsection (a) of this section, above.

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

(76 Del. Laws, c. 219, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 47, § 24; 79 Del. Laws, c. 65, § 2.)