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HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 92

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO SURETY BONDS FOR RENTAL PROPERTY.

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

Section 1. Amend Section 5141, Title 25 of the Delaware Code by adding a new subsection (29) as shown by underlining as follows and redesignating current subsections (29) and (30) as (30) and (31) respectively:

(29) "Surety bond fee or premium" shall mean the amount of money the tenant pays to the surety for enrollment in a surety bond program in lieu of posting a security deposit.

Section 2. Amend Section 5310(a), Title 25 of the Delaware Code by making insertions as shown by underlining as follows:

(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.

Section 3. Amend Section 5311, Title 25 of the Delaware Code by making insertions as shown by underlining as follows:

§ 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.

Section 4. Amend Section 5514(a), Title 25 of the Delaware Code by making insertions as shown by underlining and

deletions as shown by strike through as follows:

§ 5514. Security deposit.

(a) (1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any security deposit amount in excess of 1 month's rent, including such amount which when combined with the amount of any surety bond is in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

Section 5. Amend Title 25 of the Delaware Code by adding a new section 5514A as shown by underlining as follows:

§5514A. Surety Bond.

(a) Instead of paying all or part of a security deposit to a landlord under § 5514, a tenant may purchase a surety bond for the purposes stated in § 5514(c).

(b) A landlord may not require a tenant to purchase a surety bond instead of paying a security deposit and a landlord is not required to accept the tenant's purchase of a surety bond instead of paying a security deposit.

(c) A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a lease with the landlord.

(d) The amount of a surety bond purchased instead of a security deposit may not exceed one month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3)). If a tenant purchases a surety bond and provides a security deposit in accordance with this section, the aggregate amount of both the surety bond and security deposit may not exceed one month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3)).

(e) Before a tenant purchases a surety bond instead of paying all or part of a security deposit, a surety shall disclose in writing to the tenant that:

(1) Except under the circumstances outlined in subsection (c), payment for a surety bond is nonrefundable;

(2) The surety bond is not insurance for the tenant;

(3) The surety bond is being purchased to protect the landlord against loss due to nonpayment of rent, breach of lease, or damages caused by the tenant;

(4) The tenant may be required to reimburse the surety for amounts the surety paid to the landlord for any claim made by the landlord against the surety bond;

(5) Even after a tenant purchases a surety bond, the tenant remains responsible for the following:

(A) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning;

(B) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and

(C) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(6) Nothing in this section shall be construed to require the tenant to pay, as between the landlord and the surety, more than the total amount owed to the landlord under subsection (a).

(f) Notwithstanding the issuance of a surety bond by the tenant to the landlord, the tenant has the right to pay the amount due under subsection (a) directly to the landlord or to require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond.

(g) If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.

(h) The surety or landlord shall deliver to a tenant a copy of the rental agreement and bond form signed by the tenant at the time of the tenant's purchase of the surety bond.

(i) If a landlord's interest in the leased premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require:

(1) During the current lease term, an additional security deposit from the tenant; or

(2) At any lease renewal, a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of one months' rent per dwelling unit.

(j) A surety bond issued under this section may only be issued by an admitted carrier licensed by the Delaware Department of Insurance.

SYNOPSIS

This bill amends the landlord/tenant code to permit the use of a surety bond in place of a security deposit. Instead of paying a refundable security deposit, a tenant may, if the landlord permits, purchase a nonrefundable "surety bond" for a percentage of the security deposit amount. The issuer of the surety bond would then be liable to the landlord in the event the tenant does not pay for any damages sustained by the landlord due to non-payment of rent, breach of lease, or damage to the rental property.