

Proposed Amendments to Bill No. 250330

Proposed deletions in ~~strike through~~; proposed additions in **bold**.

AN ORDINANCE

Amending Chapter 9-800 of The Philadelphia Code, entitled “Landlord and Tenant,” to modify the requirements related to good cause for ending a tenancy, add protections against retaliation and harassment for tenants and tenant organizations, specify tenants’ rights related to the implied warranty of habitability and provide a legal presumption related to breaches of the implied warranty of habitability, create a tenant right to organize, specify deadlines for asserting claims, and establish and enhance enforcement mechanisms, remedies, damages, and protections, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER 9-800. LANDLORD AND TENANT

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§ 9-804. Unfair Rental Practices.

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(2) It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to *refuse to lease to any person*, terminate a lease with a tenant or make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy with a tenant, *or restrict access to common areas or amenities* in retaliation for:

- (a) any violation having been found against the premises;
- (b) the filing of a complaint alleging a violation;
- (c) *cooperating with an agency related to the investigation of or enforcement against a violation;*

(d) *communication with a government official, the press, or other public forums regarding violations or other conditions of the premises;*

[(c)] (e) the joining of, or participation in, any lawful organization, including a tenant organization, association, union, or any other exercise of a legal right. [It shall be unlawful for any owner, landlord, agent or other person operating or managing premises to refuse to lease any premises to a prospective tenant because he believes the prospective tenant has exercised any such right;]

[(d)] (f) an incident of domestic violence or sexual assault in which a tenant was the victim, or a tenant's status as a victim of domestic violence or sexual assault. For purposes of this subsection (2)(d) the meaning of the terms "victim", "domestic violence" and "sexual assault" are as defined in Section 9-3201 of this Code.

In any civil proceeding involving this provision in which the notice of termination or alteration of a term or condition of the lease was given within one year after a violation was found, a right of the tenant against the landlord, agent or other person operating or managing premises was exercised, or a correction made, whichever is the latest, it shall be the burden of the owner, landlord, agent or other person operating or managing such premises to prove that the notice was not given in retaliation for the exercise by the tenant of his legal rights.

(3) [The provisions of this Section shall not apply to:

(a) [Any bona fide] *The transfer of title [incident to a sale] of the [premises, but] premises shall not alter the obligation of any subsequent owner, landlord, agent or other person operating or managing such premises to comply with [shall be subject to] the provisions of this Chapter.*

(a) [(b)] *It shall not be a violation of this Section 9-804 for [Any] an owner, landlord or agent or other person operating or managing any premises against which a notice of violation has been issued to [who desires to] terminate an existing occupancy in order that the premises may be rehabilitated and the violation cured, provided that [and] the Department of Licenses and Inspections issues a certification that such work requires that the premises be vacated.*

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(12) Good cause required.

(a) No owner, landlord, agent or other person operating or managing any residential premises, upon expiration of [a] *any* lease [of less than one year], shall issue a notice to vacate, notice of non-renewal, or notice to terminate the lease, unless (1) the landlord has good cause not to renew the lease; and (2) the landlord provides the tenant with notice pursuant to subsection (c), below. For purposes of this subsection (12)(a), good cause shall include, but is not limited to, any of the following:

* * *

(13) *Tenant Harassment. It shall be unlawful for any owner, landlord, agent, or other person operating or managing premises to ~~intentionally or knowingly~~ take any action, or refuse to act, for the purpose of causing any person lawfully entitled to occupancy of a residential rental unit to vacate such residential rental unit or to surrender or waive any rights in relation to such occupancy. When carried out with the requisite intent or purpose, examples of Tenant Harassment include, but are not limited to, the following:*

(a) *Reducing or eliminating, or threatening to reduce or to eliminate, housing services required by a lease, contract or law, including but not limited to the elimination of parking if provided in the tenant's lease or contract.*

(b) *Failing to perform or complete repairs and maintenance in a timely manner or failing to follow applicable industry standards to minimize exposure to ~~noise~~, dust, mold, lead paint, asbestos, or other building materials with potentially harmful health impacts.*

(c) *Interfering with a tenant's quiet enjoyment of their residence, including but not limited to, by ~~entering or photographing portions of a rental unit that are beyond the scope of a lawful entry or inspection~~; failing to provide reasonable notice **of 24 hours for non-emergency repairs** to the tenant about, or to offer a reasonable justification for, entry of the unit; or otherwise engaging in unreasonably disruptive behavior when entering or accessing the property or attempting to enter or access the property.*

(d) *Threatening a tenant or their guests with physical harm.*

(e) *Influencing or attempting to influence a tenant to vacate a rental housing unit through fraud, intimidation or coercion.*

(f) *Engaging in abusive use of government process against a tenant, for example by making a report or threatening to make a report about a tenant to a governmental entity when done to retaliate against the tenant for engaging in activity protected under Section 9-804(2), to prevent the tenant from engaging in such activities in the future, or to cause the tenant to vacate the unit or forfeit other legal rights of occupancy.*

(g) *Threatening or taking action to terminate any tenancy including service delivery of any notice to quit or other eviction notice or the commencement of an action to recover possession of a rental unit based on alleged facts which the landlord has no reasonable cause to believe to be true. No landlord shall be liable under this subsection for commencing an action to recover possession of a rental unit unless and until the tenant has obtained a favorable termination of that action.*

(h) *Threatening to or engaging in any act or omission which interferes with the tenant's right to use and enjoy the rental unit or whereby the premises are rendered unfit, unsafe, or imminently dangerous pursuant to the Philadelphia Property Maintenance Code.*

(i) *Refusing to acknowledge, facilitate, or accept receipt of lawful rent payments or rental assistance payments as set forth in the lease agreement or as established by the usual practice of the parties or applicable federal, state, or local law. This includes but is not limited to refusal to accept rent paid on behalf of the tenant from a third party, refusing to timely provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party.*

(j) *Engaging in an activity prohibited by federal, state, or local housing anti-discrimination laws.*

~~(k) *Retaliating against, threatening, or interfering with tenants or tenant organizers engaged in tenant organizing activities, including the formation of or participation in tenant associations and unions, as well as the activities protected by § 9-814.*~~

~~(k)~~ *Other acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of a tenant and that cause, or are likely to cause, a tenant to surrender or waive any rights in relation to such tenancy.*

[13] (14) Self-Help Eviction.

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[14] (15) Any person aggrieved under the provisions of this Section may file a complaint with the Fair Housing Commission or such agency as designated by the Mayor; or may allege any violations in an initial pleading or, where appropriate, in a responsive pleading in a court of competent jurisdiction. *Unless otherwise stated, a claim for a violation of this Chapter must be filed with the Fair Housing Commission within one (1) year of the date that an alleged violation last occurred. A claim for a violation of this Chapter must be filed in court within two (2) years of the date that an alleged violation occurred. There is no requirement that a complaint be filed*

with an agency before asserting a claim in court. Each prohibited action under this Section shall constitute a separate violation for every day it occurs or continues.

(a) In an administrative proceeding before the Fair Housing Commission or another agency designated by the Mayor to receive complaints under this Chapter, violations of this Section shall be punishable pursuant to Section 9-807.

(b) In a judicial proceeding, a court may order the following, upon a finding that a violation of this Section has occurred:

(.1) Injunctive relief and such other equitable relief, as appropriate.

(.2) Compensatory damages and restitution, including economic damages and emotional distress damages, or, in the alternative, if the plaintiff elects before judgment is rendered, statutory damages of \$1,000 per violation.

(.3) Upon a finding of a willful or wanton violation of this Section, punitive damages up to three times the value of actual damages sustained or, if statutory damages are elected, three times the value of statutory damages.

(.4) Reasonable attorney's fees and costs.

(.5) Suspension or revocation of the owner or agent's rental license, during which period the rent for any rental unit in the housing accommodation shall not be collected or increased.

(c) A tenant may use the protections afforded in this Section as an affirmative defense in an ejectment, eviction, replevin, or any other action under Chapter 9-800 of the Philadelphia Code and 68 P.S. §§ 250.101-399.19.

(d) With respect to claims of tenant harassment, as defined in subsection (13), above, the Fair Housing Commission's jurisdiction is permissive. The Commission may promulgate regulations as to the tenant harassment claims which may be filed with the Commission.

(16) Implied Warranty of Habitability.

(a) A tenant shall be entitled to an abatement of rent during and for any periods when the implied warranty of habitability has been materially breached by a landlord, including, but not limited to, where a landlord fails to rebut the presumption of a breach pursuant to this Subsection. A material breach of the implied warranty of habitability occurs

when (.1) a defect in the property is of a nature and kind which will prevent the use of the dwelling for its intended purpose to provide premises fit for habitation by its dwellers; (.2) the landlord had notice of the defect of the condition; (.3) to the extent the breach is not one that requires a tenant to temporarily or permanently leave the property, the landlord had a reasonable opportunity to make the necessary repairs and the landlord failed to make the necessary repairs.

(b) In a proceeding pursuant to this Section before the Fair Housing Commission or a court of competent jurisdiction, there shall be a nonexclusive presumption that an owner, landlord, agent or other person operating or managing any residential premises breached the implied warranty of habitability if (.1) the conditions or characteristics of the premises violate the requirements of the Philadelphia Property Maintenance Code or the Philadelphia Fire Code; (.2) the Department has issued a notice of violation regarding the defective conditions or characteristics of the premises; (.3) 30 days have passed following the issuance of that notice of violation; (.4) no appeal of that notice of violation is pending; and (.5) the defective conditions or characteristics that form the basis of that notice of violation have not all been remedied. When these conditions are met a court may reasonably conclude that the landlord had notice of the defect from the Department of Licenses and Inspections, had a reasonable opportunity to make the necessary repairs, and failed to make the necessary repairs.

(.a) A notice of violation that includes a determination by the Department that the rental property is unfit, unsafe, or imminently dangerous, which is not complied with pursuant to the timelines of section (b) shall entitle a tenant to full abatement of rent during or for the period of the violation, or until the Department determines that work to repair the violation has started and is actively progressing, and acceptable interim measures have been taken to ensure tenant safety and unit habitability during the interim.

(.b) The Department's notice of violation to the landlord shall relieve the tenant of separately providing the landlord written notice of a defect or condition that gives rise to the presumptive breach of the implied warranty of habitability.

(.c) A landlord may rebut the presumption of a breach of the implied warranty of habitability, in whole or in part, by showing by a preponderance of the evidence:

(i) The landlord has been unable to correct the violation because the tenant prevented the landlord from accessing the property;

(ii) To the extent the notice of violation is not related to the structure of the building, that the habitability of the tenant's residence was not fully impacted by the relevant violation, in which case rent shall be abated to the extent that habitability was adversely impacted;

(iii) *The tenant caused the violation that is the basis for the violation; or*

(iv) *The defective conditions or characteristics that form the basis of the violation were corrected, in which case the breach shall be deemed to apply to the period from the issuance of the notice of violation to the date the defective condition was repaired, so long as notice of repair was provided, a request for reinspection by the Department has been made, and the subsequent reinspection confirms the defective condition was repaired.*

(.d) *Nothing in this Subsection shall be interpreted to preclude a finding that the implied warranty of habitability was breached prior to or despite no violation having been issued by the City.*

[15] (17) No provision of this Section can be waived or made subject to a contract between the parties depriving a tenant of the benefits of this Section.

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§ 9-814. *Tenant Right to Organize*

(1) *Tenants shall have the right to:*

(a) *Organize and advocate related to the terms and conditions of their residency;*

(b) *Form, join, meet with, and participate in tenant organizations;*

(c) *Meet and confer through representatives of their own choosing with owners and management;and*

(d) *Engage in lawful concerted activities with other tenants;*

(2) *Any tenant organizer who is not a tenant shall have the same rights to visit tenants and access a residential rental accommodations as all other non-residents;*

(3) *Any owner or agent of an owner of a residential rental accommodation has a duty to bargain in good faith with tenants and tenant organizers regarding lease terms and property conditions.*

(4) *No owner or agent of an owner of a residential rental accommodation shall interfere with the right of a tenant or tenant organizer invited by a tenant onto the premises to*

conduct the following activities related to the establishment or operation of a tenant organization, if performed in a lawful manner:

- (a) Distributing literature in common areas, including lobby areas;*
 - (b) Knocking on tenants' doors, speaking with tenants, and placing literature at or under tenants' doors;*
 - (b) Posting information on all building bulletin boards;*
 - (c) Assisting tenants to participate in tenant organization activities; and*
 - (e) Convening tenant or tenant organization meetings at any reasonable time and in any appropriate space that would reasonably be interpreted as areas that the tenant had access to under the terms of their lease, including any tenant's unit, a community room, a common area including lobbies, or other available space.*
 - (f) Formulating responses to owner actions or building and unit conditions, including:*
 - (.1) Rent increases or requests for rent increases;*
 - (.2) Proposed increases, decreases, or other changes in the housing accommodation's facilities and services;*
 - (.3) Conversion of residential units to nonresidential use, cooperative housing, or condominiums;*
 - (g) Proposing that the owner or management modify the housing accommodation's facilities and services; and*
 - (h) Any other activity reasonably related to the establishment or operation of a tenant organization.*
- (5) A person aggrieved under the provisions of this Section may file a complaint in accordance with the procedures and timeliness set forth in Subsection 9-804(15) and may be entitled to relief as described therein.*

SECTION 2. This Ordinance shall become effective immediately.