



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Third Floor, Suite 1
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 5, 2022

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: SS 1 for SB 167 (Landlord Mitigation Fund)

The State Council for Persons with Disabilities (SCPD) has reviewed SS 1 for SB 167 which would create the Landlord Mitigation Fund. The bill states that it is to “provide payment for certain expenses incurred by landlords participating in government-sponsored rental assistance program[s].” It was developed to accompany a pending Source of Income Bill (SB 90) to encourage landlord participation in government-sponsored rental assistance programs and to provide a process for a landlord to submit a claim for loss or damages to the Delaware State Housing Authority (DSHA) for reimbursement. Specifically, this fund addresses landlord concern about loss of income due to attempting to meet the inspection and condition requirements of government-sponsored rental assistance programs. In addition, when a tenant vacates without notice or damages the unit, the landlord may file a claim for reimbursement. The landlord is prohibited from taking legal action against a tenant for an amount paid under this fund, which may reduce the number of tenants who have claims filed against them in JP court. DSHA has discretion to create the fund, set the maximum amount of reimbursement, and conduct a claim review. SCPD endorses the proposed legislation in conjunction with legislation ensuring Source of Income protection (SB 90) but recommends that any evidence submitted to the fund

may not be used for termination of government-sponsored rental assistance. SCPD has the following observations.

Claims eligible for reimbursement by landlords include:

- (1) Lost rental income due to delays in the public housing authority inspection process, in an amount equal to the lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant.
- (2) Lost rental income due to the tenant vacating the tenancy without notice.
- (3) Reimbursement for damages to the real property other than for normal wear and tear, in excess of the security deposit. In order for a claim to be eligible for reimbursement under this subsection, the landlord must provide DSHA with proof of the expenditures for which the landlord is seeking reimbursement.
- (4) Reimbursement for improvements required by the public housing authority inspection. In order for a claim to be eligible for reimbursement under this subsection, the landlord must provide DSHA with proof of the expenditures for which the landlord is seeking reimbursement; and the landlord must rent to the tenant whose housing subsidy was conditioned on the real property passing inspection.

The proposed legislation will positively impact individuals with disabilities. The Delaware Public Housing Authorities administer 5,549 federal vouchers¹ and the Delaware State Housing Authority (DSHA) administers approximately 800 SRAP vouchers. Of the households using federal Housing Choice Vouchers in Delaware, 31% of non-elderly households and 68% of elderly households had head, spouse or co-head of household with a disability.

However, a mitigation fund on its own is unlikely to have the substantial impact on the landlord participation in government-sponsored rental assistance programs in Delaware. This legislation should be supported in conjunction with the legislation guaranteeing protection from discrimination based on Source of Income (SB 90).

Furthermore, this legislation DOES NOT prohibit the landlord from using evidence of damage submitted to the mitigation fund as evidence for eviction. The remedy for damages should generally be reimbursement for repair costs, not eviction. Although

¹ <https://www.huduser.gov/portal/datasets/assthsg.html>

this fund promotes such a remedy, it does not guarantee that a tenant will not face eviction based on damage to the unit.

Finally, the legislation DOES NOT prohibit any of the Delaware Public Housing Authorities from using a mitigation fund claim as evidence for termination of a benefit. Again, the remedy for damages or for vacating a tenancy should be payment of costs only, not termination of a benefit.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

SS 1 for SB 167 [Landlord Mitigation Fund (4-5-22)]