

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 493  
Committee Substitute Favorable 5/9/11

Short Title: Landlord Tenant Law Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE LAWS RELATED TO LANDLORD TENANT  
3 RELATIONSHIPS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 42-34.1 reads as rewritten:

6 "**§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.**

7 (a) If the judgment in district court is against the defendant appellant, it shall be  
8 sufficient to stay execution of the judgment during the 30-day time period for taking an appeal  
9 provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant  
10 appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails to make  
11 rental payments as provided in the undertaking within five days of the day rent is due under the  
12 terms of the residential rental agreement, the clerk of superior court shall, upon application of  
13 the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess  
14 the defendant appellant as provided in G.S. 42-36.2.

15 (a1) If the judgment in district court is against the defendant appellant and the defendant  
16 appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff  
17 for the time the defendant appellant remains in possession of the premises after the judgment is  
18 given. Rent shall be prorated if the judgment is executed before the day rent would become due  
19 under the terms of the lease. The clerk of court shall disperse any rent in arrears paid by the  
20 defendant appellant in accordance with a stipulation executed by all parties or, if there is no  
21 stipulation, in accordance with the judge's order.

22 (b) If the judgment in district court is against the defendant appellant and the defendant  
23 appellant appeals the judgment, it shall be sufficient to stay execution of the judgment if the  
24 defendant appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails  
25 to perfect the appeal or the appellate court upholds the judgment of the district court, the  
26 execution of the judgment shall proceed. The clerk of court shall not disperse any rent in  
27 arrears paid by the defendant appellant until all appeals have been resolved."

28 **SECTION 2.(a)** G.S. 42-25.9(d) reads as rewritten:

29 "(d) If any tenant abandons personal property of ~~five hundred dollar (\$500.00)~~ seven  
30 hundred fifty dollars (\$750.00) value or less in the demised premises, or fails to remove such  
31 property at the time of execution of a writ of possession in an action for summary ejection,  
32 the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), or  
33 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing  
34 free or at a nominal price clothing and household furnishings to people in need, upon that  
35 organization agreeing to identify and separately store the property for 30 days and to release the  
36 property to the tenant at no charge within the 30-day period. A landlord electing to use this  
37 procedure shall immediately post at the demised premises a notice containing the name and



1 address of the property recipient, post the same notice for 30 days or more at the place where  
2 rent is received, and send the same notice by first-class mail to the tenant at the tenant's last  
3 known address. Provided, however, that the notice shall not include a description of the  
4 property."

5 **SECTION 2.(b)** G.S. 42-25.9(h) reads as rewritten:

6 "(h) If the total value of all property remaining on the premises at the time of execution  
7 of a writ of possession in an action for summary ejectment is less than ~~one hundred dollars~~  
8 ~~(\$100.00)~~, five hundred dollars (\$500.00), the property shall be deemed abandoned five days  
9 after the time of execution, and the landlord may throw away or dispose of the property. Upon  
10 the tenant's request prior to the expiration of the five-day period, the landlord shall release  
11 possession of the property to the tenant during regular business hours or at a time agreed upon."

12 **SECTION 3.** G.S. 42-26 reads as rewritten:

13 "**§ 42-26. Tenant holding over may be dispossessed in certain cases.**

14 (a) Any tenant or lessee of any house or land, and the assigns under the tenant or legal  
15 representatives of such tenant or lessee, who holds over and continues in the possession of the  
16 demised premises, or any part thereof, without the permission of the landlord, and after demand  
17 made for its surrender, may be removed from such premises in the manner hereinafter  
18 prescribed in any of the following cases:

- 19 (1) When a tenant in possession of real estate holds over after his term has  
20 expired.
- 21 (2) When the tenant or lessee, or other person under him, has done or omitted  
22 any act by which, according to the stipulations of the lease, his estate has  
23 ceased.
- 24 (3) When any tenant or lessee of lands or tenements, who is in arrear for rent or  
25 has agreed to cultivate the demised premises and to pay a part of the crop to  
26 be made thereon as rent, or who has given to the lessor a lien on such crop as  
27 a security for the rent, deserts the demised premises, and leaves them  
28 unoccupied and uncultivated.

29 (b) An arrearage in costs owed by a tenant for water or sewer services pursuant to  
30 G.S. 62-110(g) shall not be used as a basis for termination of a lease under this Chapter. Any  
31 payment to the landlord shall be applied first to the rent owed and then to charges for water or  
32 sewer service, unless otherwise designated by the tenant.

33 (c) In an action for ejectment based upon G.S. 42-26(a)(2), the lease may provide that  
34 the landlord's acceptance of partial rent or partial housing subsidy payment does not waive the  
35 tenant's breach for which the right of reentry was reserved, and the landlord's exercise of such a  
36 provision does not constitute a violation of Chapter 75 of the General Statutes."

37 **SECTION 4.** G.S. 42-51 reads as rewritten:

38 "**§ 42-51. Permitted uses of the deposit.**

39 (a) Security deposits for residential dwelling units shall be permitted only for the  
40 following:

- 41 (1) The tenant's possible nonpayment of rent and costs for water or sewer  
42 services provided pursuant to ~~G.S. 62-110(g)~~, G.S. 62-110(g).
- 43 (2) damage-Damage to the premises, including damage to or destruction of  
44 smoke detectors or carbon monoxide detectors.
- 45 (3) nonfulfillment of rental period; Damages as the result of the nonfulfillment of  
46 the rental period, except where the tenant terminated the rental agreement  
47 under G.S. 42-45, G.S. 42-45.1, or because the tenant was forced to leave the  
48 property because of the landlord's violation of Article 2A of the General  
49 Statutes or was constructively evicted by the landlord's violation of  
50 G.S. 42-42(a).

- 1           (4)    ~~any~~ Any unpaid bills that become a lien against the demised property due to  
2           the tenant's ~~occupaney~~, occupancy.  
3           (5)    The costs of re-renting the premises after breach by the tenant, including any  
4           reasonable fees or commissions paid by the landlord to a licensed real estate  
5           broker to re-rent the premises.  
6           (6)    The costs of removal and storage of the tenant's property after a summary  
7           ejectment ~~proceeding or~~ proceeding.  
8           (7)    ~~court costs in connection with terminating a tenancy.~~ Court costs.  
9           (8)    Any fee permitted by G.S. 42-46.

10       (b)    The security deposit shall not exceed an amount equal to two weeks' rent if a  
11       tenancy is week to week, one and one-half months' rent if a tenancy is month to month, and two  
12       months' rent for terms greater than month to month. These deposits must be fully accounted for  
13       by the landlord as set forth in G.S. 42-52."

14           **SECTION 5.** G.S. 42A-11(b) reads as rewritten:

15       "(b)    The vacation rental agreement shall contain provisions separate from the  
16       requirements of subsection (a) of this section which shall describe the following as permitted or  
17       required by this Chapter:

- 18           (1)    The manner in which funds shall be received, deposited, and disbursed in  
19           advance of the tenant's occupancy of the property.  
20           (2)    Any processing fees permitted under G.S. 42A-17(c).  
21           (2a)   Any cleaning fee permitted under G.S. 42A-17(d).  
22           (3)    The rights and obligations of the landlord and tenant under G.S. 42A-17(b).  
23           (4)    The applicability of expedited eviction procedures.  
24           (5)    The rights and obligations of the landlord or real estate broker and the tenant  
25           upon the transfer of the property.  
26           (6)    The rights and obligations of the landlord or real estate broker and the tenant  
27           under G.S. 42A-36.  
28           (7)    Any other obligations of the landlord and tenant."

29           **SECTION 6.** G.S. 42A-17 is amended by adding a new subsection to read:

30       "(d)    A vacation rental agreement may include a cleaning fee, the amount of which shall  
31       be provided in the agreement, reasonably calculated to cover the costs of cleaning the  
32       residential property upon the termination of the tenancy."

33           **SECTION 7.** The General Statutes Commission shall study and recommend to the  
34       2012 Regular Session of the 2011 General Assembly changes to the General Statutes to provide  
35       for the orderly and expeditious removal by a landlord of the personal property of a deceased  
36       tenant where the heirs are not readily identifiable or available to take possession of that  
37       personal property.

38           **SECTION 8.** Section 7 of this act is effective when it becomes law. The remainder  
39       of this act becomes effective October 1, 2011, and applies to all actions for summary ejectment  
40       filed on and after that date and to all residential rental agreements entered into on or after that  
41       date.