

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 493
Committee Substitute Favorable 5/9/11
Senate Judiciary II Committee Substitute Adopted 5/31/12

Short Title: Landlord Tenant Law Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO LANDLORD TENANT
RELATIONSHIPS AND ESTABLISHING A PROCESS WHEREBY A LANDLORD
MAY REMOVE FROM A RESIDENTIAL DWELLING UNIT TANGIBLE PERSONAL
PROPERTY BELONGING TO A DECEASED TENANT AFTER FILING AN
AFFIDAVIT WITH THE CLERK OF COURT IN THE COUNTY IN WHICH THE
RESIDENTIAL DWELLING UNIT IS LOCATED.

The General Assembly of North Carolina enacts:

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

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

(a) If the judgment in district court is against the defendant appellant, it shall be sufficient to stay execution of the judgment during the 30-day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in G.S. 42-34(b), and no additional security under G.S. 1-292 is required. If the defendant appellant fails to make rental payments as provided in the undertaking within five days of the day rent is due under the terms of the residential rental agreement, the clerk of superior court shall, upon application of the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess the defendant appellant as provided in G.S. 42-36.2.

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

(b) If the judgment in district court is against the defendant appellant and the defendant appellant appeals the judgment, it shall be sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in ~~G.S. 42-34(b)~~. G.S. 42-34(b), and no additional security under G.S. 1-292 is required. If the defendant appellant fails to perfect the appeal or the appellate court upholds the judgment of the district court, the execution of the judgment shall proceed. The clerk of court shall not disperse any rent in arrears paid by the defendant appellant until all appeals have been resolved."

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



1 "(d) If any tenant abandons personal property of ~~five hundred dollar (\$500.00)~~ seven
2 hundred fifty dollar (\$750.00) value or less in the demised premises, or fails to remove such
3 property at the time of execution of a writ of possession in an action for summary ejectment,
4 the landlord may, as an alternative to the procedures provided in G.S. 42-25.9(g), 42-25.9(h), or
5 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing
6 free or at a nominal price clothing and household furnishings to people in need, upon that
7 organization agreeing to identify and separately store the property for 30 days and to release the
8 property to the tenant at no charge within the 30-day period. A landlord electing to use this
9 procedure shall immediately post at the demised premises a notice containing the name and
10 address of the property recipient, post the same notice for 30 days or more at the place where
11 rent is received, and send the same notice by first-class mail to the tenant at the tenant's last
12 known address. Provided, however, that the notice shall not include a description of the
13 property."

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

15 "(h) If the total value of all property remaining on the premises at the time of execution
16 of a writ of possession in an action for summary ejectment is less than ~~one hundred dollars~~
17 ~~(\$100.00)~~, five hundred dollars (\$500.00), the property shall be deemed abandoned five days
18 after the time of execution, and the landlord may throw away or dispose of the property. Upon
19 the tenant's request prior to the expiration of the five-day period, the landlord shall release
20 possession of the property to the tenant during regular business hours or at a time agreed upon."

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

22 "**§ 42-26. Tenant holding over may be dispossessed in certain cases.**

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

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

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

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

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

47 "**§ 42-51. Permitted uses of the deposit.**

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

- 50 (1) The tenant's possible nonpayment of rent and costs for water or sewer
51 services provided pursuant to ~~G.S. 62-110(g)~~, G.S. 62-110(g).

- 1 (2) ~~damage~~ Damage to the premises, including damage to or destruction of
 2 smoke detectors or carbon monoxide detectors.
- 3 (3) ~~nonfulfillment of rental period,~~ Damages as the result of the nonfulfillment of
 4 the rental period, except where the tenant terminated the rental agreement
 5 under G.S. 42-45, G.S. 42-45.1, or because the tenant was forced to leave the
 6 property because of the landlord's violation of Article 2A of the General
 7 Statutes or was constructively evicted by the landlord's violation of
 8 G.S. 42-42(a).
- 9 (4) ~~any~~ Any unpaid bills that become a lien against the demised property due to
 10 the tenant's ~~occupancy,~~ occupancy.
- 11 (5) The costs of re-renting the premises after breach by the tenant, including any
 12 reasonable fees or commissions paid by the landlord to a licensed real estate
 13 broker to re-rent the premises.
- 14 (6) The costs of removal and storage of the tenant's property after a summary
 15 ejection ~~proceeding or~~ proceeding.
- 16 (7) ~~court costs in connection with terminating a tenancy.~~ Court costs.
- 17 (8) Any fee permitted by G.S. 42-46.

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

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

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

- 26 (1) The manner in which funds shall be received, deposited, and disbursed in
 27 advance of the tenant's occupancy of the property.
- 28 (2) Any processing fees permitted under G.S. 42A-17(c).
- 29 (2a) Any cleaning fee permitted under G.S. 42A-17(d).
- 30 (3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).
- 31 (4) The applicability of expedited eviction procedures.
- 32 (5) The rights and obligations of the landlord or real estate broker and the tenant
 33 upon the transfer of the property.
- 34 (6) The rights and obligations of the landlord or real estate broker and the tenant
 35 under G.S. 42A-36.
- 36 (7) Any other obligations of the landlord and tenant."

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

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

41 **SECTION 7.** Article 25 of Chapter 28A of the General Statutes is amended by
 42 adding a new section to read as follows:

43 "**§ 28A-25-1.2. Removal of tangible personal property by landlord after death of**
 44 **residential tenant.**

45 (a) When a decedent who is the sole occupant of a dwelling unit dies leaving tangible
 46 personal property in the dwelling unit, the landlord may take possession of the property upon
 47 the filing of an affidavit that complies with the provisions of subsection (b) of this section if all
 48 of the following conditions have been met:

- 49 (1) At least 10 days has elapsed from the date the paid rental period for the
 50 dwelling unit has expired.

1 (2) No personal representative, collector, or receiver has been appointed for the
2 decedent's estate under the provisions of this Chapter, Chapter 28B, or
3 Chapter 28C of the General Statutes in the county in which the dwelling unit
4 is located.

5 (3) No affidavit related to the decedent's estate has been filed under the
6 provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1 in the county in which the
7 dwelling unit is located.

8 (b) The affidavit required by subsection (a) of this section shall be on a form approved
9 by the Administrative Office of the Courts and supplied by the clerk of court. The affidavit
10 shall state all of the following:

11 (1) The name and address of the affiant and the fact that the affiant is the lessor
12 of the dwelling unit.

13 (2) The name of the decedent and the fact that the decedent was the lessee and
14 sole occupant of the dwelling unit and died leaving tangible personal
15 property in the dwelling unit. The affiant shall attach to the affidavit a copy
16 of the decedent's death certificate.

17 (3) The address of the dwelling unit.

18 (4) The date of the decedent's death.

19 (5) The date the paid rental period expired and the fact that at least 10 days has
20 elapsed since that date.

21 (6) The affiant's good faith estimate of the value of the tangible personal
22 property remaining in the dwelling unit. The affiant shall attach to the
23 affidavit an inventory of the property which shall include, at a minimum, the
24 categories of furniture, clothing and accessories, and miscellaneous items.

25 (7) That no personal representative, collector, or receiver has been appointed for
26 the decedent's estate under the provisions of this Chapter, Chapter 28B, or
27 Chapter 28C of the General Statutes in the county in which the dwelling unit
28 is located and that no affidavit has been filed in the county under the
29 provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1.

30 (8) The name of the person identified in the rental application, lease agreement,
31 or other landlord document as the authorized person to contact in the event
32 of the death or emergency of the tenant; that the affiant has made a good
33 faith attempt to contact that person to urge that action be taken to administer
34 the decedent's estate; and that either the affiant was unsuccessful in
35 contacting the person or, if contacted, the person has not taken action to
36 administer the decedent's estate. The affiant shall state the efforts made to
37 contact the person identified in the rental application, lease agreement, or
38 other landlord document.

39 (c) The affidavit shall be filed in the office of the clerk of court in the county in which
40 the dwelling unit is located. The affidavit shall be filed by the clerk upon the landlord's
41 payment of the fee of thirty dollars (\$30.00) and shall be indexed in the index to estates. The
42 landlord shall mail a copy of the affidavit to the person identified in the rental application, lease
43 agreement, or other landlord document as the authorized person to contact in the event of the
44 death or emergency of the tenant. If no contact person is identified in the rental application,
45 lease agreement, or other landlord document, the landlord shall cause notice of the filing of the
46 affidavit to be posted at the door of the landlord's primary rental office or the place where the
47 landlord conducts business and at the county courthouse in the area designated by the clerk for
48 the posting of notices.

49 (d) The filing of an affidavit that complies with the provisions of subsection (b) of this
50 section shall be sufficient to require the transfer of the property remaining in the decedent's
51 dwelling unit to the landlord. Upon the transfer, the landlord may remove the property from

1 the dwelling unit and deliver it for storage to any storage warehouse in the county in which the
2 dwelling unit is located or in an adjoining county if no storage warehouse is located in that
3 county. The landlord may also store the property in the landlord's own storage facility.
4 Notwithstanding any provision of Chapter 42 of the General Statutes, after removing the
5 property from the dwelling unit as provided in this subsection, the landlord shall be in
6 possession of the dwelling unit and may let the unit as the landlord deems fit.

7 (e) If, at least 90 days after the landlord filed the affidavit required by subsection (a) of
8 this section, no personal representative, collector, or receiver has been appointed under the
9 provisions of this Chapter, Chapter 28B, or Chapter 28C of the General Statutes in the county
10 in which the dwelling unit is located and no affidavit has been filed in the county under the
11 provisions of G.S. 28A-25-1 or G.S. 28A-25-1.1, the landlord may take any of the following
12 actions related to the decedent's property:

13 (1) Sell the property as provided in subsection (f) of this section.

14 (2) Deliver the property into the custody of a nonprofit organization regularly
15 providing free, or at a nominal price, clothing and household furnishings to
16 people in need for disposition in the normal course of the organization's
17 operations. The organization shall not be liable to anyone for the disposition
18 of the property.

19 (f) If the landlord delivers the property to a nonprofit organization as authorized in
20 subdivision (2) of subsection (e) of this section, the landlord shall provide an accounting to the
21 clerk stating the nature of the action and the date on which the action was taken. A landlord
22 who elects to sell the property as authorized in subdivision (1) of subsection (e) of this section
23 may do so at a public or private sale. Whether the sale is public or private, the landlord shall, at
24 least seven days prior to the day of sale, give written notice to the clerk and post written notice
25 of the sale in the area designated by the clerk for the posting of notices and at the door of the
26 landlord's primary rental office or the place where the landlord conducts business stating the
27 date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment
28 of unpaid rents, damages, packing and storage fees, filing fees, and sale costs shall be
29 delivered to the clerk. The landlord may apply the proceeds of the sale to the unpaid rents,
30 damages, packing and storage fees, filing fees, and sale costs. Any surplus from the sale shall
31 be paid to the clerk, and the landlord shall provide an accounting to the clerk showing the
32 manner in which the proceeds of the sale were applied. The clerk shall administer the funds in
33 the same manner as provided in G.S. 28A-25-6.

34 (g) If, at any time after the landlord files the affidavit required by subsection (a) of this
35 section but before the landlord takes any of the actions authorized in subsection (e) of this
36 section, the landlord is presented with letters of appointment or another document issued by a
37 court indicating that a personal representative, collector, or receiver has been appointed for the
38 decedent's estate or an affidavit filed under the provisions of G.S. 28A-25-1 or
39 G.S. 28A-25-1.1, the landlord shall deliver the decedent's property to the personal
40 representative, collector, or receiver appointed or to the person who filed the affidavit.

41 (h) Notwithstanding the provisions of subsections (a) through (g) of this section, if the
42 decedent dies leaving tangible personal property of five hundred dollar (\$500.00) value or less
43 in the dwelling unit, the landlord may, without filing an affidavit, deliver the property into the
44 custody of a nonprofit organization regularly providing free, or at a nominal price, clothing and
45 household furnishings to people in need upon that organization agreeing to identify and
46 separately store the property for 30 days and to release the property to a person authorized by
47 law to act on behalf of the decedent at no charge within the 30-day period. Prior to delivering
48 the property to the nonprofit organization, the landlord shall prepare an inventory of the
49 property which shall include, at a minimum, the categories of furniture, clothing and
50 accessories, and miscellaneous items. A landlord electing to act under this subsection shall
51 immediately send a notice by first-class mail containing the name and address of the property

1 recipient and a copy of the inventory to the person identified in the rental application, lease
2 agreement, or other landlord document as the authorized person to contact in the event of the
3 death or emergency of the tenant and shall post the same notice for 30 days or more at the door
4 of the landlord's primary rental office or the place where the landlord conducts business. The
5 notice posted shall not include an inventory of the property. Any nonprofit organization
6 agreeing to receive personal property under this subsection shall not be liable to the decedent's
7 estate for the disposition of the property, provided that the property has been separately
8 identified and stored for release to a person authorized by law to act on behalf of the decedent
9 for a period of 30 days.

10 (i) If any lessor, landlord, or agent seizes possession of the decedent's tangible personal
11 property in any manner not in accordance with the provisions of this section, any person
12 authorized by law to act on behalf of the decedent shall be entitled to recover possession of the
13 property or compensation for the value of the property and, in any action brought by any person
14 authorized by law to act on behalf of the decedent, the landlord shall be liable to the decedent's
15 estate for actual damages, but not including punitive damages, treble damages, or damages for
16 emotional distress.

17 (j) The procedure authorized in this section may be used as an alternative to a summary
18 ejectment action under Chapter 42 of the General Statutes. A landlord shall, in his or her
19 discretion, determine whether to proceed under the provisions of this section or under Chapter
20 42 of the General Statutes."

21 **SECTION 8.** G.S. 42-25.7 reads as rewritten:

22 **"§ 42-25.7. Distress and distraint not permitted.**

23 It is the public policy of the State of North Carolina that distress and distraint are prohibited
24 and that landlords of residential rental property shall have rights concerning the personal
25 property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g),
26 42-25.9(h), ~~or 42-36.2-42-36.2,~~ or 28A-25-1.2."

27 **SECTION 9.** Article 3 of Chapter 42 of the General Statutes is amended by adding
28 a new section to read as follows:

29 **"§ 42-36.3. Death of residential tenant; landlord may file affidavit to remove personal**
30 **property from the dwelling unit.**

31 Notwithstanding any other provision of this Chapter, when a decedent who is the sole
32 occupant of a dwelling unit dies leaving tangible personal property in the dwelling unit, the
33 landlord may, instead of commencing a summary ejectment action, file an affidavit as provided
34 in G.S. 28A-25-1.2."

35 **SECTION 10.** This act becomes effective October 1, 2012, and applies to all
36 actions for summary ejectment filed on and after that date, and to personal property that was
37 owned by a tenant who dies on or after that date.