

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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HOUSE BILL 1053

Short Title: Landlord/Tenant Law Revisions. (Public)

Sponsors: Representatives Blue; Faison, E. Floyd, Harrison, Insko, Lucas, Luebke, Parmon, Ross, Weiss, and Womble.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.

April 6, 2009

A BILL TO BE ENTITLED
AN ACT REQUIRING LANDLORDS TO IMPROVE THE HABITABILITY OF
DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS, STAYING
THE EXECUTION OF A JUDGMENT FOR SUMMARY EJECTMENT WHILE A
MOTION FOR MODIFICATION OF THE UNDERTAKING IS PENDING,
ESTABLISHING FEES FOR ADMINISTRATIVE SERVICES IN RESIDENTIAL
TENANCIES, AND ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A
CITY MAY ORDER A DWELLING TO BE VACATED AND CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the



1 motion is filed and determine what modifications, if any, are appropriate. No writ of possession
2 or other execution of the magistrate's judgment shall take place during the time the aggrieved
3 party's motion for modification is pending before the clerk of court."

4 **SECTION 2.** G.S. 42-42(a) is amended by adding a new subdivision to read as
5 follows:

6 "**§ 42-42. Landlord to provide fit premises.**

7 (a) The landlord shall:

8 ...

9 (8) Within a reasonable period of time based upon the severity of the condition,
10 repair or remedy any imminently dangerous condition on the premises after
11 acquiring actual knowledge or receiving notice of the condition. For
12 purposes of this subdivision, the term "imminently dangerous condition"
13 means any of the following:

14 a. Unsafe wiring.

15 b. Unsafe flooring or steps.

16 c. Unsafe ceilings or roofs.

17 d. Unsafe chimneys or flues.

18 e. Lack of potable water.

19 f. Lack of operable locks on all doors leading to the outside.

20 g. Broken windows or lack of operable locks on all windows on the
21 ground level.

22 h. Lack of operable heating facilities capable of heating living areas to
23 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from
24 November 1 through March 31.

25 i. Lack of an operable toilet.

26 j. Lack of an operable bathtub or shower.

27 k. Rat infestation as a result of defects in the structure that make the
28 premises not impervious to rodents.

29 l. Excessive standing water, sewage, or flooding problems caused by
30 plumbing leaks or inadequate drainage that contribute to mosquito
31 infestation or mold."

32 **SECTION 3.** G.S. 42-44 is amended by adding the following new subsection to
33 read as follows:

34 "(a3) Whenever the landlord has knowledge or notice of any imminently dangerous
35 condition as provided in G.S. 42-42(a)(8), the landlord shall repair or remedy the condition
36 within a reasonable period of time based upon the severity of the condition. If the landlord fails
37 to remedy the imminently dangerous condition within a reasonable period of time based upon
38 the severity of the condition, the landlord shall be deemed to have breached the implied
39 covenant of quiet enjoyment. Notwithstanding the landlord's repair or remedy of any
40 imminently dangerous condition, the landlord may recover from the tenant the actual and
41 reasonable costs of repairs of conditions that were the fault of the tenant."

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

43 "**§ 42-46. Late fees; fees for administrative services.**

44 ...

45 (e) A landlord may provide in a residential rental agreement that the tenant shall pay an
46 administrative fee to cover the landlord's costs in prosecuting a successful summary ejectment
47 proceeding against the tenant. However, the administrative fee authorized under this subsection
48 may be imposed only if the following conditions are met:

49 (1) The amount of the fee may not exceed the amount of the late fee authorized
50 in subsection (a) of this section.

1 (2) The fee may be claimed only after the landlord has obtained a final judgment
2 for summary ejectment in the trial court, and the fee shall not be due until at
3 least five days after the deadline for appeal has expired.

4 (3) The tenant's failure to pay the fee may not be treated as a default for another
5 summary ejectment proceeding.

6 (4) The landlord shall not charge any fees for services of any kind that are not
7 expressly authorized by this Chapter."

8 **SECTION 5.** G.S. 42-52 reads as rewritten:

9 **"§ 42-52. Landlord's obligations.**

10 Upon termination of the tenancy, money held by the landlord as security may be applied as
11 permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the
12 landlord in writing shall itemize any damage and mail or deliver same to the tenant, together
13 with the balance of the security deposit, no later than 30 days after termination of the tenancy
14 and delivery of possession by the tenant. If the extent of the landlord's claim against the
15 security deposit cannot be determined within 30 days, the landlord shall provide the tenant with
16 an interim accounting after 30 days to preserve the landlord's claim and shall provide a final
17 accounting within 60 days after termination of the tenancy and delivery of possession by the
18 tenant. If the tenant's address is unknown the landlord shall apply the deposit as permitted in
19 G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for
20 collection by the tenant for at least six months. The landlord may not withhold as damages part
21 of the security deposit for conditions that are due to normal wear and tear nor may the landlord
22 retain an amount from the security deposit which exceeds his actual damages."

23 **SECTION 6.** G.S. 42-55 reads as rewritten:

24 **"§ 42-55. Remedies.**

25 If the landlord or the landlord's successor in interest fails to account for and refund the
26 balance of the tenant's security deposit as required by this Article, the tenant may institute a
27 civil action to require the accounting of and the recovery of the balance of the deposit. The
28 failure of a landlord to comply with the deposit, bond, or notice requirements of this Article
29 shall void the landlord's right to retain any portion of the tenant's security deposit as otherwise
30 permitted under G.S. 42-51. In addition to other remedies at law and equity, the tenant may
31 recover damages resulting from noncompliance by the landlord; and upon a finding by the
32 court that the party against whom judgment is rendered was in willful noncompliance with this
33 Article, the court ~~may, in its discretion, allow a reasonable attorney's fee to the duly licensed~~
34 ~~attorney representing the prevailing party, such attorney's fee to be taxed as part of the cost of~~
35 ~~court shall award treble damages as provided in G.S. 75-16 or a two thousand dollars (\$2,000)~~
36 civil penalty for each violation of this Article, whichever is greater, and shall award attorneys'
37 fees as provided in G.S. 75-16.1."

38 **SECTION 7.** G.S. 160A-443 reads as rewritten:

39 **"§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public**
40 **officer.**

41 ...

42 (3) That if, after notice and hearing, the public officer determines that the
43 dwelling under consideration is unfit for human habitation, he shall state in
44 writing his findings of fact in support of that determination and shall issue
45 and cause to be served upon the owner thereof an order,

- 46 a. If the repair, alteration or improvement of the dwelling can be made
47 at a reasonable cost in relation to the value of the dwelling (the
48 ordinance of the city may fix a certain percentage of this value as
49 being reasonable), requiring the owner, within the time specified, to
50 repair, alter or improve the dwelling in order to render it fit for
51 human ~~habitation or to vacate and close the dwelling as a human~~

~~habitation; or~~habitation. The order may require that the property be vacated and closed only if the repairs, alterations, or improvements and the current state of the property present a significant threat of bodily harm. In making the determination of significant threat of bodily harm from continued occupancy, the public officer shall consider any additional threats presented by the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section;

or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), or there exists a significant threat of bodily harm considering the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities, requiring the owner, within the time specified in the order, to vacate and close or remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

...."

SECTION 8. This act becomes effective October 1, 2009.