

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-334
HOUSE BILL 802

AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A TENANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-222 reads as rewritten:

"§ 7A-222. General trial practice and procedure.

(a) Trial of a small claim action before a magistrate is without a jury. The rules of evidence applicable in the trial of civil actions generally are observed. At the conclusion of plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to establish a prima facie case. If a judgment of dismissal is not rendered the defendant may introduce evidence. At the conclusion of all the evidence the magistrate may render judgment or may in his discretion reserve judgment for a period not in excess of 10 ~~days~~-days, except as provided in subsection (b) of this section.

(b) In a small claim action for summary ejectment, the magistrate shall render judgment on the same day on which the conclusion of all the evidence and submission of legal authorities occurs, unless the parties concur on an extension of additional time for entering the judgment and except for more complex summary ejectment cases, in which event the magistrate shall render judgment within five business days of the hearing. Complex summary ejectment cases include cases brought for criminal activity, breaches other than nonpayment of rent, evictions involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing tenants, and cases with counterclaims."

SECTION 2. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties."

SECTION 3. G.S. 7A-228 reads as rewritten:

"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

(a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates



to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after entry of judgment. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

(b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after entry of judgment pursuant to subsection (a), and by serving a copy of the notice of appeal on all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10 days after entry of judgment in a summary ejection action, and within 20 days after entry of judgment in all other actions, shall result in the automatic dismissal of the appeal. Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an indigent for the appeal and is denied, that party shall have an additional five days to perfect the appeal by paying the court costs. The failure to demand a trial by jury in district court by the appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

(b1) A person desiring to appeal as an indigent shall, within 10 days of entry of judgment by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs of appeal. Within 20 days after entry of judgment, a superior or district court judge, magistrate, or the clerk of the superior court may authorize a person to appeal to district court as an indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall authorize a person to appeal as an indigent if the person files the required affidavit and meets one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate, or the clerk of the superior court may authorize a person who does not meet any of the criteria listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

The district court may dismiss an appeal and require the person filing the appeal to pay the court costs advanced if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious. If the court dismisses the appeal, the court shall affirm the judgment of the magistrate.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed.

(d) When a defendant in a summary ejection action has given notice of appeal and perfected the appeal in accordance with G.S. 7A-228(b), the plaintiff may serve upon the defendant a motion to dismiss the appeal if the defendant:

- (1) Failed to raise a defense orally or in writing in the small claims court;
- (2) Failed to file a motion, answer, or counterclaim in the district court; and
- (3) Failed to make any payment due under any applicable bond to stay execution of the judgment for possession.

The motion to dismiss the appeal shall list all of the deficiencies committed by the defendant, as described in subdivisions (1), (2), and (3) of this subsection, and shall state that the court will decide the motion to dismiss without a hearing if the defendant fails to respond within 10 days of receipt of the motion. The defendant may defeat the motion to dismiss by responding within 10 days of receipt of the motion by doing any of the following acts: (i) filing a responsive motion, answer, or counterclaim and serving the plaintiff with a copy thereof or (ii) paying the amount due under the bond to stay execution. The court shall review the file, determine whether the motion satisfies the requirements of this subsection, determine whether the defendant has made a sufficient response to defeat the motion, and shall enter an order resolving the matter without a hearing."

SECTION 4. G.S. 42-25.9 reads as rewritten:

"§ 42-25.9. Remedies.

...
(g) ~~Ten~~ Seven days after being placed in lawful possession by execution of a writ of possession, a landlord may ~~throw away, dispose of, or sell all items~~ of personal property

remaining on the premises, premises in accordance with the provisions of this section and G.S. 42-36.2(b), except that in the case of the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured home with a current value in excess of five hundred dollars (\$500.00) and its contents by a landlord after being placed in lawful possession by execution of a writ of possession. During the ~~10-day~~ seven-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. Upon the tenant's request prior to the expiration of the ~~10-day~~ seven-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the property at public or private sale, the landlord shall give written notice to the tenant by first-class mail to the tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the ~~10-day~~ seven-day period which allows the tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon request, within ~~10~~ seven days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the tenant's request prior to the day of sale, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. The landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the tenant, upon request, within ~~10~~ seven days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

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

SECTION 5. G.S. 42-36.2 reads as rewritten:

"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of evicted tenant's personal property.

(a) **When Sheriff May Remove Property.** – Before removing a tenant's personal property from demised premises pursuant to a writ for possession of real property or an order, the sheriff shall give the tenant notice of the approximate time the writ will be executed. The time within which the sheriff shall have to execute the writ shall be no more than ~~seven~~ five days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as provided in the writ, no earlier than the time specified in the notice, unless:

- (1) The landlord, or his authorized agent, signs a statement saying that the tenant's property can remain on the premises, in which case the sheriff shall simply lock the premises; or
- (2) The landlord, or his authorized agent, signs a statement saying that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him and has satisfied his indebtedness to the landlord.

Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted because the landlord signed a statement described in subdivision (2) of this subsection, the clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the costs of the proceeding shall be charged as part of the court costs.

(b) **Sheriff May Store Property.** – When the sheriff removes the personal property of an evicted tenant from demised premises pursuant to a writ or order the tenant shall take possession of his property. If the tenant fails or refuses to take possession of his property, the sheriff may deliver the property to any storage warehouse in the county, or in an adjoining county if no storage warehouse is located in that county, for storage. The sheriff may require the landlord to advance the cost of delivering the property to a storage warehouse plus the cost of one month's storage before delivering the property to a storage warehouse. If a landlord refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not

remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not executing the writ. Except for the disposition of manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2), within ~~10 days~~seven days of the landlord's being placed in lawful possession by execution of a writ of possession and upon the tenant's request within that ~~10 day~~seven-day period, the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon. During the ~~10 day~~seven-day period after being placed in lawful possession by execution of a writ of possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the premises unless otherwise provided for in this Chapter. ~~After the expiration of the 10 day period, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g).~~ If, after being placed in lawful possession by execution of a writ, the landlord has offered to release the tenant's property and the tenant fails to retrieve such property during the landlord's regular business hours within seven days after execution of the writ, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request release of the property within ~~10 days~~seven days, all costs of summary ejectment, execution and storage proceedings shall be charged to the tenant as court costs and shall constitute a lien against the stored property or a claim against any remaining balance of the proceeds of a warehouseman's lien sale.

(c) **Liability of the Sheriff.** – A sheriff who stores a tenant's property pursuant to this section and any person acting under the sheriff's direction, control, or employment shall be liable for any claims arising out of the willful or wanton negligence in storing the tenant's property.

(d) **Notice.** – The notice required by subsection (a) shall, except in actions involving the lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant that failure to request possession of any property on the premises within ~~10~~seven days of execution may result in the property being thrown away, disposed of, or sold. Notice shall be made by one of the following methods:

- (1) By delivering a copy of the notice to the tenant or his authorized agent at least two days before the time stated in the notice for serving the writ;
- (2) By leaving a copy of the notice at the tenant's dwelling or usual place of abode with a person of suitable age and discretion who resides there at least two days before the time stated in the notice for serving the writ; or
- (3) By mailing a copy of the notice by first-class mail to the tenant at his last known address at least five days before the time stated in the notice for serving the writ."

SECTION 6. The Administrative Office of the Courts is directed to develop a form for parties in small claim actions for summary ejectment to inform them of the time line and process in summary ejectment actions. The clerk of superior court shall make the form available to the parties.

SECTION 7. This act becomes effective September 1, 2013, and applies to all actions for summary ejectment filed on and after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:26 p.m. this 23rd day of July, 2013