

§ 42-46. Authorized late fees and eviction fees.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

- (1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater.
- (2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars (\$4.00) or five percent (5%) of the weekly rent, whichever is greater.
- (3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(b) A late fee under subsection (a) of this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable to leases entered into on or after that date.

(d) A lessor shall not charge a late fee to a lessee pursuant to subsection (a) of this section because of the lessee's failure to pay for water or sewer services provided pursuant to G.S. 62-110(g).

(e) **Complaint-Filing Fee.** – Pursuant to a written lease, a landlord may charge a complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

(f) **Court-Appearance Fee.** – Pursuant to a written lease, a landlord may charge a court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant was in default of the lease and the landlord filed, served, and prosecuted successfully a complaint for summary ejectment and/or monies owed in the small claims court. If the tenant appeals the judgment of the magistrate, and the magistrate's judgment is vacated, any fee awarded by a magistrate to the landlord under this subsection shall be vacated.

(g) **Second Trial Fee.** – Pursuant to a written lease, a landlord may charge a second trial fee for a new trial following an appeal from the judgment of a magistrate. To qualify for the fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed. The landlord's fee may not exceed twelve percent (12%) of the monthly rent in the lease.

(h) **Limitations on Charging and Collection of Fees.**

- (1) A landlord who claims fees under subsections (e) through (g) of this section is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.
- (2) A landlord who earns a fee under subsections (e) through (g) of this section may not deduct payment of that fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease for a subsequent summary ejectment action.
- (3) It is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by subsections (e) through (g) [and] (i) of this section, and a reasonable attorney's fee as allowed by law.

- (4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.
- (5) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any fee charged pursuant to this section shall be calculated on the tenant's share of the contract rent only, and the rent subsidy shall not be included.

(i) **Out-of-Pocket Expenses.** – In addition to the late fees referenced in subsections (a) and (b) of this section and the administrative fees of a landlord referenced in subsections (e) through (g) of this section, a landlord is also permitted to charge and recover from a tenant the following actual out-of-pocket expenses:

- (1) Filing fees charged by the court.
- (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure and G.S. 42-29.
- (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, not to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent.

(j) The out-of-pocket expenses listed in subsection (i) of this section are allowed to be included by the landlord in the amount required to cure a default. (1987, c. 530, s. 1; 2001-502, s. 4; 2003-370, s. 1; 2004-143, s. 5; 2009-279, s. 4; 2016-98, s. 1.7; 2018-50, s. 1.1.)