

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 854
May 4, 2021
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40511-MQ-22B

Short Title: Landlord/Tenant Changes.

(Public)

Sponsors: Representative Hardister.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY AND REAFFIRM THE STATUTORY AUTHORITY OF
3 LANDLORDS TO RECOVER OUT-OF-POCKET EXPENSES AND LITIGATION
4 COSTS IN SUMMARY EJECTMENT PROCEEDINGS, TO MAKE VARIOUS
5 CHANGES TO THE LANDLORD/TENANT STATUTES, AND TO PROHIBIT
6 DISCRIMINATORY PRACTICES AGAINST TENANTS WITH SERVICE ANIMALS
7 OR SUPPORT ANIMALS.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. CLARIFICATION AND REAFFIRMATION OF RECOVERY OF**
11 **OUT-OF-POCKET EXPENSES AND LITIGATION COSTS IN SUMMARY**
12 **EJECTMENTS**

13 **SECTION 1.1.** G.S. 42-46 reads as rewritten:

14 **"§ 42-46. Authorized late fees and eviction fees, costs, and expenses.**

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

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25 (3) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and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

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

30 (c) Repealed by Session Laws 2009-279, s. 4, effective October 1, 2009, and applicable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

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

35 (e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge ~~a~~ an
36 administrative complaint-filing fee not to exceed fifteen dollars (\$15.00) or five percent (5%) of



1 the monthly rent, whichever is greater, only if the tenant was in default of the lease, the landlord
2 filed and served a complaint for summary ejectment and/or money owed, the tenant cured the
3 default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can
4 include this fee in the amount required to cure the default.

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

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

16 (h) Limitations on Charging and Collection of Fees: Administrative Fees and
17 Out-of-Pocket Expenses and Litigation Costs.

18 (1) A landlord who claims administrative fees under subsections (e) through (g)
19 of this section is entitled to charge and retain only one of the above fees for
20 the landlord's complaint for summary ejectment and/or money owed.

21 (2) A landlord who earns ~~a~~an administrative fee under subsections (e) through
22 (g) of this section may not deduct payment of that fee from a tenant's
23 subsequent rent payment or declare a failure to pay the fee as a default of the
24 lease for a subsequent summary ejectment action.

25 (3) It is contrary to public policy for a landlord to put in a lease or claim any
26 administrative fee for filing a complaint for summary ejectment and/or money
27 owed other than the ones expressly authorized by subsections (e) through (g)
28 ~~[and] (i) of this section, and a reasonable attorney's fee as allowed by~~
29 ~~law.~~ This limitation does not apply to out-of-pocket expenses or
30 litigation costs.

31 (3a) It is contrary to public policy for a landlord to claim, or for a lease to provide
32 for the payment of, any out-of-pocket expenses or litigation costs for filing a
33 complaint for summary ejectment and/or money owed rather than those
34 expressly authorized under subsection (i) of this section.

35 (4) Any provision of a residential rental agreement contrary to the provisions of
36 this section is against the public policy of this State and therefore void and
37 unenforceable.

38 (5) If the rent is subsidized by the United States Department of Housing and
39 Urban Development, by the United States Department of Agriculture, by a
40 State agency, by a public housing authority, or by a local government, any fee
41 charged pursuant to this section shall be calculated on the tenant's share of the
42 contract rent only, and the rent subsidy shall not be included.

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

47 (1) Filing fees charged by the court.

48 (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North
49 Carolina Rules of Civil Procedure and G.S. 42-29.

50 (3) Reasonable attorneys' fees actually ~~incurred, paid or owed,~~ incurred, pursuant to a
51 written lease, not to exceed fifteen percent (15%) of the amount owed by the

1 tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the
2 eviction is based on a default other than the nonpayment of rent.

3 (j) The out-of-pocket expenses and litigation costs listed in subsection (i) of this section
4 are allowed to be included by the landlord in the amount required to cure a default.

5 (k) As used in this section, the term "administrative fees" does not include out-of-pocket
6 expenses, litigation costs, or other fees."

7 **SECTION 1.2.** This Part is effective when it becomes law and is intended to apply
8 retroactively to all pending controversies as of that date. The amendments contained in this Part
9 are intended to be clarifying of the General Assembly's intent under previous amendments to this
10 statute.

11 **PART II. VARIOUS CHANGES TO LANDLORD/TENANT STATUTES**

12 **SECTION 2.1.** Article 1 of Chapter 42 of the General Statutes is amended by adding
13 a new section to read:

14 **"§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.**

15 Notwithstanding any other duty or obligation which may be defined by this Chapter or
16 otherwise provided by law or any theory of liability, the criminal record of any prospective or
17 current residential lessee, occupant, or guest shall not make any future injury or damage arising
18 from that residential lessee, occupant, or guest foreseeable by the residential lessor or residential
19 lessor's agent, nor shall a residential lessor or a residential lessor's agent have a duty to screen
20 for, or to refuse to rent because of, the criminal record of a prospective or current residential
21 lessee, occupant, or guest. This statute does not prohibit a residential lessor or residential lessor's
22 agent from using a criminal background check as grounds for refusing to rent to any prospective
23 residential lessee or current lessee in a manner consistent with fair housing laws."

24 **SECTION 2.2.** G.S. 42-25.7 reads as rewritten:

25 **"§ 42-25.7. Distress and distraint not permitted.**

26 It is the public policy of the State of North Carolina that distress and distraint are prohibited
27 and that landlords of residential rental property shall have rights concerning the personal property
28 of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h),
29 42-36.2, 28A-25-2, or 28A-25-7."

30 **SECTION 2.3.** G.S. 28A-25-1 reads as rewritten:

31 **"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.**

32 (a) When a decedent dies intestate leaving personal property, less liens and
33 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time
34 after 30 days from the date of death, any person indebted to the decedent or having possession of
35 tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action
36 belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal
37 property or an instrument evidencing a debt, obligation, stock or chose in action to a person
38 claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or
39 creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified
40 copy of an affidavit filed in accordance with subsection (b) and made by or on behalf of the heir
41 or creditor or the public administrator stating:

- 42 (1) The name and address of the affiant and the fact that the affiant is the public
43 administrator or an heir or creditor of the decedent;
- 44 (2) The name of the decedent and the decedent's residence at time of death;
- 45 (3) The date and place of death of the decedent;
- 46 (4) That 30 days have elapsed since the death of the decedent;
- 47 (5) That the value of all the personal property owned by the estate of the decedent,
48 less liens and encumbrances thereon, does not exceed twenty thousand dollars
49 (\$20,000);
- 50

- 1 (6) That no application or petition for appointment of a personal representative is
 2 pending or has been granted in any jurisdiction;
 3 (7) The names and addresses of those persons who are entitled, under the
 4 provisions of the Intestate Succession Act, to the personal property of the
 5 decedent and their relationship, if any, to the decedent; and
 6 (8) A description sufficient to identify each tract of real property owned by the
 7 decedent at the time of the decedent's death.

8 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
 9 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
 10 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
 11 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance paid
 12 to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i) the
 13 name and address of the affiant and the fact that the affiant is the surviving spouse and is entitled,
 14 under the provisions of the Intestate Succession Act, to all of the property of the decedent; (ii)
 15 that the value of all of the personal property owned by the estate of the decedent, less liens and
 16 encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and (iii) the
 17 information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

18 ...

19 (d) The public administrator or an heir that has presented an affidavit as provided in
 20 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's
 21 personal property located in the demised premises."

22 **SECTION 2.4.** G.S. 28A-25-1.1 reads as rewritten:

23 **"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

24 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
 25 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from
 26 the date of death, any person indebted to the decedent or having possession of tangible personal
 27 property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the
 28 decedent shall make payment of the indebtedness or deliver the tangible personal property or an
 29 instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the
 30 public administrator appointed pursuant to G.S. 28A-12-1, a person named or designated as
 31 executor in the will, devisee, heir or creditor, of the decedent, not disqualified under
 32 G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with
 33 subsection (b) and made by or on behalf of the heir, the person named or designated as executor
 34 in the will of the decedent, the creditor, the public administrator, or the devisee, stating:

- 35 (1) The name and address of the affiant and the fact that the affiant is the public
 36 administrator, a person named or designated as executor in the will, devisee,
 37 heir or creditor, of the decedent;
 38 (2) The name of the decedent and the decedent's residence at time of death;
 39 (3) The date and place of death of the decedent;
 40 (4) That 30 days have elapsed since the death of the decedent;
 41 (5) That the decedent died testate leaving personal property, less liens and
 42 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
 43 value;
 44 (6) That the decedent's will has been admitted to probate in the court of the proper
 45 county and a duly certified copy of the will has been recorded in each county
 46 in which is located any real property owned by the decedent at the time of the
 47 decedent's death;
 48 (7) That a certified copy of the decedent's will is attached to the affidavit;
 49 (8) That no application or petition for appointment of a personal representative is
 50 pending or has been granted in any jurisdiction;

- 1 (9) The names and addresses of those persons who are entitled, under the
2 provisions of the will, or if applicable, of the Intestate Succession Act, to the
3 property of the decedent; and their relationship, if any, to the decedent; and
4 (10) A description sufficient to identify each tract of real property owned by the
5 decedent at the time of the decedent's death.

6 In those cases in which the affiant is the surviving spouse, is entitled to all of the property of
7 the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
8 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
9 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after reduction
10 for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the
11 affidavit shall state: (i) the name and address of the affiant and the fact that the affiant is the
12 surviving spouse and is entitled, under the provisions of the decedent's will, or if applicable, of
13 the Intestate Succession Act, to all of the property of the decedent; (ii) that the decedent died
14 testate leaving personal property, less liens and encumbrances thereon, not exceeding thirty
15 thousand dollars (\$30,000); and (iii) the information required under subdivisions (2), (3), (4), (6),
16 (7), (8), and (10) of this subsection.

17 ...

18 (d) The public administrator, person named or designated as executor in the will, devisee,
19 or heir that has presented an affidavit as provided in subsection (a) of this section shall be entitled
20 to remove or otherwise dispose of the decedent's personal property located in the demised
21 premises."

22 **SECTION 2.5.** G.S. 28A-25-2 reads as rewritten:

23 "**§ 28A-25-2. Effect of affidavit.**

24 The person paying, delivering, transferring or issuing personal property or the evidence
25 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
26 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a
27 duly qualified personal representative of the decedent. A lessor or lessor's agent of the demised
28 premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or
29 G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property
30 located in demised premises is discharged and released to the same extent as if the lessor dealt
31 with a duly qualified personal representative of the decedent. The person or lessor is not required
32 to see to the application of the personal property or evidence thereof or to inquire into the truth
33 of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay,
34 deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its
35 payment, delivery, transfer, or issuance compelled upon proof of their right in an action brought
36 for that purpose by or on behalf of the persons entitled thereto. The court costs and attorney's fee
37 incident to the action shall be taxed against the person whose refusal to comply with the
38 provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action necessary. The heir or
39 creditor to whom payment, delivery, transfer or issuance is made is answerable and accountable
40 therefor to any duly qualified personal representative or collector of the decedent's estate or to
41 any other person having an interest in the estate."

42 **SECTION 2.6.** Sections 2.3, 2.4, and 2.5 of this Part are effective when they become
43 law and apply to decedents dying on or after that date. The remainder of this Part is effective
44 when it becomes law.

45 **PART III. SUPPORT ANIMALS IN RENTAL UNITS**

46 **SECTION 3.1.** Article 5 of Chapter 42 of the General Statutes is amended by adding
47 the following new section to read:

48 "**§ 42-47. Support and service animals – Nondiscrimination.**

49 (a) For the purposes of this section, the following definitions apply:
50

- 1 (1) Health service professional. – A person with a therapeutic relationship with a
2 person with a disability. The term does not include a person described in this
3 subdivision that solely provides written documentation or verification to a
4 person with a disability for a fee.
- 5 (2) Person with a disability. – As defined in G.S. 168A-3(7a).
- 6 (3) Service animal. – An animal trained to assist a person with a disability, as
7 described in G.S. 168-4.2.
- 8 (4) Support animal. – A companion animal that a health service professional has
9 determined provides a benefit for a person with a disability. The term also
10 includes an assistance animal, as defined in G.S. 14-163.1(a)(1). A support
11 animal shall not be required to be trained or registered under Chapter 168A of
12 the General Statutes.
- 13 (5) Therapeutic relationship. – The provision of medical care or services, program
14 care or services, or personal care services, in good faith, for and with personal
15 knowledge of a person's disability and that person's disability-related need for
16 an assistance animal by one of the following:
- 17 a. A physician or other medical professional.
- 18 b. A mental health service provider.
- 19 c. A nonmedical service agency or reliable third party who is in a
20 position to know about the person's disability.
- 21 The term does not include an entity that issues a certificate, license, or similar
22 document that purports to confirm, without conducting a meaningful
23 assessment of a person's disability or a person's disability-related need for an
24 assistance animal, that a person (i) has a disability or (ii) needs an assistance
25 animal.
- 26 (b) Based, in part, upon a tenant, applicant, or household member's (i) status as a person
27 with a disability or (ii) use of a service animal or a support animal, a landlord shall not do any of
28 the following:
- 29 (1) Terminate or fail to renew a tenancy.
- 30 (2) Refuse to enter into a rental agreement.
- 31 (3) Impose different terms, conditions, or privileges in the rental of a dwelling.
- 32 (4) Otherwise make unavailable a dwelling unit or otherwise retaliate in the rental
33 of a dwelling.
- 34 (c) A landlord may require that a person with a disability that is not observable or already
35 known who is seeking reasonable accommodation under this section provide written verification
36 from a health service professional of the following:
- 37 (1) The person is a person with a disability.
- 38 (2) A disability-related need exists for the person to use a support animal.
- 39 (3) The service animal or support animal assists the person in managing the
40 person's disability.
- 41 A person with a disability that moves from another state may provide written verification
42 from a health service professional licensed or certified in that state, if applicable.
- 43 (d) Any person who intentionally or knowingly does any of the following shall be liable
44 to the landlord in a private action:
- 45 (1) Misrepresents to a landlord that the person is a person with a disability or that
46 the person has a disability-related need for the use of a service animal or a
47 support animal.
- 48 (2) Makes a materially false statement to a health service professional for the
49 purpose of obtaining documentation or verification that the person has a
50 disability-related need for the use of a service animal or a support animal.

- 1 (3) Provides a document or verification to a landlord that misrepresents that an
2 animal is a service animal or a support animal.
- 3 (4) Fits an animal that is not a service animal or a support animal with an item
4 that would cause a reasonable person to believe that the animal is a service
5 animal or a support animal.
- 6 (5) As a health service professional, does any of the following:
- 7 a. Verifies a person's disability status and need for a service animal or a
8 support animal without personal knowledge of the person's condition
9 adequate to provide a reliable verification.
- 10 b. Charges a fee for providing a written verification for a person's
11 disability status and need for a service animal or a support animal and
12 provides no additional service to the person, unless the health service
13 professional (i) has an ongoing relationship with a person with a
14 disability or (ii) conducts a good-faith consultation with a person with
15 a disability for the purpose of providing a diagnosis and treatment
16 recommendation.

17 A landlord prevailing in a private action under this subsection shall be entitled to damages in
18 an amount equal to the sum of any actual damages sustained by the landlord as a result of the
19 acts or conduct. The court may also impose civil penalties in an amount not greater than one
20 thousand dollars (\$1,000) but not less than five hundred dollars (\$500.00) for each violation
21 described in this subsection.

22 (e) Nothing in this section shall prohibit a landlord from requiring that a person with a
23 disability who uses a service animal or a support animal do the following:

- 24 (1) Comply with the terms of the rental agreement and other rules or regulations
25 applicable to the dwelling unit on the same terms as other tenants.
- 26 (2) Pay for the cost of repairs that result from any damages to the dwelling unit
27 that are caused by a service animal or a support animal in the same manner as
28 a tenant who possesses an animal that is not a service animal or a support
29 animal in a dwelling unit.
- 30 (3) Subject to applicable laws, sign an addendum or other agreement that sets
31 forth the responsibilities of the owner of the service animal or support animal.

32 (f) Subject to any other federal, State, or local law, a landlord who permits a person with
33 a disability to use a service animal or a support animal in a dwelling unit pursuant to this section
34 shall not be liable for an injury to another person caused by a person's service animal or support
35 animal."

36 **SECTION 3.2.** G.S. 42-53 reads as rewritten:

37 "**§ 42-53. Pet deposits.**

38 ~~Notwithstanding the provisions of this section, the~~ With the exception of a service animal or
39 support animal in accordance with G.S. 42-47, a landlord may charge a reasonable,
40 nonrefundable fee for pets kept by the tenant on the premises."

41 **SECTION 3.3.** This Part becomes effective January 1, 2022, and applies to rental
42 agreements or leases entered into on or after that date.

43 **PART IV. EFFECTIVE DATE**

44 **SECTION 4.1.** Except as otherwise provided, this act is effective when it becomes
45 law.
46