

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 661
PROPOSED COMMITTEE SUBSTITUTE S661-PCS75260-ST-31

Short Title: Allocate Water Cost/Landlord-Tenant Changes.

(Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LESSORS OF CONTIGUOUS PREMISES TO ALLOCATE THE COST FOR WATER AND SEWER SERVICE TO EACH TENANT USING EQUIPMENT THAT MEASURES HOT WATER USAGE, 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.(a) G.S. 62-110(g) reads as rewritten:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(1a) If the contiguous premises were built prior to 1989 and the lessor determines that the measurement of the tenant's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the tenant using equipment that measures the tenant's hot water usage. In that case, each tenant shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the tenant's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water



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usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

- a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.
- b. The lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the lessor.
- c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.
- d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a tenant may inspect the records during reasonable business hours.
- e. Bills for water and sewer service sent by the lessor to the tenant shall contain all the following information:
 1. The amount of water and sewer services allocated to the tenant during the billing period.
 2. The method used to determine the amount of water and sewer services allocated to the tenant.
 3. Beginning and ending dates for the billing period.
 4. The past-due date, which shall not be less than 25 days after the bill is mailed.
 5. Any late fee that will be applied if the bill is not paid by the past-due date.
 6. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

...."

SECTION 1.(b) This section becomes effective July 1, 2010.

SECTION 2. 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

1 appellant on appeal to the district court signs a pleading stating that there is evidence of an
2 actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be
3 required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for
4 ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of
5 execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and
6 signing the undertaking. If either party disputes the amount of the payment or the due date in
7 the undertaking, the aggrieved party may move for modification of the terms of the undertaking
8 before the clerk of superior court or the district court. Upon such motion and upon notice to all
9 interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the
10 motion is filed and determine what modifications, if any, are appropriate. No writ of possession
11 or other execution of the magistrate's judgment shall take place during the time the aggrieved
12 party's motion for modification is pending before the clerk of court."

13 **SECTION 3.** G.S. 42-42(a) is amended by adding a new subdivision to read as
14 follows:

15 "**§ 42-42. Landlord to provide fit premises.**

16 (a) The landlord shall:

17 ...

18 (8) Within a reasonable period of time based upon the severity of the condition,
19 repair or remedy any imminently dangerous condition on the premises after
20 acquiring actual knowledge or receiving notice of the condition. For
21 purposes of this subdivision, the term "imminently dangerous condition"
22 means any of the following:

23 a. Unsafe wiring.

24 b. Unsafe flooring or steps.

25 c. Unsafe ceilings or roofs.

26 d. Unsafe chimneys or flues.

27 e. Lack of potable water.

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

29 g. Broken windows or lack of operable locks on all windows on the
30 ground level.

31 h. Lack of operable heating facilities capable of heating living areas to
32 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from
33 November 1 through March 31.

34 i. Lack of an operable toilet.

35 j. Lack of an operable bathtub or shower.

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

38 l. Excessive standing water, sewage, or flooding problems caused by
39 plumbing leaks or inadequate drainage that contribute to mosquito
40 infestation or mold."

41 **SECTION 4.** G.S. 42-46 is amended by adding four new subsections to read:

42 "(e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a
43 complaint-filing fee in an amount equal to five percent (5%) of the monthly rent only if the
44 tenant was in default of the lease, the landlord filed and served a complaint for summary
45 ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed
46 the complaint prior to judgment. The landlord can include this fee in the amount required to
47 cure the default.

48 (f) Court-Appearance Fee. – Pursuant to a written lease, a landlord may charge a court-
49 appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant
50 was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint

1 for summary ejection and/or monies owed in the small claims court; and neither party
2 appealed the judgment of the magistrate.

3 (g) Attorney's Fee or Second Trial Fee. – Pursuant to a written lease, a landlord may
4 charge a second trial fee if the landlord appears pro se or may charge an attorney's fee if
5 represented by counsel in a new trial following an appeal from the judgment of a magistrate. To
6 qualify for either fee, the landlord must prove that the tenant was in default of the lease and the
7 landlord prevailed on the issue of nonpayment of rent. The pro se landlord's fee may not exceed
8 fifteen percent (15% of the monthly rent in the lease. If the landlord is entitled to an attorney's
9 fee, the court shall determine the outstanding balance according to G.S. 6-21.2.

10 (h) Limitations on Charging and Collection Fees.

11 (1) A landlord who claims fees under subsections (a) through (g) of this section
12 is entitled to charge and retain only one of the above fees for the landlord's
13 complaint for summary ejection and/or money owed.

14 (2) A landlord who earns a fee under this section may not deduct payment of
15 that fee from a tenant's subsequent rent payment or declare a failure to pay
16 the fee as a default of the lease for a subsequent summary ejection action.

17 (3) It is contrary to public policy for a landlord to put in a lease or claim any fee
18 for filing a complaint for summary ejection and/or money owed other than
19 the ones expressly authorized by this section, and any such unauthorized fees
20 shall be unenforceable on or after October 1, 2009.

21 (4) A landlord who collects or attempts to collect a fee in contravention of this
22 section shall be deemed in violation of Article 2 of Chapter 75 of the
23 General Statutes.

24 (5) If the rent is subsidized by the United States Department of Housing and
25 Urban Development, by the United States Department of Agriculture, by a
26 State agency, by a public housing authority, or by a local government, any
27 fee pursuant to subsections (e) through (g) of this section shall be calculated
28 in accordance with subdivisions (1) and (2) of this subsection on the tenant's
29 share of the contract rent only, and the rent subsidy shall not be included."

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

31 **"§ 42-52. Landlord's obligations.**

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

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

46 **"§ 42-55. Remedies.**

47 If the landlord or the landlord's successor in interest fails to account for and refund the
48 balance of the tenant's security deposit as required by this Article, the tenant may institute a
49 civil action to require the accounting of and the recovery of the balance of the deposit. The
50 willful failure of a landlord to comply with the deposit, bond, or notice requirements of this
51 Article shall void the landlord's right to retain any portion of the tenant's security deposit as

1 otherwise permitted under G.S. 42-51. In addition to other remedies at law and equity, the
2 tenant may recover damages resulting from noncompliance by the landlord; and upon a finding
3 by the court that the party against whom judgment is rendered was in willful noncompliance
4 with this Article, the court ~~may, in its discretion, allow a reasonable attorney's fee to the duly~~
5 ~~licensed attorney representing the prevailing party, such attorney's fee to be taxed as part of the~~
6 ~~cost of court,~~ shall award treble damages as provided in G.S. 75-16 or a two thousand dollar
7 (\$2,000) civil penalty for each violation of this Article, whichever is greater, and shall award
8 attorneys' fees as provided in G.S. 75-16.1."

9 **SECTION 7.** G.S. 160A-443(3) reads as rewritten:

10 "**§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public**
11 **officer.**

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

16 a. If the repair, alteration or improvement of the dwelling can be made
17 at a reasonable cost in relation to the value of the dwelling (the
18 ordinance of the city may fix a certain percentage of this value as
19 being reasonable), requiring the owner, within the time specified, to
20 repair, alter or improve the dwelling in order to render it fit for
21 human ~~habitation or to vacate and close the dwelling as a human~~
22 ~~habitation; or~~habitation. The order may require that the property be
23 vacated and closed only if the repairs, alterations, or improvements
24 and the current state of the property present a significant threat of
25 bodily harm. In making the determination of significant threat of
26 bodily harm from continued occupancy, the public officer shall
27 consider any additional threats presented by the presence and
28 capacity of minors under the age of 18 or occupants with physical or
29 mental disabilities. The order shall state that the failure to make
30 timely repairs as directed in the order shall make the dwelling subject
31 to the issuance of an unfit order under subdivision (4) of this section;
32 or

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

48 **SECTION 8.** Except as otherwise provided, this act becomes effective October 1,
49 2009.