

Tenant's Rights Statutes

§ 42-25.6. Manner of ejectment of residential tenants

It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in Article 3 of this Chapter.

§ 42-25.7. Distress and distraint not permitted

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have security interests or liens on the personal property of their residential tenants only in accordance with G.S. 44A-2(e).

§ 42-25.8. Contrary lease provisions

Any lease or contract provision contrary to this Article shall be void as against public policy.

§ 42-25.9. Remedies

(a) If any lessor, landlord, or agent removes or attempts to remove a tenant from a dwelling unit in any manner contrary to this Article, the tenant shall be entitled to recover possession or to terminate his lease and the lessor, landlord or agent shall be liable to the tenant for damages caused by the tenant's removal or attempted removal. Damages in any action brought by a tenant under this Article shall be limited to actual damages as in an action for trespass or conversion and shall not include punitive damages, treble damages or damages for emotional distress.

(b) If any lessor, landlord, or agent seizes possession of or interferes with a tenant's access to a tenant's or household member's personal property in any manner not in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), or 42-36.2 the tenant or household member shall be entitled to recover possession of his personal property or compensation for the value of the personal property, and, in any action brought by a tenant or household member under this Article, the landlord shall be liable to the tenant or household member for actual damages, but not including punitive damages, treble damages or damages for emotional distress.

(c) The remedies created by this section are supplementary to all existing common-law and statutory rights and remedies.

(d) If any tenant abandons personal property of five hundred dollar (\$500.00) value or less in the demised premises, or fails to remove such property at the time of execution of a writ of possession in an action for summary ejectment, the landlord may, as an alternative to the procedures provided in G.S.42-25.9(g), 42-25.9(h), or 42-36.2, deliver the property into the custody of a nonprofit organization regularly providing free or at a nominal price clothing and household furnishings to people in need, upon that organization agreeing to identify and separately store the property for 30 days and to release the property to the tenant at no charge within the 30-day period. A landlord electing to use this procedure shall immediately post at the demised premises a notice containing the name and address of the property recipient, post the same notice for 30 days or more at the place where rent is received, and send the same notice by first-class mail to the tenant at the tenant's last known address. Provided, however, that the notice shall not include a description of the property.

(e) For purposes of subsection (d), personal property shall be deemed abandoned if the landlord finds evidence that clearly shows the premises has been voluntarily vacated after the paid rental period has expired and the landlord has no notice of a disability that caused the vacancy. A presumption of abandonment shall arise 10 or more days after the landlord has posted conspicuously a notice of suspected abandonment both inside and outside the premises and has received no response from the tenant.

(f) Any nonprofit organization agreeing to receive personal property under subsection (d) shall not be liable to the owner for a disposition of such property provided that the property has been separately identified and stored for release to the owner for a period of 30 days.

(g) Ten 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, 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 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 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 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 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 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 one hundred dollars (\$100.00), then 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.

§ 42-37.1. Defense of retaliatory eviction

(a) It is the public policy of the State of North Carolina to protect tenants and other persons whose residence in the household is explicitly or implicitly known to the landlord, who seek to exercise their rights to decent, safe, and sanitary housing. Therefore, the following activities of such persons are protected by law:

- (1) A good faith complaint or request for repairs to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair under G.S. 42-42;
- (2) A good faith complaint to a government agency about a landlord's alleged violation of any health or safety law, or any regulation, code, ordinance, or State or federal law that regulates premises used for dwelling purposes;
- (3) A government authority's issuance of a formal complaint to a landlord concerning premises rented by a tenant;
- (4) A good faith attempt to exercise, secure or enforce any rights existing under a valid lease or rental agreement or under State or federal law; or
- (5) A good faith attempt to organize, join, or become otherwise involved with, any organization promoting or enforcing tenants' rights.

(b) In an action for summary ejectment pursuant to G.S. 42-26, a tenant may raise the affirmative defense of retaliatory eviction and may present evidence that the landlord's action is substantially in response to the occurrence within 12 months of the filing of such action of one or more of the protected acts described in subsection (a) of this section.

(c) Notwithstanding subsections (a) and (b) of this section, a landlord may prevail in an action for summary ejectment if:

- (1) The tenant breached the covenant to pay rent or any other substantial covenant of the lease for which the tenant may be evicted, and such breach is the reason for the eviction; or
- (2) In a case of a tenancy for a definite period of time where the tenant has no option to renew the lease, the tenant holds over after expiration of the term; or
- (3) The violation of G.S. 42-42 complained of was caused primarily by the willful or negligent conduct of the tenant, member of the tenant's household, or their guests or invitees; or
- (4) Compliance with the applicable building or housing code requires demolition or major alteration or remodeling that cannot be accomplished without completely displacing the tenant's household; or
- (5) The landlord seeks to recover possession on the basis of a good faith notice to quit the premises, which notice was delivered prior to the occurrence of any of the activities protected by subsections (a) and (b) of this section; or
- (6) The landlord seeks in good faith to recover possession at the end of the tenant's term for use as the landlord's own abode, to demolish or make major alterations or remodeling of the dwelling unit in a manner that requires the complete displacement of the tenant's household, or to terminate for at least six months the use of the property as a rental dwelling unit.

Residential Rental Agreements Act

§ 42-40. Definitions

For the purpose of this Article, the following definitions shall apply:

- (1) "Action" includes recoupment, counterclaim, defense, setoff, and any other proceeding including an action for possession.
- (2) "Premises" means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential tenants.
- (3) "Landlord" means any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this Article.

§ 42-41. Mutuality of obligations

The tenant's obligation to pay rent under the rental agreement or assignment and to comply with G.S. 42-43 and the landlord's obligation to comply with G.S. 42-42(a) shall be mutually dependent.

§ 42-42. Landlord to provide fit premises

(a) The landlord shall:

- (1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building code.

- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
- (3) Keep all common areas of the premises in safe condition.
- (4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord provided that notification of needed repairs is made to the landlord in writing by the tenant, except in emergency situations.
- (5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

(b) The landlord is not released of his obligations under any part of this section by the tenant's explicit or implicit acceptance of the landlord's failure to provide premises complying with this section, whether done before the lease was made, when it was made, or after it was made, unless a governmental subdivision imposes an impediment to repair for a specific period of time not to exceed six months. Notwithstanding the provisions of this subsection, the landlord and tenant are not prohibited from making a subsequent written contract wherein the tenant agrees to perform specified work on the premises, provided that said contract is supported by adequate consideration other than the letting of the premises and is not made with the purpose or effect of evading the landlord's obligations under this Article.

§ 42-43. Tenant to maintain dwelling unit

(a) The tenant shall:

- (1) Keep that part of the premises that the tenant occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises that the tenant uses.
- (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner.
- (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.
- (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do so.
- (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes.
- (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in the tenant's exclusive control unless the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
- (7) Notify the landlord, in writing, of the need for replacement of or repairs to a smoke detector. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written

agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

(b) The landlord shall notify the tenant in writing of any breaches of the tenant's obligations under this section except in emergency situations.

§ 42-44. General remedies, penalties, and limitations

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) If a landlord fails to provide, install, replace, or repair a smoke detector under the provisions of G.S. 42-42(a)(5) within 30 days of having received written notice from the tenant or any agent of State or local government of the landlord's failure to do so, the landlord shall be responsible for an infraction and shall be subject to a fine of not more than two hundred fifty dollars (\$250.00) for each violation. The landlord may temporarily disconnect a smoke detector in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the smoke detector or make it inactive.

(a2) If a smoke detector is disabled or damaged, other than through actions of the landlord, the landlord's agents, or acts of God, the tenant shall reimburse the landlord the reasonable and actual cost for repairing or replacing the smoke detector within 30 days of having received written notice from the landlord or any agent of State or local government of the need for the tenant to make such reimbursement. If the tenant fails to make reimbursement within 30 days, the tenant shall be responsible for an infraction and subject to a fine of not more than one hundred dollars (\$100.00) for each violation. The tenant may temporarily disconnect a smoke detector in a dwelling unit to replace the batteries or when it has been inadvertently activated.

(b) Repealed by Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se.

