

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1012

Short Title: Clarify Landlord/Tenant Law.

(Public)

Sponsors: Representatives Barnes; and Colton.

Referred to: Commerce.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PORTIONS OF LANDLORD AND TENANT LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"§ 42-14.3. Limitations.

Unless specifically provided elsewhere in this Chapter, no leases of residential property shall contain a waiver or otherwise deny the rights conveyed to lessors and lessees by any provision in this Chapter."

Sec. 2. G.S. 42-25.9 reads as rewritten:

"§ 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. 44A-2(e) or 42-25.9(d), 42-36.2, 44A-2, or 44A-4,~~ the tenant or household member shall be entitled to recover possession of his personal property ~~or~~ and compensation for ~~the value of the personal property, and, in any action brought by a~~

1 ~~tenant or household member under this Article, the landlord shall be liable to the tenant or~~
2 ~~household member for actual damages, but not including punitive damages, treble damages or~~
3 ~~damages for emotional distress. any actual damages suffered as a result of such wrongful~~
4 ~~action.~~

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

7 (d) If any tenant abandons personal property of five hundred dollar (\$500.00)
8 value or less in the demised premises, or fails to remove such property at the time of
9 execution of a writ of possession in an action for summary ejectment, the landlord may,
10 as an alternative to the procedures provided in G.S. 42-36.2 or G.S. 44A-2(e), deliver
11 the property into the custody of a nonprofit organization regularly providing free or at a
12 nominal price clothing and household furnishings to people in need, upon that
13 organization agreeing to identify and separately store the property for 30 days and to
14 release the property to the tenant at no charge within the 30-day period. A landlord
15 electing to use this procedure shall immediately post at the demised premises a notice
16 containing the name and address of the property recipient, post the same notice for 30
17 days or more at the place where rent is received, and send the same notice by first-class
18 mail to the tenant at the tenant's last known address. Provided, however, that the notice
19 shall not include a description of the property.

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

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

31 Sec. 3. G.S. 42-36.2(b) reads as rewritten:

32 "(b) Sheriff May Store Property. – When the sheriff removes the personal property
33 of an evicted tenant from demised premises pursuant to a writ or order the tenant shall
34 take possession of his property. If the tenant fails or refuses to take possession of his
35 property, the sheriff may deliver the property to any storage warehouse in the county, or
36 in an adjoining county if no storage warehouse is located in that county, for storage. The
37 sheriff may require the landlord to advance the cost of delivering the property to a
38 storage warehouse plus the cost of one month's storage before delivering the property to
39 a storage warehouse. If a landlord refuses to advance these costs when requested to do
40 so by the sheriff, the sheriff shall not remove the tenant's property, but shall return the
41 writ unexecuted to the issuing clerk of court with a notation thereon of his reason for not
42 executing the writ. ~~All costs of summary ejectment, execution and storage proceedings shall~~
43 ~~be charged to the tenant as court costs and shall constitute a lien against the stored property or a~~
44 ~~claim against any remaining balance of the proceeds of a warehouseman's lien sale. If the~~

1 sheriff has collected the costs of storage from a landlord and has stored the tenant's
2 personal property, a lien for such costs arises in favor of the landlord. The landlord must
3 exercise that lien in accordance with G.S. 44A-2 and G.S. 44A-4. If the tenant's
4 property is sold at a warehouseman's lien sale, the landlord may satisfy his lien for
5 advancing the storage costs out of any remaining balance of the proceeds from the sale."

6 Sec. 4. G.S. 44A-2(e) reads as rewritten:

7 "(e) Unless otherwise agreed between the lessor and lessee, ~~Any any~~ lessor of a
8 house, room, apartment, mobile home, office, store or other demised premises has a
9 lien on all furniture, household ~~furnishings~~, furnishings (except clothes, food, and
10 medicine), trade fixtures, equipment and other personal property to which the tenant has
11 legal title and which remains on the demised premises if (i) the tenant has vacated the
12 premises for 21 or more days after the ~~paid rental period has expired~~, expired (in case
13 of ejectment, the 21 days start after the sheriff has padlocked the premises), and (ii) the
14 lessor has a lawful claim for damages against the ~~tenant~~, tenant, and the claim is not on
15 appeal. If the tenant has vacated the premises for 21 or more days after the expiration of the
16 paid rental period, or if the lessor has received a judgment for possession of the premises which
17 is executable and the tenant has vacated the premises, then all property remaining on the
18 premises may be removed and placed in storage. If the total value of all property remaining on
19 the premises is less than one hundred dollars (\$100.00), then it shall be deemed abandoned five
20 days after the tenant has vacated the premises, and the lessor may remove it and may donate it
21 to any charitable institution or organization. Provided, the lessor shall not have a lien if there is
22 an agreement between the lessor or his agent and the tenant that the lessor shall not have a lien.
23 This lien shall be for the amount of any rents which were due the lessor at the time the
24 tenant vacated the premises and for the time, up to 60 days, from the vacating of the
25 premises to the date of sale; and for any sums necessary to repair damages to the
26 premises caused by the tenant, normal wear and tear excepted; and for reasonable costs
27 and expenses of sale. The lien created by this subsection shall be enforced only by sale
28 at public sale pursuant to the provisions of G.S. 44A-4(e). This lien shall not have
29 priority over any security interest in the personal property which is perfected at the time
30 the lessor acquires this lien."

31 Sec. 5. G.S 44A-2 is amended by adding a new subsection to read:

32 "(e2) If the last paid rental period has expired, the tenant has vacated the premises
33 and not informed the landlord of any intent to remove the tenant's remaining personal
34 property, and the landlord has a judgment for possession of the premises for more than
35 10 days, then the landlord may remove and store the tenant's remaining personal
36 property. However, the cost of such storage will not become a lien on the tenant's
37 personal property until the requirements of subsection (e) above are met. Prior to any
38 such lien attaching, the landlord must release all such personal property of the tenant
39 upon the tenant's request. If all of the conditions of this subsection are met and the
40 landlord reasonably determines that the personal property left on the premises is worth
41 less than one hundred dollars (\$100.00), instead of storing it the landlord may deem it
42 abandoned and donate it to any charitable organization."

43 Sec. 6. This act becomes effective October 1, 1991.