

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 802
Committee Substitute Favorable 5/8/13

Short Title: Landlord/Tenant/Shorten Eviction Time.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS RELATED TO LANDLORD AND TENANT
3 RELATIONSHIPS TO SHORTEN THE TIME PERIOD REQUIRED TO EVICT A
4 TENANT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7A-222 reads as rewritten:

7 "§ 7A-222. General trial practice and procedure.

8 (a) Trial of a small claim action before a magistrate is without a jury. The rules of
9 evidence applicable in the trial of civil actions generally are observed. At the conclusion of
10 plaintiff's evidence the magistrate may render judgment of dismissal if plaintiff has failed to
11 establish a prima facie case. If a judgment of dismissal is not rendered the defendant may
12 introduce evidence. At the conclusion of all the evidence the magistrate may render judgment
13 or may in his discretion reserve judgment for a period not in excess of 10 ~~days.~~ days, except as
14 provided in subsection (b) of this section.

15 (b) In a small claim action for summary ejectment, the magistrate shall render judgment
16 on the same day on which the conclusion of all the evidence and submission of legal authorities
17 occurs, unless the parties concur on an extension of additional time for entering the judgment
18 and except for more complex summary ejectment cases, in which event the magistrate shall
19 render judgment within five business days of the hearing. Complex summary ejectment cases
20 include cases brought for criminal activity, breaches other than nonpayment of rent, evictions
21 involving SECTION 8 of the Housing Act of 1937 (42 U.S.C. § 1437f) or public housing
22 tenants, and cases with counterclaims."

23 SECTION 2. G.S. 7A-223 reads as rewritten:

24 "§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

25 (a) In any small claim action demanding summary ejectment or past due rent, or both,
26 the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of
27 the facts alleged in the complaint. If a small claim action demanding summary ejectment is
28 assigned to a magistrate, the practice and procedure prescribed for commencement, form and
29 service of process, assignment, pleadings, and trial in small claim actions generally are
30 observed, except that if the defendant by written answer denies the title of the plaintiff, the
31 action is placed on the civil issue docket of the district court division for trial before a district
32 judge. In such event, the clerk withdraws assignment of the action from the magistrate and
33 immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and
34 the magistrate to whom the action has been assigned. The plaintiff, within five days after
35 receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to
36 request jury trial within the time limited is a waiver of the right to trial by jury.



1 (b) If either party in a small claim action for summary judgment moves for a
2 continuance, the magistrate shall render a decision on the motion pursuant to Rule 40(b) of the
3 Rules of Civil Procedure. However, the magistrate shall not continue a matter for more than
4 five days without the consent of both parties."

5 **SECTION 3.** G.S. 7A-228 reads as rewritten:

6 **"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected;**
7 **oral notice; dismissal.**

8 (a) The chief district court judge may authorize magistrates to hear motions to set aside
9 an order or judgment pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a
10 magistrate. The exercise of the authority of the chief district court judge in allowing magistrates
11 to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to
12 hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief
13 from a judgment or order entered by a magistrate and, if granted, to order a new trial before a
14 magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party
15 is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given
16 orally in open court upon announcement or after entry of judgment. If not announced in open
17 court, written notice of appeal must be filed in the office of the clerk of superior court within 10
18 days after entry of judgment. The appeal must be perfected in the manner set out in subsection
19 (b). Upon announcement of the appeal in open court or upon receipt of the written notice of
20 appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties,
21 then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6.

22 (b) The appeal shall be perfected by (1) oral announcement of appeal in open court; or
23 (2) by filing notice of appeal in the office of the clerk of superior court within 10 days after
24 entry of judgment pursuant to subsection (a), and by serving a copy of the notice of appeal on
25 all parties pursuant to G.S. 1A-1, Rule 5. Failure to pay the costs of court to appeal within 10
26 days after entry of judgment in a summary ejection action, and within 20 days after entry of
27 judgment in all other actions, shall result in the automatic dismissal of the appeal.
28 Notwithstanding the foregoing deadlines, if an appealing party petitions to qualify as an
29 indigent for the appeal and is denied, that party shall have an additional five days to perfect the
30 appeal by paying the court costs. The failure to demand a trial by jury in district court by the
31 appealing party before the time to perfect the appeal has expired is a waiver of the right thereto.

32 (b1) A person desiring to appeal as an indigent shall, within 10 days of entry of judgment
33 by the magistrate, file an affidavit that he or she is unable by reason of poverty to pay the costs
34 of appeal. Within 20 days after entry of judgment, a superior or district court judge, magistrate,
35 or the clerk of the superior court may authorize a person to appeal to district court as an
36 indigent if the person is unable to pay the costs of appeal. The clerk of superior court shall
37 authorize a person to appeal as an indigent if the person files the required affidavit and meets
38 one or more of the criteria listed in G.S. 1-110. A superior or district court judge, a magistrate,
39 or the clerk of the superior court may authorize a person who does not meet any of the criteria
40 listed in G.S. 1-110 to appeal as an indigent if the person cannot pay the costs of appeal.

41 The district court may dismiss an appeal and require the person filing the appeal to pay the
42 court costs advanced if the allegations contained in the affidavit are determined to be untrue or
43 if the court is satisfied that the action is frivolous or malicious. If the court dismisses the
44 appeal, the court shall affirm the judgment of the magistrate.

45 (c) Whenever such appeal is docketed and is regularly set for trial, and the appellant
46 fails to appear and prosecute his appeal, the presiding judge may have the appellant called and
47 the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed. In any
48 action for summary ejection, the defendant shall do all of the following:

49 (1) File a notice of appeal and perfect the appeal in accordance with
50 G.S. 7A-228(b).

51 (2) Raise a defense orally or in writing in the small claims court.

1 (3) File a motion, an answer, or a counterclaim in the district court action.

2 (4) Make any payment when due under the bond to stay execution of the
3 magistrate's judgment.

4 If the defendant fails to comply with all of the requirements listed in subdivisions (1) through
5 (4) of this subsection, the plaintiff may file a motion to dismiss the appeal. The court shall grant
6 the motion to dismiss without a hearing if all of the following conditions are met: (i) the motion
7 states that the defendant has failed to comply with subdivisions (1) through (4) of subsection
8 (c) of this section, (ii) the motion states that the court may decide the motion to dismiss without
9 a hearing if the defendant does not file a responsive pleading or pay the required bond payment
10 within 10 days after service of the motion, and (iii) the defendant fails to serve the response or
11 make the payment within the time permitted."

12 **SECTION 4.** G.S. 42-25.9 reads as rewritten:

13 **"§ 42-25.9. Remedies.**

14 ...

15 (g) ~~Ten~~ Seven days after being placed in lawful possession by execution of a writ of
16 possession, a landlord may ~~throw away, dispose of, or sell all items~~ of personal property
17 remaining on the ~~premises, premises~~ in accordance with the provisions of this section and
18 G.S. 42-36.2(b), except that in the case of the lease of a space for a manufactured home as
19 defined in G.S. 143-143.9(6), G.S. 44A-2(e2) shall apply to the disposition of a manufactured
20 home with a current value in excess of five hundred dollars (\$500.00) and its contents by a
21 landlord after being placed in lawful possession by execution of a writ of possession. During
22 the ~~10-day~~ seven business-day period after being placed in lawful possession by execution of a
23 writ of possession, a landlord may move for storage purposes, but shall not throw away,
24 dispose of, or sell any items of personal property remaining on the premises unless otherwise
25 provided for in this Chapter. Upon the tenant's request prior to the expiration of the
26 ~~10-day~~ seven business-day period, the landlord shall release possession of the property to the
27 tenant during regular business hours or at a time agreed upon. If the landlord elects to sell the
28 property at public or private sale, the landlord shall give written notice to the tenant by
29 first-class mail to the tenant's last known address at least seven days prior to the day of the sale.
30 The seven-day notice of sale may run concurrently with the ~~10-day~~ seven business-day period
31 which allows the tenant to request possession of the property. The written notice shall state the
32 date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment
33 of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the tenant, upon
34 request, within ~~10~~ seven business days after the sale, and will thereafter be delivered to the
35 government of the county in which the rental property is located. Upon the tenant's request
36 prior to the day of sale, the landlord shall release possession of the property to the tenant during
37 regular business hours or at a time agreed upon. The landlord may apply the proceeds of the
38 sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall
39 be disbursed to the tenant, upon request, within ~~10~~ seven business days of the sale and shall
40 thereafter be delivered to the government of the county in which the rental property is located.

41 (h) If the total value of all property remaining on the premises at the time of execution
42 of a writ of possession in an action for summary ejection is less than five hundred dollars
43 (\$500.00), the property shall be deemed abandoned five days after the time of execution, and
44 the landlord may throw away or dispose of the property. Upon the tenant's request prior to the
45 expiration of the five-day period, the landlord shall release possession of the property to the
46 tenant during regular business hours or at a time agreed upon."

47 **SECTION 5.** G.S. 42-28 reads as rewritten:

48 **"§ 42-28. Summons issued by clerk.**

49 When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27, and asks
50 to be put in possession of the leased premises, the clerk of superior court shall issue a summons
51 requiring the defendant to appear at a certain time and place not to exceed seven days from the

1 issuance of the summons, excluding weekends and legal holidays, to answer the complaint. In
2 counties with a population of at least 300,000, after the issuance of the summons, the clerk
3 shall either return the summons to the plaintiff or shall forward the summons to the sheriff, at
4 the election of the plaintiff. The plaintiff may claim rent in arrears, and damages for the
5 occupation of the premises since the cessation of the estate of the lessee, not to exceed the
6 jurisdictional amount established by G.S. 7A-210(1), but if he omits to make such claim, he
7 shall not be prejudiced thereby in any other action for their recovery."

8 **SECTION 6.** G.S. 42-29 reads as rewritten:

9 **"§ 42-29. Service of summons.**

10 (a) The officer receiving the summons shall mail a copy of the summons and complaint
11 to the defendant no later than the end of the next business day or as soon as practicable at the
12 defendant's last known address in a stamped addressed envelope provided by the plaintiff to the
13 action. The officer may, within five days of the issuance of the summons, attempt to telephone
14 the defendant requesting that the defendant either personally visit the officer to accept service,
15 or schedule an appointment for the defendant to receive delivery of service from the officer. If
16 the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does
17 not result in service to the defendant, the officer shall make at least one visit to the place of
18 abode of the defendant within five days of the issuance of the summons, but at least two days
19 prior to the day the defendant is required to appear to answer the complaint, excluding legal
20 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt
21 personal delivery of service. He then shall deliver a copy of the summons together with a copy
22 of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
23 usual place of abode with some person of suitable age and discretion then residing therein. If
24 such service cannot be made the officer shall affix copies to some conspicuous part of the
25 premises claimed and make due return showing compliance with this section.

26 (b) For the purposes of this section only, in counties with populations of at least
27 300,000, the term "officer" as used in subsection (a) of this section is defined as (i) any person
28 over the age of 21 years who is not a party to the action and is employed by the plaintiff to
29 serve the summons and complaint in summary ejection in accordance with this Article or (ii)
30 the sheriff of the county where the premises are located.

31 (c) A plaintiff that employs an officer as defined under subsection (b)(i) of this section
32 to serve the summons and complaint shall not pass on to the defendant more than forty dollars
33 (\$40.00) in service fees."

34 **SECTION 7.** G.S. 42-36.2 reads as rewritten:

35 **"§ 42-36.2. Notice to tenant of execution of writ for possession of property; storage of**
36 **evicted tenant's personal property.**

37 (a) When Sheriff May Remove Property. – Before removing a tenant's personal
38 property from demised premises pursuant to a writ for possession of real property or an order,
39 the sheriff shall give the tenant notice of the approximate time the writ will be executed. The
40 time within which the sheriff shall have to execute the writ shall be no more than ~~seven~~five
41 days from the sheriff's receipt thereof. The sheriff shall remove the tenant's property, as
42 provided in the writ, no earlier than the time specified in the notice, unless:

- 43 (1) The landlord, or his authorized agent, signs a statement saying that the
44 tenant's property can remain on the premises, in which case the sheriff shall
45 simply lock the premises; or
- 46 (2) The landlord, or his authorized agent, signs a statement saying that the
47 landlord does not want to eject the tenant because the tenant has paid all
48 court costs charged to him and has satisfied his indebtedness to the landlord.

49 Upon receipt of either statement by the landlord, the sheriff shall return the writ unexecuted
50 to the issuing clerk of court and shall make a notation on the writ of his reasons. The sheriff
51 shall attach a copy of the landlord's statement to the writ. If the writ is returned unexecuted

1 because the landlord signed a statement described in subdivision (2) of this subsection, the
2 clerk shall make an entry of satisfaction on the judgment docket. If the sheriff padlocks, the
3 costs of the proceeding shall be charged as part of the court costs.

4 (b) Sheriff May Store Property. – When the sheriff removes the personal property of an
5 evicted tenant from demised premises pursuant to a writ or order the tenant shall take
6 possession of his property. If the tenant fails or refuses to take possession of his property, the
7 sheriff may deliver the property to any storage warehouse in the county, or in an adjoining
8 county if no storage warehouse is located in that county, for storage. The sheriff may require
9 the landlord to advance the cost of delivering the property to a storage warehouse plus the cost
10 of one month's storage before delivering the property to a storage warehouse. If a landlord
11 refuses to advance these costs when requested to do so by the sheriff, the sheriff shall not
12 remove the tenant's property, but shall return the writ unexecuted to the issuing clerk of court
13 with a notation thereon of his reason for not executing the writ. Except for the disposition of
14 manufactured homes and their contents as provided in G.S. 42-25.9(g) and G.S. 44A-2(e2),
15 within 10 days of the landlord's being placed in lawful possession by execution of a writ of
16 possession and upon the tenant's request within that 10 day period, the landlord shall release
17 possession of the property to the tenant during regular business hours or at a time agreed upon.
18 During the 10 day period after being placed in lawful possession by execution of a writ of
19 possession, a landlord may move for storage purposes, but shall not throw away, dispose of, or
20 sell any items of personal property remaining on the premises unless otherwise provided for in
21 this Chapter. ~~After the expiration of the 10 day period, the landlord may throw away, dispose~~
22 ~~of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If, after being~~
23 placed in lawful possession by execution of a writ, the landlord has offered to release the
24 tenant's property and the tenant fails to retrieve such property during the landlord's regular
25 business hours within seven business days, the landlord may throw away, dispose of, or sell the
26 property in accordance with the provisions of G.S. 42-25.9(g). If the tenant does not request
27 release of the property within 10 days, all costs of summary ejectment, execution and storage
28 proceedings shall be charged to the tenant as court costs and shall constitute a lien against the
29 stored property or a claim against any remaining balance of the proceeds of a warehouseman's
30 lien sale.

31 (c) Liability of the Sheriff. – A sheriff who stores a tenant's property pursuant to this
32 section and any person acting under the sheriff's direction, control, or employment shall be
33 liable for any claims arising out of the willful or wanton negligence in storing the tenant's
34 property.

35 (d) Notice. – The notice required by subsection (a) shall, except in actions involving the
36 lease of a space for a manufactured home as defined in G.S. 143-143.9(6), inform the tenant
37 that failure to request possession of any property on the premises within ~~10~~five days of
38 execution may result in the property being thrown away, disposed of, or sold. Notice shall be
39 made by one of the following methods:

- 40 (1) By delivering a copy of the notice to the tenant or his authorized agent at
41 least two days before the time stated in the notice for serving the writ;
- 42 (2) By leaving a copy of the notice at the tenant's dwelling or usual place of
43 abode with a person of suitable age and discretion who resides there at least
44 two days before the time stated in the notice for serving the writ; or
- 45 (3) By mailing a copy of the notice by first-class mail to the tenant at his last
46 known address at least five days before the time stated in the notice for
47 serving the writ."

48 **SECTION 8.** The Administrative Office of the Courts is directed to develop a form
49 for parties in small claim actions for summary ejectment to inform them of the time line and
50 process in summary ejectment actions. The Clerk of Superior Court shall make the form
51 available to the parties.

1 **SECTION 9.** This act becomes effective July 1, 2013, and applies to all actions for
2 summary ejection filed on and after that date.