

## North Carolina's Residential Rental Agreement Act

In general, the relationship between landlord and tenant is governed by the terms of the lease agreement. But state and federal law impose certain conditions that the landlord and tenant cannot change, even if the lease purports to do so. The most important of these laws is North Carolina's Residential Rental Agreement Act. (N.C. Gen. Stat. §§ 42-38 to 49)

### What the Landlord Is Required To Do

**Maintain Facilities:** The landlord is required to 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. But the landlord need not perform this duty unless the tenant first advises the landlord of needed repairs in writing. The tenant may wish to inform the landlord of the problem immediately over the telephone or in person and then follow up by notifying the landlord in writing. The tenant should always keep a copy of all written communication between herself and the landlord.

In the event of an emergency, such as when the heat fails during the winter, prior written notification is not required. If the tenant orally informs the landlord and the landlord fails to respond in a reasonable amount of time, then the tenant may decide to pay to repair the emergency problem himself and seek reimbursement from the landlord.

The tenant can agree to perform some or all of the landlord's maintenance duties, but the parties must make an agreement separate from the lease and the tenant must be compensated. G.S. § § 42-42 and 43.

**Comply with Building Codes:** The landlord must maintain the residence in compliance with the local building and housing codes. Most towns and cities in North Carolina have enacted housing, fire, and health codes. The requirements of these codes vary depending on the city or town. Housing codes often require functional heating and plumbing, locks on windows and doors, and weather-tight walls, windows and doors. Also, the code may require the landlord to rid the premises of infestations, and to repair holes or cracks in walls. Local fire codes govern heating and electrical systems. The health code deals with sewage disposal and well water systems.

If, after the tenant advises the landlord of a violation of these codes, the landlord does not take action, the tenant may wish to report the problem to a local building, fire, or health inspector. These inspectors have independent authority to force compliance with the codes, and may take prompt action when a violation creates a risk to the safety of the tenant. The landlord must comply with these local codes regardless of whether the tenant has given the landlord prior written notice of a particular problem.

**Keep Common Areas Safe:** The landlord is required to maintain all common areas in a safe condition, regardless of whether a tenant has given the landlord notice of an unsafe condition. Common areas include hallways, parking lots, play areas, laundry rooms, and sewage or plumbing systems serving more than one rental unit. G.S. § § 42-42(a)(3).

**Keep Premises in Safe and Habitable Condition:** If the landlord complies with his other duties, he most likely will be in compliance with this requirement as well. But this general, catch-all requirement ensures that the landlord cannot rent an unsafe or uninhabitable residence due to some loophole in the specific requirements of the local codes and state laws. The landlord must provide operable smoke detectors that have been approved by a national testing laboratory and that have been installed properly. The landlord must replace or repair the smoke detectors provided that the tenant has notified the landlord in writing of needed replacement or repairs. The landlord must place new batteries in a battery-operated smoke detector at the beginning of the lease term, unless the lease provides otherwise. G.S. § § 42-42(a)(5).

### **What the Tenant Is Required To Do**

#### **Under the Residential Rental Agreement Act, the tenant must:**

- (1) Keep that part of the premises which he 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 which he 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 his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces; and
- (7) Notify the landlord of the need for replacement of or repairs to a smoke detector. The landlord may require that this notification be in writing and the landlord need not repair a smoke

detector unless the notification is in writing. The tenant is responsible for replacing the batteries in smoke detectors when the batteries expire during the term of the lease, unless the lease provides otherwise. G.S. § § 42-43.

Of course, the tenant must pay the rent according to the terms of the lease. For a lease that provides that rent is due at a fixed time (for example, by the fifth of each month), the landlord cannot seek to evict the tenant until ten days after the landlord or his agent has requested that the tenant pay all rent that is past due. (The procedures for eviction are discussed below.) But if the lease provides for immediate eviction, the landlord may evict the tenant without delay.

If rent is due at a fixed time, the lease may provide for a late payment fee. In non-subsidized leases providing for monthly rent, the fee cannot exceed \$15 or 5% of the monthly rent, whichever is greater. A late fee cannot be imposed unless the tenant pays the rent five days or more late. A late fee may be charged only one time for each late rental payment. G.S. § § 42-46.

### **What Happens If a Dispute Arises?**

**Withhold Rent:** A tenant cannot unilaterally withhold rent from a landlord who fails to make required repairs. However, the landlord and tenant can agree to a reduction in rent. For example, the landlord may allow the tenant to pay for repairs to a broken refrigerator, and then subtract the amount of the bill from the next month's rent. (The tenant should retain copies of all receipts.) Another example: The landlord may reduce the rent for a month during which the tenant could not use one room because the roof leaked. This type of informal solution occurs frequently between landlords and tenants.

**Abandonment of Lease:** The lease is a contract between the landlord and the tenant. The tenant can get out of the lease only if the lease itself allows the tenant to do so and the tenant follows the procedures laid out in the lease. For example, the lease may permit the tenant to move out simply by giving notice thirty days in advance. But there is no law that allows tenants to abandon any lease just by giving a notice thirty days in advance. If the tenant abandons the premises prior to the expiration of the lease, the tenant will remain liable for the rent every month until the landlord rents the premises to another tenant or the lease expires, provided that the landlord makes reasonable efforts to re-rent the premises.

### **Early Termination by Military Personnel**

Recognizing the potential hardship on military personnel that can result from changes in duty stations, the General Assembly created a statutory liquidated damages provision to settle early termination claims. *See* G.S. § § 42-45. Under this section, soldiers who are permanently reassigned to a duty station at least 50 miles from their dwelling can terminate their lease knowing that their liability to the landlord for lost rent will not exceed the amount specified in

the statute.

Under the recently amended Soldiers and Sailors' Relief Act, now called the Servicemembers Civil Relief Act (SCRA), the change of duty does not have to be permanent, but rather for a deployment of 90 days or more. Also, the general rule is that the written notice of termination is effective 30 days after the next rental payment is made. *See* 50 U.S.C.S. Appx. § 535. In addition, § 531 allows a court to stay or place other restrictions on the eviction of a soldier or his/her dependents.

**Small Claims Court:** If the landlord and tenant cannot settle their differences between themselves, the tenant may file an action in small claims court. The tenant has the option of performing a repair and either suing to be reimbursed, or suing to have the right to withhold future rent payments until he has recovered the cost of the repairs. The tenant may also sue before the problem is fixed and request that the court allow the tenant to withhold future rent payments to cover the cost of repairs. In either case, the tenant may recover damages for the actual cost of the repairs and for the loss in the fair rental value of the property.

An action for reimbursement of money that the tenant has spent is called "rent recoupment". Suing for a court order allowing the tenant to withhold Full or partial future rent payments is "rent abatement." A tenant may choose rent abatement if she does not have the money up front to perform the necessary repairs, or if she does not want to risk paying for repairs and possibly losing in court.

When in small claims court, the tenant will need to show the following:

- (1) That the tenant had a written or oral lease when the problem existed;
- (2) That the type of problem that existed was one that the law required the landlord to remedy;
- (3) That the tenant gave written notice, if required;
- (4) That the landlord failed to fix the problem within a reasonable time;
- (5) That the tenant, in an action for rent recoupment, fixed the problem and incurred expenses (The tenant should retain copies of all repair bills and proof that the bills have been paid by him, such as a receipt of payment, or a canceled check); and
- (6) Evidence of the reduced rental value of the property (this most likely will be provided by oral testimony of the tenant).

In an action for rent abatement, the tenant may want to bring evidence showing the estimated cost of repairs. For example, the tenant may present a written repair estimate, or a sales brochure

showing the cost of a new appliance. If the tenant anticipates that the landlord will argue that the tenant paid for repairs that were unnecessary or overpriced, the tenant should arrange to have the person who performed the repairs in the court room. Once the court issues an order, the tenant should read the order carefully and follow the court' s instructions.

The tenant may also be able to recover for damage to his personal property caused by the landlord' s failure to properly maintain the premises. If conditions of the residence were so bad that the tenant was forced to move, and these conditions resulted from the landlord' s actions, omissions or negligence, the tenant may be able to recover the moving expenses.

If the tenant wins in court, the court may require the landlord to pay the tenant' s court fees but it will not require the landlord to pay any attorney' s fees. Because disputes between a landlord and a tenant usually involve no more than a few hundred dollars, tenants should consider proceeding in small claims court without a lawyer. Small claims court is a more informal forum and parties quite often do not hire lawyers.

**Evictions:** North Carolina does not permit landlords to use "self-help" eviction. That is, a landlord cannot change the locks or otherwise impede the tenant' s ability to enter the premises (except in order to maintain or repair the premises), even if the tenant fails to pay the rent. In order to evict the tenant, the landlord must obtain a court order through a process called "summary ejectment". G. S. §§ 42-26 to 36.2.

The landlord cannot evict a tenant in retaliation for certain protected actions. These protected actions include: (1) Complaints made to the landlord, his employee, or his agent about conditions or defects in the premises that the landlord is obligated to repair; (2) complaints to a government agency about a landlord' s alleged violation of any health or safety laws; (3) attempts to exercise rights described in the lease or in state or federal law; and (4) attempts to become involved with any tenants' rights groups. If the tenant has undertaken any of these actions in good faith and in the 12 months before the eviction proceeding, the tenant may use this evidence in an attempt to show retaliatory eviction. G. S. §§ 42-37.1 and 37.2.

## **Security Deposits**

A security deposit is an amount paid by the tenant to the landlord at the beginning of a lease to cover expenses incurred by the landlord for which the tenant was responsible, but did not pay. Security deposits are governed by the Tenant Security Deposit Act, G. S. §§ 42-50 to 56. Under this Act, if the lease is month-to-month, the security deposit cannot exceed one and one half months' rent, and if the lease is longer than month-to-month, the security deposit is limited to two months' rent. If the lease is week-to-week, the security deposit is limited to two weeks' rent.

**Landlord' s Obligations During the Lease** The Act forbids the landlord from depositing the security deposit in his personal bank account. The landlord must establish a separate trust

account in a North Carolina bank, and must inform the tenant of the name and address of that bank within thirty days of the beginning of the lease. In lieu of opening a trust account, the landlord may purchase a security deposit bond from a North Carolina insurance company. These requirements are designed to make it easier for the tenant to recover the security deposit at the end of the lease.

**Landlord' s Obligations at the End of the Lease**The landlord can retain part or all of the security deposit to cover only the following costs: (1) the tenant' s failure to pay rent; (2) damage to the premises; (3) expenses related to the tenant' s moving out before lease expires; (4) unpaid bills of the tenant which become a lien against the premises; (5) costs of re-renting the premises after a breach of the lease by the tenant; (6) costs of removing and storing the tenant' s property after eviction; and (7) court costs in connection with terminating a tenancy. The landlord must return the deposit within thirty days of the end of the lease. If the landlord keeps any portion of the security deposit, for any of the reasons given above, the landlord must explain the charges to the tenant in writing. This is referred to as an accounting. The landlord can only keep enough of the security deposit to cover his actual costs of repairs, unpaid bills, etc. For example, if the tenant paid a \$600 deposit, and the landlord then paid a repair service \$100 to replace a window that the tenant had broken and did not repair before moving out, the landlord can charge no more than \$100 for that item on the accounting. If that is the only charge against the security deposit, the landlord must return \$500. Any clause in the lease that gives the landlord the power to withhold more than his actual costs -- commonly called forfeiture clauses -- is not enforceable. Conversely, if the actual costs incurred by the landlord exceed the amount of the security deposit, the landlord can keep the entire deposit and sue the tenant for the difference.

**Normal Wear and Tear and Damage:** The landlord can use the security deposit to repair damage for which the tenant is responsible. But the landlord cannot apply the security deposit to normal wear and tear. *See* G. S. §§ 42-43(a)(6).

A frequently asked question is: What' s the difference?

Normal wear and tear includes deterioration of the premises that occurs under normal use conditions. For example, paint may fade, electrical switches may wear out and break, pull strings on curtains may fray and snap, and carpet may wear down. These things happen even if the tenant cleans regularly and cares for the premises reasonably. Damage occurs from unreasonable use or accidents, and includes extreme build up of dirt, mold, etc., stains on carpets, and broken windows. Even planned alterations to the premises are considered damage. For example, the tenant cannot leave large holes in the walls from shelving, and cannot repaint the walls to significantly change the color. If the tenant wishes to make changes to the premises that will remain after the tenant moves out, the tenant should secure that landlord' s written permission.

The tenant can take steps to avoid disputes over damage. At the beginning of the lease term, the tenant should inspect the premises thoroughly and note all problems in writing. The tenant should sign and date the list and also have the landlord sign the list. At the end of the lease, the

tenant should again inspect the premises with the landlord present, discuss any damage with the landlord, and again prepare a list.

**Small Claims Court:** If the tenant believes that the landlord has unlawfully withheld an excessive amount of the security deposit, and the parties cannot resolve the dispute between themselves, small claims court is an option. If the landlord deliberately withheld more than his lawful share of the security deposit, or deliberately withheld the deposit past the thirty-day period, the court may award the tenant the cost of her attorney' s fees, in addition to any other damages.

**Filing a Complaint:** A tenant may file a complaint with the Attorney General' s office. Our office can help try to mediate the complaint with the landlord.