



Greensboro Landlords Association

Meeting Minutes

June 9th, 2020

Opening:

The monthly meeting of the Greensboro Landlords Association was called to order at 6:15 on June 9th, 2020 on our Zoom Meeting lead by our President, Andrea Neese Pegram.

Attendance:

18 Members were recorded by 3rd Party Vendor, Jennifer Dille with TESS, LLC.

A link to Our Recorded Meeting is Below and Following is Preston Nelson's PowerPoint Presentation:

https://youtu.be/Jb_2oFIDYXM

Minutes submitted by: Jennifer Dille with TESS, LLC

Please scroll down to the next page to view the presentation.

Residential Security Deposits

Thoughts from a Friend

On the Law

§ 42-54. Transfer of dwelling units

Upon termination of the landlord's interest in the dwelling unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within 30 days, do one of the following acts, either of which shall relieve him of further liability with respect to such payment or deposit:

- (1) Transfer the portion of such payment or deposit remaining after any lawful deductions made under this section to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address; or
- (2) Return the portion of such payment or deposit remaining after any lawful deductions made under this section to the tenant.

§ 42-53. Pet deposits

Notwithstanding the provisions of this section, the landlord may charge a reasonable, nonrefundable **fee** for pets kept by the tenant on the premises.

§ 42-50. Deposits from the tenant.

Security deposits from the tenant in residential dwelling units shall be deposited in a trust account with a licensed and federally insured depository institution or a trust institution authorized to do business in this State, or the landlord may, at the landlord's option, furnish a bond from an insurance company licensed to do business in North Carolina. The security deposits from the tenant may be held in a trust account outside of the State of North Carolina only if the landlord provides the tenant with an adequate bond in the amount of the deposits. The landlord or the landlord's agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where the tenant's deposit is currently located or the name of the insurance company providing the bond. (1977, c. 914, s. 1; 2015-93, s. 2; 2017-25, s. 2(a).)

TRUST

- Trust: “A right of property, real or personal, held by one party for the benefit of another.”
- Trust (Account) Deposit: “Where money or property is deposited to be kept intact and not commingled with other funds or property of bank and is to be returned in kind to depositor or devoted to particular purpose or requirement of depositor or payment of particular debts or obligations of depositor.”

-From Blacks Law Dictionary De Luxe Fourth Edition

§ 42-52. Landlord's obligations

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

See changes in Realtor Lease after 2018.

ESCHEAT

§ 116B-53. Presumptions of abandonment

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

ESCHEAT

§ 116B-53. Presumptions of abandonment

- (c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:
 - (6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property.
 - (16) All other property, **five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.**

ESCHEAT

§ 116B-57. Dormancy charge; other lawful charges.

- (a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time **only if there is a valid and enforceable written contract** between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.
- (b) **This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract.**

§ 42-51. Permitted uses of the deposit

(b) The security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is week to week, **one and one-half months' rent if a tenancy is month to month**, and **two months' rent for terms greater than month to month**. These deposits must be fully accounted for by the landlord as set forth in G.S. 42-52.

§ 42-51. Permitted uses of the deposit

- (a) Security deposits for residential dwelling units shall be permitted only for the following:
- (1) The tenant's possible **nonpayment of rent** and **costs for water or sewer services provided** pursuant to G.S. 62-110(g) and electric service pursuant to G.S. 62-110(h).
 - (2) **Damage to the premises**, including damage to or destruction of smoke alarms or carbon monoxide alarms.
 - (3) Damages as the result of the **nonfulfillment of the rental period**, except where the tenant terminated the rental agreement under G.S. 42-45[military], G.S. 42-45.1 [domestic violence], or because the tenant was forced to leave the property because of the landlord's violation of Article 2A of Chapter 42 of the General Statutes or was constructively evicted by the landlord's violation of G.S. 42-42(a) [unfit premises].
 - (4) Any **unpaid bills that become a lien** against the demised property due to the tenant's occupancy.
 - (5) The **costs of re-renting the premises after breach by the tenant**, including any reasonable fees or commissions paid by the landlord to a licensed real estate broker to re-rent the premises.
 - (6) The costs of **removal and storage of the tenant's property** after a summary ejectment proceeding.
 - (7) **Court costs**.
 - (8) Any fee permitted by G.S. 42-46 **Authorized late fees and eviction fees**.

§ 42-46. Authorized late fees and eviction fees.

- (i) Out-of-Pocket Expenses. – In addition to the [Late Fee, Complaint Filing Fee, Court Appearance Fee, Second Trial Fee], a landlord is also permitted to charge and recover from a tenant the following actual out-of-pocket expenses:
 - (1) Filing fees charged by the court.
 - (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure and G.S. 42-29.
 - (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, **not to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent.** (j) **The out-of-pocket expenses listed in subsection (i) of this section are allowed to be included by the landlord in the amount required to cure a default.**

§ 42-55. Remedies

- If the landlord or the landlord's successor in interest fails to account for and refund the balance of the tenant's security deposit as required by this Article, the tenant may institute a civil action to require the accounting of and the recovery of the balance of the deposit. **The willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit as otherwise permitted under G.S. 42-51.** In addition to other remedies at law and equity, the tenant may recover damages resulting from noncompliance by the landlord; and upon a finding by the court that the party against whom judgment is rendered was in willful noncompliance with this Article, such willful noncompliance is against the public policy of this State and the court may award attorney's fees to be taxed as part of the costs of court.
- The provisions of this Article shall **apply to all persons, firms, or corporations engaged in the business of renting or managing residential dwelling units, excluding single rooms, on a weekly, monthly or annual basis.**
- See Also Chapter 75 Unfair Trade Practices

Neil v. Kuester Real Estate Servs., Inc., 764 S.E.2d 498 (N.C. App., 2014)

- (1) where a landlord “fails to account for and refund the balance of the tenant's security deposit as required[,]” tenants can bring a civil action to receive the required accounting and appropriate refunds due them (“**the appropriate refund remedy**”);
- (2) where a landlord “willfully fails to comply with the deposit, bond, or notice requirements of this Article[,]” a tenant can seek refund of the entire security deposit, even if the landlord would otherwise be entitled to retain some portion thereof (“**the full refund remedy**”);
- (3) where a tenant has incurred damages from the landlord's failure to comply with the Act, the tenant may sue to recover those damages (“**the damages remedy**”); and (
- (4) where a landlord's noncompliance is willful, the tenant can seek attorney's fees (“**the attorney's fees remedy**”). See N.C. Gen.Stat. § 42–55.

Further, we can find nothing in the Act that would prevent a landlord from fining tenants for violating health, safety, or other rules and regulations such as those Plaintiffs agreed to in their lease addenda. The Act simply bars landlords from taking those amounts out of security deposits. See N.C. Gen.Stat. § 42–51.

More Definitions

Rent: “Consideration paid for use or occupation of Property.”

Ordinary (adj): “Regular; usual; normal; common; often recurring; according to established order; settled; **customary; reasonable**; not characterized by peculiar or unusual circumstances; belonging to, or exercise by, or **characteristic of, the normal or average** individual.”

Ordinary Repairs: “ Such as are necessary to make good the usual wear and tear or **natural and unavoidable decay** and keep the property in good condition.”

-From Blacks Law Dictionary De Luxe Fourth Edition

§ 42-10. Tenant not liable for accidental damage

A tenant for life, or years, or for a less term, shall **not be liable for damage occurring on the demised premises accidentally**, and notwithstanding reasonable diligence on his part, unless he so contract.

Fun Facts about Attorneys

§ 42-14.4. Notice to State Bar of attorney default on lease.

“If a landlord has actual knowledge that a tenant is an attorney, the landlord shall deliver notice to the North Carolina State Bar (hereinafter "State Bar") at least 15 days prior to the destruction or discard of any "potentially confidential materials" remaining in the premises after the landlord obtains possession of the premises, whether by summary ejectment under Article 3 of this Chapter or by any other means, including the tenant vacating the premises. For purposes of this section, the term "potentially confidential materials" means client files, trust or operating account records, or other materials relating to client matters. For purposes of this section, the term "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.”

Discussion