

# NORTH CAROLINA LANDLORD-TENANT LAWS

*Knowing your rights and responsibilities: a brief overview*

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# I. Understanding where your rights/ responsibilities come from.

There are two places to look to determine what your rights and responsibilities are. First, there is North Carolina law. Some of the laws are mandatory and cannot be changed, even if everybody agrees. While other laws can be changed if everyone agrees. Second, there is your lease agreement. Your lease is a contract and it explains what each party is agreeing to and controls each party's behavior. For the most part, this information reviews North Carolina laws that you must comply with and that cannot be changed by your lease agreement.

# II. Basic Fit-Housing Laws:

North Carolina requires the landlord and the tenant each take on certain responsibilities to ensure the property is maintained in conditions fit for humans to live in. We review those responsibilities now.

## What does the landlord have to do regarding repairs?

1. ***Obey the Local Housing Code.*** Most cities and some counties have passed a law which is called a housing code. This law tells the landlord what conditions have to be provided and maintained, including such items as hot and cold water facilities that do not leak, window screens, walls, ceilings and floors without holes, door locks and other basic necessities. Cities and counties with a housing code will have an inspection department whose duties include inspecting units and informing owners and tenants of needed repairs. The inspection department will also be responsible for enforcing the local housing code. Failure to make the required repairs can result in the premises being boarded up and not allowed to be rented until the repairs are made.
2. ***Make any repairs needed to make the premises fit and habitable.***
3. ***Keep the plumbing, heating, sanitary and electrical equipment in good and safe working order.***
4. ***If the landlord provides appliances, such as a stove or refrigerator, he/she must fix them if they break down.***
5. ***Keep the stairwells, walkways and other common areas of apartment buildings and duplexes in safe condition.***
6. ***Install smoke detectors.***

## What does the tenant have to do regarding repairs?

7. ***Keep the place as clean and safe as possible.*** Get rid of garbage in a clean and safe way. Keep the plumbing (toilet, sinks, bathtub) as clean as possible.
8. ***Notify the landlord of needed repairs.***
9. ***Do not do any damage to the premises.*** If the tenant or someone visiting damages the premises, the tenant is responsible. This means the landlord may charge the tenant for the repairs.

### Consequences of not making repairs

#### **10. *Tenant may sue owner/landlord and/or agent and recover:***

- a) Damages equaling the difference between the fair rental value of the premises free of defects and the fair rental value of the premises in their defective condition (“rent abatement”);
  - b) Prospective rent abatement (ordering the rent to be at the lower rate on account of the condition);
  - c) Treble damages (three times the amount of the actual damages) and attorneys’ fees if the conditions of the premises and the agreement between the parties are rise to the level of unfair and deceptive acts by the landlord; and
  - d) Injunctive relief, requiring the landlord to make repairs.
11. ***Local housing code may call for the premises to be taken off the market.*** Fines and/or criminal liability may be applicable.
12. ***In the City of Raleigh, the Probationary Rental Occupancy Permit program began February 7, 2005 and affects all landlords with less than 20 rental units.*** Violations of City ordinances, including those regarding fit housing, may result in fines and participation in the program.

## III. Handling the money: Paying attention to the details

There are two laws that require landlords to handle tenants’ monies with particular detail. First, there are requirements for handling security deposits. Second, there are requirements for charging late payment fees. We address both.

### **Security Deposits (N.C.G.S. 42-50)**

#### **B. How much security deposit can a landlord charge?**

1. The tenant pays rent every week, the landlord can require two weeks rent as a deposit.
2. If the tenant pays rent every month and there is no written lease, he/she can require one and one-half month’s rent as a deposit.
3. If the tenant has a lease for more than a month, he/she can charge two months’ rent as a deposit.

#### **C. What does the landlord have to do regarding security deposits?**

1. Give the tenant written notice of the name of the bank that is holding the tenant’s security or the name and address of the insurance company providing a bond to cover the security deposit, if not in a bank in N.C.; and
2. After the tenant moves out for any reason (including eviction), the landlord must give the tenant a written account of any items deducted from the deposit and refund the remainder to the tenant. The landlord has thirty (30) days from the time the tenant moves out to give this accounting and refund.

### When can a landlord keep all or part of the security deposit?

3. If the tenant owes back rent, he/she can deduct what is owed.

4. If the tenant has damaged the property more than normal wear and tear, the landlord can deduct the cost of repair.
5. If the tenant breaks the lease and the landlord loses rent or has expenses to find a new tenant, he/she can keep the actual amount lost.
6. If the tenant has been evicted in court, the landlord can deduct court costs from the security deposit.

### **Late Fees (N.C.G.S. 42-46)**

- A. When can you charge a late fee? Only after the rent is five days or more late.
- B. How much can you charge? \$15.00 or 5% of the monthly rent, whichever is more.
- C. Figuring the 15%: Tricks of the trade. It sounds simple to charge 15%, but...
  1. Subsidized Housing: If the property is subsidized, you charge 15% of the portion of the rent the tenant pays.
  2. "Market Rent": You may have a policy where you say the "market rent" is \$1,000.00 but you are willing to rent it for \$800.00 a month if the tenants sign a year-long lease and you call this lower rate your "concession rent." When the tenant is late – which number do you use? The law says "monthly rent." Although no appellate court has told us what "monthly rent" means in this kind of case, it is recommended to use the actual monthly rent the tenant pays.

## **IV. Eviction: What happens if you need to evict the tenant?**

Evicting a tenant requires that you follow the process set out by North Carolina law. You should not take matters into your own hands. Do not change the locks. Do not turn off the utilities. Learn your legal rights and enforce them.

### **How Can the Landlord Evict Legally. (N.C.G.S. 42-25.9)**

- A. Some kinds of evictions by a landlord are illegal.  
A landlord may evict a tenant legally only by getting a court order. The landlord may not evict by changing the locks, turning off electricity, gas or water, disconnecting a heater, or any way other than through the court.
- B. How do court evictions work?

The landlord has to file a legal complaint with the court. This complaint must be served upon the tenant by the sheriff. Attached to the complaint will be a summons that tells the tenant the day, time, and place to be in court.

If the landlord or the tenant loses in court, he/she has a right to appeal within ten days in writing or tell the court while the landlord is there that they wish to appeal. If the tenant does not appeal, the landlord can get an order to have the Sheriff put the tenant out. This

eviction by the Sheriff generally occurs within approximately 15 days of the court hearing.

C. Can you accept rent?

No. If you are proceeding with an eviction, you may not accept rent from the tenant. If you do, they can assert that you waived the breach.

D. What happens to the tenant's property?

If the tenant is evicted through the court process and the landlord has the furniture and clothes padlocked inside the house, the tenant will have ten (10) days to get them out from the day of the padlocking. The tenant must contact the landlord and arrange for a time during regular business hours or another time by agreement to come and remove the property. If the tenant does not remove them within those ten (10) days, the landlord may dispose of the property in any way he/she wishes.

## V. What about eviction for criminal activities?

A landlord may evict a tenant for a number of reasons, including, for example, non-payment of rent. There is a special law for evictions for criminal activities. The landlord and tenant may also address this issue in their lease and the landlord may sue for eviction as set forth above based upon a breach of the lease.

### **EVICCTIONS FOR CRIMINAL ACTIVITIES - Article 7 of Chapter 42**

In North Carolina, both public and private landlords can evict or remove persons from residential rental property who are involved in criminal activity. The criminal activity is not limited to drug offenses but all criminal activity that threatens the health, safety or right of peaceful enjoyment of the entire premises. In addition, ***landlords have the authority to evict a tenant*** for allowing any person to re-enter the premises after that person has been banned by the housing authority or the court. Landlords are also allowed to collect rent even if they know about the criminal activity. A waiver defense is not available to tenants in actions brought under Article 7.

There is an expedited procedure established for evicting tenants involved in criminal activity. Landlords have the option of either filing these actions in Small Claims Court, as is done with summary ejection complaints now, or in District Court. Cases in District Court must be set for trial 30 days after service of the complaint or appeal from Small Claims Court. Unless there are extraordinary reasons, no extensions of time to file court papers are allowed, continuances or postponements of the trial are restricted, and all time periods for filing pleadings are shortened. In addition, if a case is appealed from Small Claims Court to District Court, and the tenant does not file an answer to the landlord's complaint within 20 days, the landlord can move for an entry of default pursuant to Rule 55 of the North Carolina Rules of Civil Procedure.

Article 7 also authorizes “partial evictions.” This allows landlords to selectively evict individual household members and guests without evicting the entire family. The bill also gives judges the authority to order “partial evictions” if the tenant who signed the lease was not involved in the criminal activity and either:

1. “did not know or have reason to know” that the activity was occurring or would likely occur; or
2. has done everything that could be reasonably expected to, to prevent the criminal activity - such as requesting the offending household member be removed from the lease and making reports to law enforcement authorities.

## VI. When the tenant seeks to enforce their rights...

Just as you, the landlord, has rights under the law. The tenants have rights too. When a tenant seeks to enforce their rights, you should be cautious that you do not respond with attempting to evict them. Such action would be illegal and you may have to pay the tenant damages.

### **Retaliatory Evictions (N.C.G.S. 42-37.1)**

A. The following tenant activities are protected by the law:

1. Complaining or requesting that the landlord make repairs;
2. Complaining to the housing inspector, health department or any other government agency about repair needs or unhealthy conditions;
3. Any complaint to a landlord from the housing inspector, health department or other government agency;
4. Any honest attempt of the tenant to enforce their rights under the lease or under state or federal law, such as filing a lawsuit and
5. Any honest attempt to organize, join or become involved with any group of people who are trying to help tenants.

B. Eviction is a remedy, if the tenant has breached the lease:

A landlord cannot evict a tenant in retaliation for doing any of these protected activities. But the landlord can evict for not paying rent or for breaking the lease in any other way, *if the lease says that the tenant can be evicted for that particular violation.*

C. What are the consequences of evicting a tenant in retaliation for protected activity?

A tenant may be able to regain possession of the premises and have a claim for money damages. The damages may include loss of personal property, lost wages, cost of moving belongings, mental suffering, and other damages.

## VII. RESOURCES

1. Attorneys:

- a. Legal Aid of North Carolina – 1-919-856-2564 - Provides free legal services to low income individuals throughout North Carolina.(Wake County office – (919) 828-4647) [www.legalaidnc.org](http://www.legalaidnc.org)

- b. NC Justice Center- (919) 856-2570 – Provides free legal services to low income individuals in impact litigation and policy matters. [www.ncjustice.org](http://www.ncjustice.org)

2. Fair Housing Investigators:

- a. NC Fair Housing Center – (919) 667-0888 – Investigates Fair Housing violations and provides assistance regarding Fair Housing issues statewide.
- b. NC Human Relations Commission – (919) 733-7996 – NC state agency that investigates complaints of discrimination and enforces NC’s Fair Housing Law.

3. Governmental Entities:

- a. NC Attorney General’s Office – Consumer Protection - (919) 716 – 6000
- b. City of Raleigh Inspections Department \_ (919) 807 – 5110 – Inspects apartments/houses to make sure no violation of Raleigh Housing Code.

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