HOUSE BILL 880:
Landlord/Tenant Changes.

Committee:	Senate Rules and Operations of the Senate	**Date:**	July 8, 2019
Introduced by:	Reps. Hardister, Ross, Richardson, Hunter	**Prepared by:**	Bill Patterson
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: House Bill 880 would:

➢ *Allow authorized persons to direct the removal or disposal of certain personal property of a decedent located in leased premises.*

➢ *Authorize collection of certain expenses incurred by a landlord in summary ejectment proceedings.*

CURRENT LAW AND BILL ANALYSIS

Under current law a landlord's rights concerning a residential tenant's personal property are limited to those set forth in statutory provisions cross-referenced in G.S. 42-25.7.

Section 1 would make a conforming change to this statute by including a cross-reference to G.S. 28A-25-2 as amended in Section 2.(c) of the bill.

Currently, under G.S. 28A-25-1 (applicable to intestate decedents) and G.S. 28A-25-1.1 (applicable to testate decedents), when a person dies leaving personal property having an unencumbered value not exceeding $20,000, any person having possession of the decedent's personal property is required to deliver it to a person who claims to be a qualified personal representative of the decedent and who presents a certified copy of an affidavit meeting the requirements set forth in those statutes.

Section 2.(a) and Section 2.(b) would amend these statutes to provide that a person claiming to be a duly qualified personal representative of the decedent who presents an affidavit meeting the statutory requirements is entitled to remove or otherwise dispose of the decedent's personal property that is located in demised premises.

G.S. 28A-25-2 currently provides that a person who delivers the decedent's personal property pursuant to an affidavit meeting the statutory requirements is discharged and released to the same extent as if the person dealt with a duly qualified personal representative of the decedent.

Section 2.(c) would amend G.S. 28A-25-2 to also provide that a lessor or lessor's agent that removes, discards, or otherwise disposes of the personal property located in demised premises at the direction of an affiant who is statutorily authorized to collect the decedent's personal property, is discharged and released to the same extent as if the lessor dealt with a duly qualified personal representative of the decedent.

Landlords are currently permitted, pursuant to a written lease, to charge and collect an administrative "complaint-filing fee," but only if the landlord filed and served a complaint for summary ejectment and/or for money owed. Landlords are also permitted to charge and recover from a tenant certain actual out-of-pocket expenses, including "filing fees charged by the court" and "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."

Section 3 would permit a landlord to charge and collect the administrative complaint-filing fee regardless of whether the summons and complaint are served. Section 3 would also provide that the out-of-pocket expenses recoverable by the landlord include the fees charged by the court for filing a complaint and a writ of possession, and also include the costs for service of the writ of possession. In addition, Section 3 would provide that nothing in G.S. 42-46 prohibits the landlord and tenant from reaching an agreement to resolve a dispute involving an alleged default under a lease or agreement, provided that the fees, costs, or expenses are permitted under that statute.

G.S. 42-51 currently provides that a landlord may use a tenant's security deposit to pay "any fee permitted by G.S. 42-46."

Section 4 would amend G.S. 42-51 to provide that the security deposit may be used for any "any fee, <u>cost, or expense</u>" permitted by G.S. 42-46.

EFFECTIVE DATE: The act is effective when it becomes law. Section 2 of the act applies to decedents dying on or after that date.