



HOUSE BILL 854: Landlord/Tenant Changes.

2021-2022 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 11, 2021
Introduced by:	Reps. Hardister, Szoka, Bradford, Richardson	Prepared by:	Brian Gwyn*
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *House Bill 854 would do the following:*

- *Reaffirm the intent of the General Assembly that landlords may recover out-of-pocket expenses and litigation costs in summary ejectment proceedings.*
- *Provide that a tenant's criminal record would not affect the foreseeability of any future injury or damage caused by the tenant, and that a landlord would have no duty to screen a potential tenant's criminal history or refuse to rent to a person because of their criminal record.*
- *Allow authorized persons to direct the removal or disposal of certain personal property of a decedent located in leased premises.*
- *Prohibit discriminatory practices against tenants with service animals or support animals.*

PART I. CLARIFICATION AND REAFFIRMATION OF RECOVERY OF OUT-OF-POCKET EXPENSES AND LITIGATION COSTS IN SUMMARY EJECTMENTS

CURRENT LAW: Landlords are currently permitted, pursuant to a written lease, to charge and collect either a complaint-filing fee, a court-appearance fee, or a second trial fee in certain circumstances.¹ Landlords are also permitted to charge and recover from a tenant certain actual out-of-pocket expenses, including filing fees charged by the court, certain costs for service of process, and reasonable attorneys' fees incurred, pursuant to a written lease, not to exceed a certain amount.²

BILL ANALYSIS:

Section 1.1 – This section would provide that the complaint-filing fee, court-appearance fee, and second trial fee are administrative fees and are the only administrative fees that landlords may charge when filing a complaint for summary ejectment or money owed. This section would further provide that out-of-pocket expenses and litigation costs are not administrative fees and that it is contrary to public policy for a landlord to claim, or a lease to provide for the payment of, any out-of-pocket expenses or litigation costs for the filing of a complaint for summary ejectment or money owed other than those expenses authorized under G.S. 42-46(i).

Section 1.2 – Provides that Part I would be effective when it becomes law and is intended to apply retroactively to all pending controversies³ as of that date. The amendments contained in Part I are intended to clarify the General Assembly's intent under previous amendments to G.S. 42-46.

¹ G.S. 42-46(e)-(g).

² G.S. 42-46(i).

³ According to [Lexology](#), as of August 2020, at least 17 class action lawsuits challenging eviction fee charges in North Carolina were filed since 2016.

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PART II. VARIOUS CHANGES TO LANDLORD/TENANT STATUTES

CURRENT LAW: 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.

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.

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.

BILL ANALYSIS:

Section 2.1 – This section would enact G.S. 42-14.5 to provide that the criminal record of any prospective or current residential lessee, occupant, or guest would not make any future injury or damage arising from the lessee, occupant, or guest foreseeable by the lessor or the lessor's agent. The residential lessor or the lessor's agent would not be required to screen for or refuse to rent because of the criminal record of a prospective or current lessee, occupant, or guest. A residential lessor or the lessor's agent would not be prohibited from using a criminal background check as grounds for refusing to rent to any prospective or current lessee.

This section codifies *Davenport v. D.M. Rental Properties, Inc.*, wherein the N.C. Court of Appeals found that an altercation between two tenants at a mobile home park was not foreseeable and that there was no duty on a landlord to screen potential tenants and no liability for failing to evict a tenant.

Section 2.2 – This section would make a conforming change to this statute by including a cross-reference to G.S. 28A-25-2 as amended in Section 2.5 of the bill.

Sections 2.3 and 2.4 – These sections would amend G.S. 28A-25-1 and G.S. 28A-25-1.1 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.

Section 2.5 – This section 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.

Section 2.6 – Sections 2.3, 2.4 and 2.5 of Part II would be effective when they become law and would apply to decedents dying on or after that date. The remainder of Part II would be effective when it becomes law.

PART III. SUPPORT ANIMALS IN RENTAL UNITS

CURRENT LAW: Under the federal Fair Housing Act, housing providers must make reasonable accommodations as necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. G.S. 41A-4(f) establishes similar rights under State law.

G.S. 42-53 authorizes landlords to charge a reasonable, nonrefundable fee for pets kept by the tenant on the premises.

G.S. 168-4.2(a) guarantees the right to every person with a disability to keep a service animal trained to assist the person's disability on any premises the person leases, rents, or uses.

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BILL ANALYSIS:

Section 3.1 – This section would create a new statute (G.S. 42-47) regarding service and support animals in rental units. The statute would prohibit a landlord from doing any of the following, if it is based in part on a tenant, applicant, or household member's status as a person with a disability or use of a service or support animal:

- Terminate or fail to renew a tenancy.
- Refuse to enter into a rental agreement.
- Impose different terms, conditions, or privileges in the rental of a dwelling.
- Otherwise make unavailable a dwelling unit or otherwise retaliate in the rental of a dwelling.

If a person has a disability that is not observable or not already known, the landlord could require that the person provide written verification of the following when seeking a reasonable accommodation:

- The person is a person with a disability.
- A disability-related need exists for the person to use a support animal.
- The service animal or support animal assists the person in managing the person's disability.

This section would make individuals liable to the landlord in a private action if they intentionally or knowingly (i) make misrepresentations to the landlord regarding their disability status, need for a service or support animal, or the status of an animal as a service or support animal or (ii) make material false statements to a health service professional for the purpose of obtaining documentation or verification that the person has a disability-related need for the use of a service or support animal.

Additionally, a health service professional would be liable to the landlord in a private action if they verified disability status or the need for a service animal without adequate personal knowledge of the person's condition, including charging a fee with no additional service to the person, unless the health service professional has an ongoing relationship with the person or conducts a good-faith consultation.

Prevailing landlords would be entitled to actual damages, and the court could also impose civil penalties not greater than \$1,000, but not less than \$500 for each violation.

Landlords would still be able to require that a person with a disability who uses a service or support animal do the following:

- Comply with rental agreement terms or other applicable rules or regulations on the same terms as other tenants.
- Pay for damage caused by a service or support animal on the same terms as damage caused by animals that are not service or support animals.
- Subject to applicable laws, sign an addendum or agreement setting forth responsibilities of the owner of the service or support animal.

Subject to any other federal, State, or local laws, landlords who permit service or support animals would not be liable for an injury to another person caused by the service or support animal.

Section 3.2 – This section would exempt situations in which G.S. 42-47 applies from the general rule that landlords can charge a reasonable, nonrefundable fee for pets kept by a tenant.

Section 3.3 – This section would make Part 3 effective January 1, 2022, and would apply to rental agreements or leases entered into on or after that date.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.

**Kristen Harris and Nicholas Giddings, Staff Attorneys with the Legislative Analysis Division, substantially contributed to this summary.*