

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 1071

Short Title: Pay Rent Arrears to Stay Ejectment.

(Public)

Sponsors: Representative Capps.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE
2 AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF
3 JUDGMENT FOR SUMMARY EJECTMENT PENDING APPEAL TO DISTRICT
4 COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 42-34 reads as rewritten:

7 **"§ 42-34. Undertaking on appeal and order staying execution.**

8 (a) Upon appeal to the district court, either party may demand that the case be
9 tried at the first session of the court after the appeal is docketed, but the presiding judge,
10 in his discretion, may first try any pending case in which the rights of the parties or the
11 public demand it.

12 (b) It shall be sufficient to stay execution of a judgment for ejectment ~~that if the~~
13 ~~defendant appellant sign~~ defendant appellant signs an undertaking that he or she
14 will pay into the office of the clerk of superior court the amount of the contract rent as it
15 becomes due periodically after the judgment was entered and, where applicable, comply
16 with subdivision (c) below. Any magistrate, clerk, or district court judge shall order stay
17 of execution upon ~~such undertaking.~~ the defendant appellant's paying the rent in arrears
18 and signing the undertaking. If either party disputes the amount of the payment or the due
19 date in ~~such the~~ the undertaking, the aggrieved party may move for modification of the terms
20

1 of the undertaking before the clerk of superior court or the district court. Upon such
2 motion and upon notice to all interested parties, the clerk or court shall hold a hearing and
3 determine what modifications, if any, are appropriate.

4 (c) In an ejectment action based upon alleged nonpayment of rent where the
5 judgment is entered more than five working days before the day when the next rent will
6 be due under the lease, the appellant shall make an additional undertaking to stay
7 execution pending appeal. Such additional undertaking shall be the payment of the
8 prorated rent for the days between the day that the judgment was entered and the next day
9 when the rent will be due under the lease. ~~Notwithstanding, such additional undertaking shall
10 not be required of an indigent appellant who prosecutes his appeal with an in forma pauperis
11 affidavit that meets the requirements of G.S. 1-288.~~

12 (c1) Notwithstanding the provisions of subsections (b) and (c) of this section, an
13 indigent defendant appellant who prosecutes his or her appeal with an in forma pauperis
14 affidavit that meets the requirement of G.S. 1-288 shall not be required to pay rent in
15 arrears or to enter into an additional undertaking to stay execution pending appeal.

16 (d) The undertaking by the appellant and the order staying execution may be
17 substantially in the following form:

18 'State of North Carolina,
19 'County of
20 '..... , Plaintiff

21
22 vs. Bond to
23 '..... , Defendant

Stay Execution
On Appeal to
District Court

24
25
26 'Now comes the defendant in the above entitled action and respectfully shows the
27 court that judgment for summary ejectment was entered against the defendant and for the
28 plaintiff on the..... day of, 19..., by the Magistrate. Defendant has appealed the
29 judgment to the District Court.

30 'Pursuant to the terms of the lease between plaintiff and defendant, defendant is
31 obligated to pay rent in the amount of \$..... per, due on the day of each

32 'Where the payment of rent in arrears or an additional undertaking is required by G.S.
33 42-34(e), G.S. 42-34(b) or (c), the defendant hereby tenders \$..... to the Court as required.

34 'Defendant hereby undertakes to pay the periodic rent hereinafter due according to the
35 aforesaid terms of the lease and moves the Court to stay execution on the judgment for
36 summary ejectment until this matter is heard on appeal by the District Court.

37 'This the day of....., 19.....
38
39 Defendant

40 'Upon execution of the above bond, execution on said judgment for summary
41 ejectment is hereby stayed until the action is heard on appeal in the District Court. If
42 defendant fails to make any rental payment to the clerk's office within five days of the

1 due date, upon application of the plaintiff, the stay of execution shall dissolve and the
2 sheriff may dispossess the defendant.

3 'This day of, 19.....

4
5 Assistant Clerk of Superior Court.'

6 (e) Upon application of the plaintiff, the clerk of superior court shall pay to the
7 plaintiff any amount of the rental payments paid by the defendant into the clerk's office
8 which are not claimed by the defendant in any pleadings.

9 (f) If the defendant fails to make a payment within five days of the due date
10 according to the undertaking and order staying execution, the clerk, upon application of
11 the plaintiff, shall issue execution on the judgment for possession.

12 (g) When it appears by stipulation executed by all of the parties or by final order
13 of the court that the appeal has been resolved, the clerk of court shall disburse any
14 accrued moneys of the undertaking remaining in the clerk's office according to the terms
15 of the stipulation or order."

16 Section 2. Article 3 of Chapter 42 of the General Statutes is amended by
17 adding the following new section:

18 "**§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.**

19 (a) If the judgment in district court is against the defendant appellant and the
20 defendant appellant does not appeal the judgment, the defendant appellant shall pay rent
21 to the plaintiff for the time the defendant appellant remains in possession of the premises
22 after the judgment is given. Rent shall be prorated if the judgment is executed before the
23 day rent would become due under the terms of the lease. The clerk of court shall disperse
24 any rent in arrears paid by the defendant appellant in accordance with a stipulation
25 executed by all parties or, if there is no stipulation, in accordance with the judge's order.

26 (b) If the judgment in district court is against the defendant appellant and the
27 defendant appellant appeals the judgment, it shall be sufficient to stay execution of the
28 judgment if the defendant appellant posts a bond as provided in G.S. 1-292. If the
29 defendant appellant fails to perfect the appeal or the appellate court upholds the judgment
30 of the district court, the execution of the judgment shall proceed. The clerk of court shall
31 not disperse any rent in arrears paid by the defendant appellant until all appeals have been
32 resolved."

33 Section 3. This act is effective when it becomes law.