

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 1071
Senate Judiciary Committee Substitute Adopted 8/10/98
Third Edition Engrossed 8/11/98

Short Title: Pay Rent Arrears to Stay Ejectment.

(Public)

Sponsors:

Referred to:

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

6 The General Assembly of North Carolina enacts:

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

8 "**§ 42-34. Undertaking on appeal and order staying execution.**

9 (a) Upon appeal to the district court, either party may demand that the case be
10 tried at the first session of the court after the appeal is docketed, but the presiding judge,
11 in his discretion, may first try any pending case in which the rights of the parties or the
12 public demand it. If the case has not been previously continued in district court, the court
13 shall continue the case for an appropriate period of time if any party initiates discovery or
14 files a motion to allow further pleadings pursuant to G.S. 7A-220 or G.S. 7A-229, or for
15 summary judgment pursuant to Rule 56 of the Rules of Civil Procedure.

16 (b) ~~It~~ During an appeal to district court, it shall be sufficient to stay execution of a
17 judgment for ejectment that if the defendant appellant sign-pays to the clerk of superior
18 court any rent in arrears as determined by the magistrate and signs an undertaking that he

1 or she will pay into the office of the clerk of superior court the amount of the contract
2 rent as it becomes due periodically after the judgment was entered and, where applicable,
3 comply with subdivision (c) below. Provided however, when the magistrate makes a
4 finding in the record, based on evidence presented in court, that there is an actual dispute
5 as to the amount of rent in arrears that is due and the magistrate specifies the specific
6 amount of rent in arrears in dispute, in order to stay execution of a judgment for
7 ejectment, the defendant appellant shall not be required to pay to the clerk of superior
8 court the amount of rent in arrears found by the magistrate to be in dispute, even if the
9 magistrate's judgment includes this amount in the amount of rent found to be in arrears.
10 If a defendant appellant appeared at the hearing before the magistrate and the magistrate
11 found an amount of rent in arrears that was not in dispute, and if an attorney representing
12 the defendant appellant on appeal to the district court signs a pleading stating that there is
13 evidence of an actual dispute as to the amount of rent in arrears, then the defendant
14 appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay
15 execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district
16 court judge shall order stay of execution upon ~~such undertaking.~~ the defendant appellant's
17 paying the undisputed rent in arrears to the clerk and signing the undertaking. If either
18 party disputes the amount of the payment or the due date in ~~such the~~ undertaking, the
19 aggrieved party may move for modification of the terms of the undertaking before the
20 clerk of superior court or the district court. Upon such motion and upon notice to all
21 interested parties, the clerk or court shall hold a hearing and determine what
22 modifications, if any, are appropriate.

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

31 (c1) Notwithstanding the provisions of subsection (b) of this section, an indigent
32 defendant appellant, as set forth in G.S. 1-110, who prosecutes his or her appeal as an
33 indigent and who meets the requirement of G.S. 1-288 shall pay the amount of the
34 contract rent as it becomes periodically due as set forth in subsection (b) of this section,
35 but shall not be required to pay rent in arrears as set forth in subsection (b) of this section
36 in order to stay execution pending appeal.

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

39 'State of North Carolina,

40 'County of

41 '....., Plaintiff

42
43 vs. Bond to

1 '..... , Defendant Stay Execution
2 On Appeal to
3 District Court

4 'Now comes the defendant in the above entitled action and respectfully shows the
5 court that judgment for summary ejectment was entered against the defendant and for the
6 plaintiff on the..... day of, 19..., by the Magistrate. Defendant has appealed the
7 judgment to the District Court.

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

10 'Where the payment of rent in arrears or an additional undertaking is required by ~~G.S.~~
11 ~~42-34(e), G.S. 42-34,~~ the defendant hereby tenders \$..... to the Court as required.

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

15 'This the day of....., 19.....

16

17 Defendant

18 'Upon execution of the above bond, execution on said judgment for summary
19 ejectment is hereby stayed until the action is heard on appeal in the District Court. If
20 defendant fails to make any rental payment to the clerk's office within five days of the
21 due date, upon application of the plaintiff, the stay of execution shall dissolve and the
22 sheriff may dispossess the defendant.

23 'This day of, 19.....

24

25 Assistant Clerk of Superior Court.'

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

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

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

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

38 **"§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.**

39 (a) If the judgment in district court is against the defendant appellant and the
40 defendant appellant does not appeal the judgment, the defendant appellant shall pay rent
41 to the plaintiff for the time the defendant appellant remains in possession of the premises
42 after the judgment is given. Rent shall be prorated if the judgment is executed before the
43 day rent would become due under the terms of the lease. The clerk of court shall disperse

1 any rent in arrears paid by the defendant appellant in accordance with a stipulation
2 executed by all parties or, if there is no stipulation, in accordance with the judge's order.

3 (b) If the judgment in district court is against the defendant appellant and the
4 defendant appellant appeals the judgment, it shall be sufficient to stay execution of the
5 judgment if the defendant appellant posts a bond as provided in G.S. 42-34(b). If the
6 defendant appellant fails to perfect the appeal or the appellate court upholds the judgment
7 of the district court, the execution of the judgment shall proceed. The clerk of court shall
8 not disperse any rent in arrears paid by the defendant appellant until all appeals have been
9 resolved."

10 Section 3. The Administrative Office of the Courts shall amend the Small
11 Claims form entitled "Judgment In Action For Summary Ejectment" to provide for a
12 block in the magistrate's findings to designate in accordance with G.S. 42-34(b) that
13 either there is no actual dispute as to the amount of rent in arrears, or if there is an actual
14 dispute of the amount of rent in arrears, the amount found to be in dispute.

15 Section 4. This act becomes effective October 1, 1998, and applies to actions
16 for summary ejectment filed on or after that date.