

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-125
HOUSE BILL 1071

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

The General Assembly of North Carolina enacts:

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

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

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

(b) ~~It~~ During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment that if the defendant appellant sign pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon such undertaking. the defendant appellant's paying the undisputed rent in arrears to the

clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in ~~such the~~ undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate.

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

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

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

'State of North Carolina,
'County of
'..... , Plaintiff

vs. Bond to
'..... , Defendant

Stay Execution
On Appeal to
District Court

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

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

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

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

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

.....

Defendant

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

'This day of, 19.....

.....

Assistant Clerk of Superior Court.'

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 19th day of August, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:47 p.m. this 28th day of August, 1998