



Legal Aid of North Carolina
 Greensboro Office
 122 North Elm Street
 Suite 700
 Greensboro, NC 27401

LANDLORD/TENANT LAW

Legal Aid of North Carolina

Greensboro Office



**LANDLORD/
TENANT LAW**

1-800-951-2257

Serving:
 Davidson, Guilford, Montgomery, Randolph,
 Rockingham & Rowan Counties

Se habla español.

Landlord-Tenant Laws

North Carolina law says that your landlord must keep your housing fit and safe. It also says that you, the tenant, must pay your rent, keep your home clean, and not damage your home. To make the law work, both the tenant and the landlord must do their part.

What Is Covered by the Law?

All types of housing in which people pay to live are covered:

- Houses
- Apartments
- Trailers
- Boarding houses
- Public housing

If you pay for your place by giving your landlord part of your crop, or if you pay by working for your landlord, these laws protect you, too. You do not have to have a written lease to use these laws. (These laws do not cover motel rooms, unless the room is your primary residence).

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Disclaimer

THIS PAMPHLET IS MEANT TO GIVE YOU GENERAL INFORMATION. IT IS NOT MEANT TO GIVE YOU SPECIFIC LEGAL ADVICE. IF YOU WANT MORE ADVICE ON YOUR PARTICULAR SITUATION, OR IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONTACT AN ATTORNEY IN PRIVATE PRACTICE, OR CONTACT LEGAL AID OF NORTH CAROLINA.

LEGAL AID OF NORTH CAROLINA PROVIDES FREE LEGAL ADVICE AND REPRESENTATION TO LOW-INCOME RESIDENTS OF DAVIDSON, GUILFORD, MONTGOMERY, RANDOLPH, ROCKINGHAM & ROWAN COUNTIES.

WE CAN BE REACHED AT:

LANDLORD / TENANT LAW

Legal Aid of North Carolina
Greensboro Office
122 North Elm Street
Suite 700
Greensboro, NC 27401

Phone: (336) 272-0148
or 1-800-951-2257
Fax: (336) 333-9825

Landlord Responsibilities

Your landlord must:

- ① Make any repairs needed to keep your place fit and safe.
- ② Keep the plumbing, heating, sanitary and electrical equipment in good and safe working order, and provide a smoke alarm.
- ③ If the landlord provides appliances, like a stove or a refrigerator, he or she must fix them if they break down.
- ④ Keep the stairs, sidewalks and areas that are used by everyone in the building in safe condition.
- ⑤ Obey local housing codes. Many towns and counties have passed laws that say what a fit and safe place should have, such as window screens, hot and cold water, door locks and more. These laws are called the "Housing Code." To find out if your town or county has a Housing Code and what the Code says, call your town hall or county inspections office.
- ⑥ Inform you if he or she sells the property.
- ⑦ Tell you in writing of any complaints about the way you are treating the property; and
- ⑧ Leave you alone while you are living there. There are some exceptions to this rule, such as the landlord's right to inspect the property, but generally while you rent, it is if you owned the place.

Notes

Tenant Claims Against Landlord

There are several claims that a tenant can bring against a landlord in court. These claims may be brought when the landlord tries to evict the tenant, and some can be brought as a separate action.

① Breach of Obligations by Landlord

You must show that the landlord failed to:

- Comply with building or housing codes
- Maintain the premises in a fit and habitable condition
- Keep all common areas in a safe condition
- Maintain all facilities and appliances supplied in good and safe working order
- Provide and maintain working smoke detectors
- Comply with another federal, state or local housing law

You must also give notice to the landlord. It can be oral for everything but plumbing or electrical problems that are not emergencies and defective smoke detectors.

If you prove your case, you can get:

- Actual damages (the difference between the fair rental value of the premises without defects and the fair rental value with the defects)
- Other damages allowed by the court.
- Treble damages and attorney's fees if the problem was so bad that the court considers it an "unfair and deceptive trade practice"

② Personal Injuries

If you suffer an injury as a result of your landlord's negligence in keeping common and private areas safe, you may be able to file suit to collect damages. Call an attorney for assistance.

③ Wrongful eviction

If your landlord tries to evict you without using the proper court process (called "summary ejection") you can file suit against him or her to recover any damages you suffered. You can also get punitive or treble damages if the landlord's actions were severely wrong.

④ Failure to Return the Security Deposit

See pages 9-10 for information on security deposits. If your landlord fails to comply with the legal requirements outlined on pages 9-10, you can file an action against them to get your money back.

Remember: Try to Talk to a Lawyer First Before You File a Claim!

Tenant Responsibilities

You must:

- ① Pay your rent on time.
- ② Keep your place as clean and safe as you can. Get rid of garbage in a clean and safe way. Keep the plumbing (sinks, toilet, bathtub) clean.
- ③ Not damage your place or let anyone visiting you damage your place. **Remember:** If your guest damages your place, you may be responsible. Your landlord may not have to fix damages caused by you or your guest. Your landlord may bill you for the repairs.
- ④ Give your landlord notice if you decide to move out at the end of your lease. If you have a written lease, usually the amount of notice required is stated in the lease. If not, North Carolina law states that proper notice is:
 - 2 days if you pay rent every week
 - 7 days if you pay rent every month
 - 1 month if the lease is year-to-year
 - 30 days if you own a mobile home and rent the lot

Notice does not have to be in writing, but it is always better to write the landlord a letter, date the letter, include the date you plan to move and keep a copy of the letter.

Is There a Limit to How Much Rent I Can Be Charged?

No. Unless you live in housing where your rent is based on your income, there is no limit to how much rent your landlord can charge. The only way to control the rent is the lease agreement.

Can My Landlord Charge Fees if I Can't Pay the Rent on Time?

Yes. North Carolina law allows the Landlord to charge up to \$15 or 5% of the rent, whichever is greater. A late fee can only be charged one time for each late rental payment. Late fees may not be deducted for your next rent payment.

Can My Landlord Charge Me a Deposit for Having Pets?

Yes. Your landlord can collect money for a pet deposit if you are going to have a pet living with you. Your landlord does not have to refund the money collected for a pet deposit unless the lease permits it.

Housing Discrimination

North Carolina and Federal laws prohibit discrimination on the basis of race, color, religion, national origin, sex, handicap or family status (protects pregnant women and families with children). In most situations, someone cannot:

- Refuse to sell, rent or lease because of race, color, religion, sex national origin, handicap or family status
- Discriminate when advertising for renters
- Discriminate when providing financing for housing
- Discriminate in the terms and conditions of your lease
- Steer (attempt to sway renters/buyers to look for a home in only one type of neighborhood)
- Blockbust (frighten people into moving out of a neighborhood) due to one of the factors listed above
- Refuse to accommodate the disabled
- Harass you sexually

If you believe that you have been discriminated against, contact a lawyer or call the

**NC Human Relations Commission:
1-919-733-7996**

Orange County residents can file a complaint with the Orange County Human Rights and Relations Commission by calling (919) 732-8181, ext. 2250. Residents from other counties should call the number above.

Public Housing

If you live in public or other federally subsidized housing (your rent is partially or totally paid for by the federal government), you have additional rights and responsibilities under the law:

- Unless you receive a certificate or voucher, your lease can only be terminated for “good cause” — something that the court considers is reasonable.
- You may be evicted for the criminal behavior of any household members or guests only if you are at fault as well. Evictions for criminal or drug activity can happen very quickly, so it is important to contact an attorney as soon as you receive eviction papers.
- If you receive Section 8 assistance, your subsidy may only be terminated if you have a pre-termination hearing with the opportunity to ask questions of the housing authority.

Remember:

If you need legal advice regarding a problem you are having with public or subsidized housing, please give Legal Aid of North Carolina a call:

1-800-951-2257

How to Get Your Landlord to Make Repairs

① **Mail your landlord a letter:**

- Include the date and your address
- State which repairs that need to be made
- Ask your landlord to make the repairs
- Give your landlord a reasonable number of days to respond
- Keep a copy of the letter
- Send the letter by certified mail—this shows that your landlord received the letter

If you have an emergency, call your landlord, ask him or her to fix the problem and tell them that it is an emergency.

② **You can offer to fix the problem yourself and pay less rent if your landlord agrees:**

- Any agreement must be in writing
- Include the date
- Try to get someone else to “witness” the agreement—state in writing that they saw both you and your landlord sign the agreement
- Keep a copy of the agreement
- Keep all receipts and records

If you do not have a written agreement, you cannot pay less rent!

If it is an emergency and you cannot wait for the landlord to approve an agreement, write the landlord and call him or her—tell him or her that you will make the repairs yourself and deduct the amount from the rent. Remember, the landlord may evict if you do not pay all of the rent!

③ **If you think the problems violate health or building codes, contact the health department or building inspector. Remember, if your house is condemned, you may have to move.**

④ **Talk with other tenants in your building. You may have more power to get repairs done if you ask as a group.**

⑤ **If the repairs are not done in a reasonable time, you may be able to file a lawsuit against the landlord. If the court decides in your favor, it can reduce the amount of rent you owe until the repairs are made, and/or award you money damages.**

⑥ **Remember: you have no right to withhold rent unless a judge orders otherwise, even if the landlord has failed to keep his or her obligations. If you hold back the rent, you risk being evicted for non-payment of rent. Contact an attorney first.**

How to Appeal From the Magistrate's Judgment

Steps to an Appeal

① Go immediately to the Clerk of Court and ask for 3 documents:

- Notice of Appeal
- Bond to Stay Execution of the Appeal
- Petition to Sue as an Indigent

② Fill out and file these forms within 10 days

An Explanation of the Appeal Papers

Notice of Appeal

You must fill out and “serve” (give) a copy of this form on your landlord (or whoever signed the complaint). This form gives your landlord notice that you have filed an appeal. You may hand-deliver or mail a copy of the form to your landlord.

Petition to Sue /Appeal as an Indigent

This form allows you to avoid paying a fee when you file your appeal. If you receive, WorkFirst, food stamps or Supplemental Security Income or are represented by a legal services attorney, you automatically qualify as an “Indigent.” If not, you will want to ask for the “**Affidavit of Indigency**” form and fill it out. You will need to have the form notarized (ask a bank official or clerk of court for help.)

Bond to Stay Execution of the Appeal

When you file this form, you agree to:

- **Pay all your future rent to the Clerk of Court instead of your landlord.** You must pay the rent to the clerk no later than 4 days after it is due. If you fail to pay the rent, the clerk can dismiss your appeal.
- **Pay any “undisputed rent” as ordered by the Magistrate.** You may not have to pay this if you file a Petition to Sue/ Appeal as an Indigent at the same time.
- **Pay any “prorated rent” if you were sued for non-payment of rent.** If the Magistrate’s judgment was entered when there were more than 5 days before your next rent payment will be due, you must pay the “prorated” rent—the portion of rent due for the remainder of the month after the Magistrate’s judgment.

Security Deposits

Your Landlord can and probably will require you to pay a security deposit. This deposit is supposed to protect the landlord if you do not take good care of the property while you are there.

The deposit cannot exceed:

- 2 weeks rent if you are paying by the week
- 1 1/2 month’s rent if you are paying by the month
- 2 months rent if you are paying rent for longer than a month

What happens to my deposit?

Your landlord must keep your deposit in a trust account in a North Carolina bank or savings institution, or furnish a bond from a North Carolina insurance company. This information must be given to you within 30 days of paying the deposit.

Can I get my deposit back?

When you move out, the deposit must be refunded to you after 30 days, if you have kept your part of the agreement. If your landlord keeps any of the money, he or she must give you an explanation of why he or she kept the money. **Your landlord can only keep the deposit money for:**

- Any rent you owe
- Damage to the property (more than normal wear and tear);
- Costs of finding a new tenant if you leave before your lease ends;
- Any court costs, if you have been evicted in court

How can I make sure I get my deposit back?

- When you move in, walk through the house with the landlord and write down anything that is damaged. Keep a copy of this list
- Before you move out, clean your home and do another inspection. Ask your landlord or another witness to go with you and take pictures
- When you move, give your landlord your new address and ask for your deposit

What happens if my landlord doesn’t give my money back?

If your landlord doesn’t return your money, keeps part and doesn’t tell you why, or keeps more than you think is fair, you should:

- Write your landlord; date the letter and keep a copy; OR
- Go see your landlord. Take a friend with you as a witness.

If none of this works, you can file a small claims action against the landlord to get your money. Call your local legal services office for information.

What to Do If You Are Getting Evicted

A Tenant cannot be evicted without the landlord getting a court order. The process by which the landlord gets this order is called “Summary Ejectment.”

How does Summary Ejectment

- ① **The landlord files a Summary Ejectment Complaint after notice to you.**
- ② **The tenant will receive a “Summons” from the court.** The summons will tell you when/where you should go to court. A copy of the Complaint comes with the summons. If you receive a summons, you should **contact an attorney immediately.**
- ③ **A hearing will be held.** The hearing is usually held before a magistrate, who will decide the case. Each side will be allowed to speak. The landlord can ask that you be evicted, ask for money, or both.
- ④ **The magistrate will make a decision.** If the magistrate agrees with the landlord that you should be evicted, he or she will enter a “judgment for possession.” The magistrate may also order you to pay rent owed and damages up to \$4,000. This order is called a “money judgment.”
- ⑤ **You have 10 days to appeal the magistrate’s decision.** You must file the appeal in writing—you can ask the clerk for a form. **If you decide to appeal, the landlord cannot evict you if you follow certain steps—see pages 15-16.**

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Reasons Your Landlord Can Evict You

Non-payment of Rent

The landlord must demand the rent and wait 10 days before filing a complaint against you at the courthouse. To “demand” the rent, the landlord must either ask you for the rent or write you a letter about the rent and explain that you will be evicted unless you pay it.

If you have paid: you should show the magistrate your rent receipts or give other evidence that you have paid during the hearing.

If you have not paid, but you can pay the past due rent, try to pay the landlord before the hearing. Remember that once the landlord files the eviction papers against you, you must pay court costs as well. You can either send the money by certified mail or get a written receipt from the landlord. You can also offer the magistrate the full rent at the hearing plus court costs and avoid eviction (if non-payment of rent is the only grounds for eviction). You must do this before a judgment is given by the magistrate. As soon as the case is called, you should tell the magistrate you have the rent and court costs as ask for the case to be dismissed.

Lease Termination

If you stay after the rental period ends, either because the written lease ended or your landlord told you to move out, and the landlord

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does not continue to accept your rent, the court may evict you for “holding over.”

The landlord must give you proper notice to move:

- 2 days if you pay rent every week
- 7 days if you pay rent every month
- 1 month if the lease is year-to-year
- 30 days if you own a mobile home and rent the lot

This notice does not have to be in writing. If the landlord can prove that the lease has been terminated, you can be evicted.

Breach of the Lease

Your landlord may try to prove that you broke (“breached”) the lease by causing damage, disturbing the neighbors or other actions. The landlord must prove the case with evidence. You will have a chance to present witnesses and evidence to show that the landlord’s claims are false or are not a serious violation of the lease agreement. The landlord does not have to give you notice before starting the eviction process, so long as the landlord is claiming that you breached the lease. However, the landlord must have a certain clause in the lease that allows him or her to evict you before your lease ends. It is called a forfeiture clause. **If you are being evicted for breaching some term of the lease, contact an attorney immediately (or call our office at 1-800-672-5834).**

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Retaliatory Eviction

Your landlord cannot legally evict you for:

- Complaining about bad conditions
- Requesting repairs
- Complaining to a government agency about violation’s of health or safety laws or any other law
- Joining a tenant’s organization
- Trying to get your rights under the lease

Trying to evict you for any of these reasons is called “retaliatory eviction.” If you believe that your landlord is doing this, try to explain to the magistrate why you believe the landlord is trying to evict you. Any evidence you have—pictures, written requests for repairs, will be helpful.

Remember:

If you receive eviction papers, you should contact an attorney immediately. If you live in Alamance, Anson, Caswell, Chatham, Moore, Orange or Richmond counties, you can call Legal Aid of North Carolina at:

1-800-951-2257

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