

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1054

Short Title: Advance Rental Payments.

(Public)

Sponsors: Senator Sherron.

Referred to: Commerce

May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT CERTAIN ADVANCE RENTAL PAYMENTS BE DEPOSITED IN TRUST ACCOUNTS AND THAT THE LANDLORD DELIVER PERIODIC ACCOUNTINGS TO THE TENANT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 42 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7.

"ADVANCE RENTAL PAYMENTS ACT.

"§ 42-61. Advance payments from tenants.

A landlord or the landlord's agent, with the written agreement of the tenant of a residential dwelling unit, may require the tenant to pay all or part of any required rent or security deposit in advance of the commencement of the tenancy. In the event the landlord or the landlord's agent requires the tenant to make any payment of monies, other than a security deposit, more than 30 days prior to the commencement of the tenancy, whether the payment is denominated as rent or otherwise, the landlord or the landlord's agent shall deposit the money in a trust account with a licensed and insured bank, credit union, or savings institution located in North Carolina not later than three banking days following receipt. Advance payments deposited in a trust account shall not earn interest

1 unless the landlord and tenant first agree in writing that the funds be deposited in an
2 interest bearing account and provide for the disbursement of the interest accrued.

3 **"§ 42-62. Use of advance payments.**

4 All advance payments other than tenant security deposits shall be maintained in a trust
5 account and may not be disbursed from that trust account until:

- 6 (1) The commencement of the tenancy, at which time the funds may be
7 disbursed in accordance with the lease or agreement of the landlord and
8 tenant;
9 (2) The landlord or the landlord's agent refunds the money to the tenant; or
10 (3) The tenant commits a material anticipatory breach, in which event the
11 landlord may retain an amount sufficient to defray the actual damages
12 suffered by the landlord as a result of the breach.

13 If at the time established for the commencement of the tenancy the landlord is unable
14 to provide the leased premises to the tenant in a fit and habitable condition, all advance
15 payments shall be refunded to the tenant.

16 **"§ 42-63. Advance payments of security deposits.**

17 Advance payments made as all or a portion of a tenant security deposit shall be
18 deposited, safeguarded, and disbursed by the landlord or the landlord's agent in
19 compliance with the provisions of Article 6 of this Chapter. Any payment of funds made
20 in advance, although not denominated as a security deposit, but required to secure the
21 landlord against damage to the leased premises or the tenant's failure to pay rent or fulfill
22 the rental term, shall nevertheless be treated as a security deposit.

23 **"§ 42-64. Duty to account.**

24 The landlord or the landlord's agent shall, within 30 days following receipt of any
25 advance payment, notify the tenant in writing of the name and address of the bank, credit
26 union, or savings institution where the payment has been deposited unless the tenancy has
27 already commenced. If the tenancy has not already commenced, the landlord or the
28 landlord's agent shall provide the tenant with an accounting of the funds in trust within
29 180 days following receipt of any advance payment. Thereafter, the landlord or the
30 landlord's agent shall provide the tenant with an accounting of the funds every 90 days
31 until the tenancy commences. All accountings required of the landlord shall be made in
32 writing and delivered to the tenant in person or by mail.

33 **"§ 42-65. Transfer of dwelling unit.**

34 If the landlord's interest in the dwelling unit is terminated for any reason while any
35 advance payment is being held in a trust account, the landlord shall either return the funds
36 to the tenant or transfer the funds to the landlord's successor in interest and notify the
37 tenant by mail of that transfer and of the transferee's name and address. The successor to
38 the landlord's interest shall, upon receiving any advance tenant payment, hold the same in
39 compliance with the requirements of this Article.

40 **"§ 42-66. Remedies.**

41 If the landlord or the landlord's agent fails to deposit and maintain a tenant's advance
42 payment in a trust account or provide the tenant with the accountings required by this
43 Article, the tenant may institute a civil action to compel compliance and in addition to

1 any other remedies available at law or equity, to recover damages resulting from the
2 landlord's failure. Upon a finding by the court that noncompliance by the landlord or the
3 landlord's agent was willful, the court may, in its discretion, award a reasonable attorney's
4 fee to the licensed attorney representing the tenant.

5 **"§ 42-67. Application of Article.**

6 The provisions of this Article apply to all persons, firms, corporations, or other
7 business associations engaging in the renting or managing of a residential dwelling unit
8 or units, excluding single rooms, on a weekly, monthly, or annual basis."

9 Sec. 2. This act is effective upon ratification, and applies to rental agreements
10 entered on or after that date.