



How can I evict a tenant for failing to pay late fees?

By John Wait, General Counsel

QUESTION: A tenant in one of the properties I manage is frequently late with rent, but he has always paid the late fee in the past. Last month, we added the late fee to the tenant's account after a late payment, but the tenant refused to pay it. The tenant has just made a payment for this month and labeled it for rent, but now there are two late fees on their account. Can we apply the tenant's payment to the late fees? If so, and the tenant is short on rent, can we start the eviction process?

ANSWER: The answers to your questions are "no" and "yes" if your lease with the tenant is on Form 410-T (Residential Rental Contract).

As to your first question, section 42-46 of North Carolina's General Statutes talks about late fees. It makes clear that a late fee in a lease "may be imposed only one time for each late rental payment. A late fee for a specific late rental payment *may not be deducted* from a subsequent rental payment so as to cause the subsequent rental payment to be in default." (Emphasis added). This means if a tenant has made a payment for rent, then it may not be used to pay late fees that are already on their account if it will cause a default.

As to your second question, it is a common misunderstanding that a landlord must give a ten-day notice when a tenant is late on rent and the landlord wishes to evict. The ten-day notice statutes, G.S. 42-3 and G.S. 42-33, only apply where the parties' lease does not cover the issue of forfeiture and re-entry by the landlord when rent is not paid on time. Where the landlord and tenant have executed a lease that covers these issues, like Form 410-T, a ten-day notice is not required and should not be alleged in a small claims complaint. *See Charlotte Office Tower Assocs. v. Carolina SNS Corp.*, 89 N.C. App. 697, 366 S.E.2d 905 (1988). The lease should be followed instead.

Form 410-T states that when rent is not paid on the first of the month, then the tenant is in breach on the second day of the month. This means that even before the late fee kicks in, a landlord can demand possession of the property and seek an eviction. Form 427-T can be used to demand possession. In your case, since the tenant has made yet another late rental payment, you can demand possession and seek an eviction now.

If you wish to pursue an eviction just for the late fees, then you may do so. Send the tenant a written notice that they are in breach of the lease by failing to pay the late fees, and if the tenant does not cure the default within five days, then you may demand possession on the sixth day and begin the eviction process.

NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. If you or a client requires legal advice, the services of a private attorney should be sought. Always consult your broker-in-charge when faced with a question relating to the practice of real estate brokerage.

© Copyright 2025. NCREALTORS®. All rights reserved. No reproduction of any part may be made without the prior written consent of the copyright holder. Any unauthorized reproduction, use, disclosure or distribution is strictly prohibited.