

The 'Rents: North Carolina DOT Is Looking to Charge Rents, While Residential Tenants Are Denied Class Certification to Collect Rent Deposits

Article By:

Michael C. Thelen

We've been quiet these past few weeks but the world has not been. We'd like to talk today about two entirely unrelated but fascinatingly fun topics: (1) the North Carolina Department of Transportation's ("NCDOT") idea to create or increase certain fees and charge rents for use of its right-of-ways, which abound throughout the Old North State and (2) an attempted creation of a plaintiff class in a lawsuit against "various real estate entities which provide rental housing, largely to a college student population" over alleged violations of the North Carolina Tenant Security Deposit Act.

NCDOT Fee Increases and Rents

We'll start with the NCDOT. Essentially, we're seeing reports in Raleigh that the Department is looking for different and creative ways to further "defray operating costs". [According to The News and Observer](#), while North Carolinians and drivers therethrough pay "one of the nation's highest gasoline taxes to take care of roads and bridges", those tax dollars are also a "subsidy" to the developers, public utilities, outdoor advertisers (um, "billboarders"?) and other businesses that pay "little or nothing" for essential services -- like field inspections, engineer reviews, permit review and issuance, oversize and overweight transportation regulation. NCDOT is looking to "shift the burden to businesses" employing these services.

In that vein, NCDOT is looking to increase fees for certain services -- driveway permits (\$50 to \$200), subdivision plat and plan review and inspection (free to no longer free), traffic impact analysis (free to volume-based payment plan), outdoor advertising permits (\$120 new or 6\$60 renewal to \$240 new or \$120 renewal), encroachments review and inspection (free to no longer free).

[Also according to reports](#), NCDOT is also looking at the possibility of charging rent for certain uses of its right-of-ways, which are vast: higher fees for logo signs at closed access road exits, new lease fees for public utilities, and special leases for cellphone micro-towers.

Government is getting squeezed, and necessity is the mother of invention. We'll see if these inventions take flight and, if so, how successfully.

Residential Tenancy Class Certification Over Rent Deposits

In a quietly-decided case out of the North Carolina Court of Appeals, a panel affirmed the denial of class certification to a group of residential tenants over alleged violations of the North Carolina Tenant Security Deposit Act. We're talking about [*Neil v. Kuester Real Estate Services, Inc., No. COA14-513 \(November 4, 2014\)*](#).

Essentially, the proposed class of residential tenants argued that "common questions of law and fact exist[ing] to all members" of the proposed class, including the remedy to all members -- a full refund of rental deposits -- "predominate over any questions that affect only individual" tenants.

The Court of Appeals, however, determined otherwise. Noting that the trial court must have "abused its discretion" to warrant reversal on the denial of class certification, the Court of Appeals set the standard for certifying a class action:

Class actions should be permitted where they are likely to serve useful purposes such as preventing a multiplicity of suits or inconsistent results. The usefulness of the class action device must be balanced, however, against inefficiency or other drawbacks. The trial court has broad discretion in this regard and is not limited to consideration of matters expressly set forth in Rule 23 or in [our case law].

The Court of Appeals concluded that the plaintiffs are not qualified for class certification because they "would not be entitled to an automatic full refund, but rather, would only be entitled to a refund of any amounts withheld from their security deposits for a use not permitted by the [North Carolina Tenant Security Deposit Act]." In other words, the Court wisely reasoned that not all withholding of deposit dollars is violative of the Act, and to hold otherwise would deprive defendants of a full and fair hearing to which it is entitled. The Court continued: "Determination of the appropriate amount of each Plaintiff's refund would require individual trials, thus rendering class action an inferior method for the adjudication of Plaintiffs' claims."

Class certification is oftentimes seen as a practically dispositive issue, in that it will not put a legal end to a lawsuit but it will usually put a practical end to a lawsuit. The conventional wisdom among those seeking class certification is that if the seekers can all join together or join "the others" together in one suit, with the economies of scale, we stand an easier road to success.

Is this a significant loss for the residential tenant protections created by the North Carolina Tenant Security Deposit Act? Probably not. But it is worth thinking about.



"I don't know what you did to that carpet, but it cost one month, er, \$4750.00, to repair."

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