

**NORTH CAROLINA PRIVATE LANDLORD/TENANT
LAW OVERVIEW**
(Revised August 2009)

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NORTH CAROLINA LANDLORD/TENANT LAW OVERVIEW

I. **BRINGING THE SUMMARY EJECTMENT ACTION**

- A. **Small Claims Action**, (G.S. 7A-210 et seq.)
1. Summons (AOC-CVM-100)
 2. Complaint (AOC-CVM-201)
 3. Amount in controversy not to exceed \$5,000
 4. Failure to file counterclaim not a bar to filing in separate action (G.S. 7A- 219)
- B. **Landlord-tenant statutes**, (Chapter 42 of NC Gen. Stats.)
1. Summary Ejectment, G.S. 42-26 et seq.
 2. Summons Issues; Hearing within 7 working days, G.S. 42-28
- C. **Service of Process**, (G.S. 42-29)
1. North Carolina Rules of Civil Procedure, Rule 4(j); G.S. 7A-217
 2. Tacking and mailing (Magistrate may only award possession, not a money judgment if tenant fails to appear)(60 Op.Atty.Gen. Hix, 2/26/92)

II. **GROUND FOR TERMINATION OF TENANCY (EVICTION)**

- A. **Nonpayment of Rent**, (G.S. 42-3)
1. Where written lease establishes a monthly rent that includes water and sewer services under G.S. 62-110(g), the terms “rent” and “rental payment” mean base rent only.
 2. Requirements
 - a) Landlord must make a clear, unequivocal demand for rent and
 - b) File 10 days or more after demand.
 3. Defenses
 - a) Tender of rent due plus costs prior to entry of final judgment mandates dismissal per G.S. 42-33. Tender is not available where lessee waives notice in a written lease or

where the lease provides automatic forfeiture for nonpayment of rent.

- b) Tenant is current on rent
- c) Retaliatory eviction (See IV Infra)
- d) Counterclaims

(1) G.S. 42-42 -Breach of Implied Warranty of Habitability - (See III Infra)

4. Cases

- a) Tucker v. Arrowood, 211 N.C. 118, 189 S.E. 180 (1937) (waiver of notice by lessee)
- b) Coleman v. Carolina Theaters, 195 N.C. 607, 143 S.E. 7 (1928) (tender during hearing cures default)
- c) Ryan v. Reynolds, 190 N.C. 563, 130 S.E. 156 (1925) (tender at trial de novo, prior to final judgment)
- d) [Note: Laing v. Lewis, 515 S.E.2d 40 (1999) (landlord seeking possession based on tenant's failure to pay rent is not entitled to default judgment because tenant failed to file bond with answer)]
- e) Snipes v. Snipes, 55 N.C. App. 498, 286 S.E.2d 591, aff'd, 306 N.C. 373, 293 S.E.2d 187 (1982) (demand for all rent and 10 day wait)

B. **Holdover**, (G.S. 42-14, 42-14.3 & 42-26)

1. Requirements

- a) Duration of Notice to Quit must be:
 - (1) one month or more for year to year tenancy;
 - (2) seven days or more for a month-to-month tenancy; or
 - (3) two days or more for a week-to-week tenancy and
- b) Notice must be given in current term and
- c) Notice period must end with term and
- d) Notice may be oral or written

- e) If lease sets out notice requirements, then notice must strictly comply with lease provisions
- f) Notice to quit 60 days or more in advance for a manufactured home owner who is renting the lot
- g) Notice of at least 180 days of intent to convert a manufactured home community to another use. (G.S. 42-14.3)

2. Defenses

- a) Acceptance of rent by landlord creates new tenancy (novation)
- b) Improper notice to quit
- c) Retaliatory Eviction per G.S. 42-37.1 (See IV. *Infra*)
- d) LL's actions based substantially on tenant's or household member's status as a victim of domestic violence, sexual assault or stalking See III. F. *Infra*.

3. Cases

- a) Kearney v. Hare, 265 N.C. 570, 144 S.E.2d 636 (1965) (creation of new tenancy after notice period)
- b) Stafford v. Yale, 228 N.C. 220, 44 S.E.2d 872 (1947) (notice must end with term)
- c) Simmons v. Jarman, 122 N.C. 195, 29 S.E. 332 (1898) (notice must be in and end with current term)
- d) Stanley v. Harvey, 90 N.C. App. 535, 369 S.E.2d 382 (1988) (notice to terminate lease must strictly comply with lease)
- e) Goler Metropolitan Apartments Inc. v. Williams, 43 N.C. App. 648, 260 S.E.2d 146 (1979) (insufficient notice to terminate, so automatic renewal of lease)
- f) Timber Ridge v. Caldwell, 672 S.E.2d 735 (N.C. App. 2009); Lincoln Terrace Associates, Ltd. V. Kelly, 179 N.C. App. 621, 635 S.E. 2d 434 (2006)(affirming and applying Goler & Stanley)

C. **Breach of Lease**, (G.S. 42-26)

1. An arrearage in additional rent owed by a tenant for water and sewer services pursuant to G.S. 62-100(g) shall not be used as a basis for termination of a lease. Any partial payment of rent shall be applied first to the base rent.

2. Requirements
 - a) Written lease
 - b) Provision in lease specifying re-entry by landlord upon breach
 - c) Clear proof of breach by tenant
 - d) LL must exercise right of re-entry promptly
 - e) Result of enforcing the forfeiture must not be unconscionable

3. Defenses
 - a) No breach by tenant
 - b) Re-entry not specified for breach
 - c) Waiver by landlord accepting rent after knowledge of breach
 - (1) G.S. 157-29 - The defense of waiver is not available where a public housing authority is the landlord unless the authority fails to either notify a tenant that a lease violation has occurred or exercises one of its remedies for such violation within 120 days of learning of the breach.
 - (2) G.S. 42-73 - The defense of waiver is not available in any eviction action brought by any landlord under Article 7 of Chapter 42 involving “criminal activity” as defined in G.S. 42-59(2). (See II.D Infra).
 - d) Retaliatory Eviction per G.S. 42-37.1 (See IV. Infra)

- e) LL's actions based substantially on tenant's or household member's status as a victim of domestic violence, sexual assault or stalking (See III. F. Infra)
4. Cases
- a) Morris v. Austraw, 269 N.C. 218, 152 S.E.2d 155 (1967) (sets out burden for LL to prevail in a breach of lease case)
 - b) Winder v. Martin, 183 N.C. 410, 111 S.E. 708 (1922) (waiver by acceptance of rent)
 - c) Charlotte Housing Authority v. Fleming, 123 N.C. App. 511, 473 S.E.2d 373 (1996) (reaffirms Morris v. Austraw; CHA failed to prove individual involved in criminal activity was a guest of the tenant)
 - d) Stanley v. Harvey, 90 N.C. App. 535, 369 S.E.2d 382 (1988) (breach of lease cannot be basis of summary ejection unless lease itself provides for termination by such breach or reserves right of reentry for such breach)
 - e) Community Housing Alternatives v. Latta, 87 N.C. App. 616, 362 S.E.2d 1 (1987) (affirmed the holding of Winder)
 - f) Office Enterprises, Inc. v. Pappas, 19 N.C. App. 725, 200 S.E.2d 205 (1973) (where L's attorney simply held T's rent check, but did not cash it, court deemed it accepted, so breach was waived)
 - g) Duran v. Housing Authority of Denver, 761 P.2d 180 (Colo. 1988) (LL waived right to terminate lease based on first notice when second notice sent)
 - h) Where the L accepts only the HUD subsidy and no direct payment of rent from the T, the authorities are split as to whether the subsidy is "rent" from the T sufficient to constitute waiver:
 - (1) Greenwich Gardens Associates v. Pitt, 126 Misc.2d 947, 484 N.Y.S. 2d 439 (Dist. Ct. 1984) (subsidy was deemed "rent")
 - (2) Midland Management Company v. Helgason, 158 Ill. 2d 98, 630 N.E.2d 836 (1994) (subsidy was not "rent," so no waiver)

- i) Long Drive Apartments v. Parker, 421 S.E.2d 631 (N.C. App. 1992) (good cause and material noncompliance with lease may include tenants' failure to maintain electric service because of potential risks of frozen pipes, fire, and uninsurability).

D. **“Expedited Eviction of Drug Traffickers and Other Criminals”**, (G.S. 42-59 et. seq., Article 7 of Chapter 42).

- 1. Nature of Actions and Jurisdiction, (G.S. 42-60) The eviction action is a civil action which can be filed in Small Claims Court or District Court.
- 2. Requirements for complete eviction, (G.S. 42-63(a))
 - a) Criminal activity (See G.S. 42-59(2))(definition is very limited) has occurred on or within the individual rental unit leased to the tenant; or
 - b) The individual rental unit was used in any way in furtherance of or to promote criminal activity; or
 - c) The tenant, any member of the tenant's household, or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises; or
 - d) The tenant has given permission to or invited a person to return or reenter any portion of the entire premises, knowing that the person has been removed and barred from the entire premises pursuant to Article 7 of Chapter 42 or the reasonable rules and regulations of a publicly assisted landlord; or
 - e) The tenant has failed to notify law enforcement or the landlord immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit pursuant to Article 7 of Chapter 42 has returned to or reentered the tenant's individual rental unit.
- 3. Affirmative Defense or Exemption to a Complete Eviction, (G.S. 42-64)
 - a) Affirmative Defense - Tenant was not involved in the criminal activity, and
 - (1) did not know or have reason to know that criminal activity was occurring or would likely occur; or

- (2) did everything that could be reasonably expected to prevent the criminal activity.
- b) Tenant must prove the affirmative defense set out in II.D.3(a) above in a subsequent eviction action by clear and convincing evidence.
- c) Exemption - (G.S. 42-64(c)) The Court has the authority to not evict if it is clearly convinced that the eviction would be a serious injustice which outweighs the rights, safety and health of the other tenants.
- d) Partial Evictions - (G.S. 42-63) Court can order the removal of certain persons other than the tenant, if an affirmative defense under G.S. 42-64 is proven.
- e) Conditional Eviction Orders - (G.S. 42-63) Court can issue conditional eviction orders where a tenant is allowed to stay, but if the tenant allows a person barred by Article 7 of Ch. 42 to return, then his/her tenancy will be terminated.

4. Enforcement of Eviction and Removal Orders, (G.S. 42-66)

Where the court has allowed a tenant to stay, conditioned on the tenant not allowing the evicted household member to return, and the tenant violates the order, the landlord can file a motion to evict and have it heard within 15 days of the service of the motion.

5. Expedited Proceedings, (G.S. 42-68)

- a) An eviction case must be set for trial within the first term of court falling 30 days after service of the complaint or notice of appeal from Small Claims Court. However, where a defendant files a counterclaim, the court shall reset trial for the first term of court after 30 days from the defendant's service of the counterclaim.
- b) Continuances of hearings shall not be granted for these cases except for compelling and extraordinary reasons, including as required to complete permitted discovery, to have a plaintiff reply to a counterclaim or on application of the district attorney for good cause shown.
- c) The parties must file their responsive pleadings (answer and counterclaims and reply to counterclaims) within 20

days of the pleadings calling for a response. Extensions of time to file these pleadings will not be allowed, except for compelling or extraordinary reasons.

- d) Any party (including tenants), who fails to file a responsive pleading in District Court within the 20 day time period, shall be subject to default.

6. Discovery, (G.S. 42-70)

- a) Discovery is permitted in cases filed in or appealed to District Court.
- b) The defendant (tenant) must initiate discovery during the time to file an answer and counterclaim.
- c) The plaintiff (landlord) must initiate discovery within 20 days of services of an answer or counterclaim filed by a defendant.
- d) Responses to discovery requests must be completed within 20 days.

7. No Waiver Defense, (G.S. 42-73)

The defense of waiver is not available in any eviction action brought by any landlord under Article 7 of Chapter 42 involving “criminal activity” as defined in G.S. 42-59(2)

III. AFFIRMATIVE ACTIONS OR COUNTERCLAIMS BY TENANTS

A. **Breach of Obligations by Landlord**, (G.S. 42-42)

1. Requirements

- a) Proof of landlord’s failure to
 - (1) Comply with building and housing codes; or
 - (2) Maintain the premises in a fit and habitable condition; or
 - (3) Keep all common areas in a safe condition; or

- (4) Maintain all facilities and appliances supplied or required to be supplied in a good and safe working order: or
- (5) Provide and maintain operable smoke detectors: or
- (6) Provide and maintain operable carbon monoxide detectors (effective Jan. 1, 2010); or
- (7) Repair or remedy 12 “imminently dangerous conditions” (See G.S. 42-42(a)(8)(effective October 1, 2009)

b) Notice to Landlord

- (1) Must be written for plumbing/electrical problems, except in emergencies or when repairs are necessary to put premises in a fit and habitable condition;
- (2) May be oral for most defects, though written notice is helpful;
- (3) Not necessary for defects existing at the time lease term began;
- (4) Written notice required for defects in smoke detectors & carbon monoxide detectors.

c) Compliance by tenant with G.S. 42-43 and rental obligation

2. Waiver of tenant’s rights under G.S. 42-42 is not allowed per G.S. 42-42(b).

3. Relief available

- a) Actual damages equaling the difference between the fair rental value of the premises free of defects and the fair rental value of the premises in their defective condition (Damages for rent abatement cannot exceed the total amount of rent paid by the tenant)
- b) Consequential damages
- c) Prospective rent abatement (See G.S. 42-41)
- d) Treble damages and attorney’s fees (G.S. 75-1.1)

4. Penalties (G.S. 42-44 (a1) & (a2))
 - a) Landlord liable for an “infraction” and subject to a fine of not more than \$250 for each violation if she/he fails to provide, install, replace, or repair a smoke detector or carbon monoxide detector under G.S. 42-42(a)(5) within 30 days of receiving written notice.
 - b) Tenant must reimburse the landlord the reasonable and actual cost for repairing or replacing a smoke detector or carbon monoxide detector within 30 days of receiving written notice if tenant disabled or damaged the smoke detector. Tenant is responsible for an “infraction” and subject to a fine of not more than \$100 for each violation if she/he fails to make reimbursement within 30 days.
5. May be asserted against owners or rental agents having actual or apparent authority to comply with G.S. 42-42.
6. May be asserted as defenses or counter claims as well and may seek recoupment or setoff. (G.S. 42-40(1))
7. Tenant may not unilaterally withhold rent prior to judicial determination that she/he may do so. (G.S. 42-44(c))
8. Cases
 - a) Von Pettis Realty, Inc. v. McKoy, 135 N.C. App. 206, 519 S.E.2d 546 (1999); disc. rev. den. 351 N.C. 371, 542 S.E. 2d 661 (2001) (Proper measure of damages in rent abatement action based on breach of the implied warranty of habitability is difference between fair rental value in a warranted condition and the fair rental value in its unwarranted condition; however, damages cannot exceed total amount of rent paid by the tenant...also, tenant is entitled to any “special and consequential damages alleged and proved”)
 - c) Creekside Apartments v. Poteat, 116 N.C. App. 26, 446 S.E.2d 826, disc. review denied, 338 N.C. 308, 451 S.E.2d 632 (1994) (Tenants were entitled to rent abatement for period during which rental premises were unfit; Landlord’s difficulty in operating apartment complex does not excuse breach of G.S. 42-42(a); Judge can not deny rent abatement based on Landlords’ reasonable efforts)

- d) Foy v. Spinks, 105 N.C. App. 534, 414 S.E.2d 87 (1992) (Reaffirms holdings of Surratt & Miller and contains language re: jury instructions)
- e) Baker v. Rushing, 104 N.C. App. 240, 409 S.E.2d 108 (1991) (Agent for LL could be held liable for breach)
- f) Allen v. Simmons, 99 N.C. App. 636, 394 S.E.2d 478 (1990) (Affirmed Miller, *supra* and Surratt, *supra*)
- g) Surratt v. Newton, 99 N.C. App. 396, 393 S.E.2d 554 (1990) (Rental agent proper party; No written notice of defects which make premises unfit and uninhabitable necessary; In action for rent abatement, damages include only those amounts actually paid)
- h) Mendenhall-Moore Realtors v. Sedoris, 89 N.C. App. 486, 366 S.E.2d 534 (1988) (Ch 42 does not, *per se*, require the provision of a hot water heater, but LL obligated to provide operable hot water heater if agreed to do so, see G.S. 42-42(a)(4))
- i) Cotton v. Stanley, 86 N.C. App. 534, 358 S.E.2d 692, disc. review denied, 321 N.C. 296, 362 S.E.2d 779 (1987) (Expert testimony not required; fair rental value of property may be determined by fact finder from evidence of the dilapidated condition of the premises)
- j) Miller v. C.W. Myers Trading Post, Inc., 85 N.C. App. 362, 355 S.E.2d 189 (1987) (Measure of damages is the difference between the fair rental value if as warranted and fair rental value in unfit condition)
- k) Jackson v. Housing Authority of City of High Point, 73 N.C. App. 363, 326 S.E.2d 295 (1985) (discussion of obligation to repair in wrongful death framework)
- l) Brooks v. Francis, 57 N.C. App. 556, 291 S.E.2d 889 (1982) (breach of G.S. 42-42 as evidence of negligence)
- m) Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970)

8. Law Review Articles

- a) Who is a Tenant? The Correct Definition of the Status in North Carolina, 21 N.C. Cent. L.J. 79 (1995)
- b) An Update on Contract Damages when the Landlord Breaches the Implied Warranty of Habitability: Surratt v. Newton and Allen v. Simmons, 69 N.C. L. Rev. 1699 (1991)
- c) Miller v. C.W. Myers Trading Post: N.C. Adopts Expansive Tenant Remedies for Violations of the Implied Warranty of Habitability, 66 N.C. L. Rev. 1276 (1988)
- d) North Carolina's Residential Rental Agreements Act: New Developments for Contract and Tort Liability in Landlord-Tenant Relations, 56 N.C. L. Rev. 785 (1978)

B. Wrongful Eviction

- 1. Any eviction not in accordance with Chapter 42, Article 3 or Article 7. (See G.S. 42-25.6)
- 2. Recovery in an action brought under G. S. 42-25.6 is limited to actual damages and costs. (See G.S. 42-25.9)
- 3. Alternative remedies of trespass, conversion, and unfair trade practices including treble damages, may also be available. (See G.S. 42-25.9(c))
- 4. Self help eviction where “residential tenancies” are involved are prohibited. (See G.S. 42-25.6)
- 5. Transient occupancy in a hotel, motel or similar lodging subject to regulation by Commission for Health Services is not protected. (See G.S. 42-39(a))
- 6. Cases
 - a) Stanley v. Moore, 339 N.C. 717, 454 S.E.2d 225 (1995) (Tenants can recover punitive or treble damages for wrongful evictions. Overrules holding in Dobbins that tenant limited to actual damages.)
 - b) Baker v. Rushing, 104 N.C. App. 240, 409 S.E.2d 108 (1991) (Even though building is called a ‘hotel’ and residents called “guest,” residents can be protected from self help evictions depending on actual nature of tenancy.)

See When a Hotel is Your Home, Is There Protection?, 15 Campbell L. Rev. 295 (1993.)

- c) Dobbins v. Paul, 71 N.C. App. 113, 321 S.E.2d 537 (1984)
- d) Spinks v. Taylor, 303 N.C. 256, 278 S.E.2d 501 (1981)
(landlord re-entry prior to enactment of Chapter 42, Article 2A)

C. **Relief available if eviction later reversed**

- 1. G.S. 42-35 - Restore Tenant to Possession
- 2. G.S. 42-36 - Tenant may recover damages for removal

D. **Tenant Security Deposit Act**, (G.S. 42-50 et seq.)

- 1. Requirements
 - a) T has vacated for 30 days or more and
 - b) L has not returned or accounted for the security deposit or
 - c) L has made improper deduction from the deposit
 - e) If L's extent of claim against security deposit cannot be determined within 30 days after delivery of possession, L shall provide interim accounting and shall provide final accounting within 60 days after delivery of possession.
(effective October 1, 2009)
- 2. Relief Available
 - a) accounting of funds
 - b) recovery of balance of deposit
 - c) resulting damages
 - d) attorney's fees
- 3. Defenses
 - a) LL applied the funds properly and
 - b) held the balance for 6 months if T's address was unknown or

- c) mailed the tenant an accounting
- 4. No cases have construed this Act to-date

E. **Personal Injuries**

- 1. Negligence in maintaining safe conditions in common areas
 - a) Conley v. Emerald Isle Realty, Inc., 350 N.C. 293, 513 S.E.2d 556 (1999) (landlords and their agents who lease furnished residences for a short term are absolved from liability for personal injury caused by failure to repair)
 - b) Collingwood v. General Elec. Real Estate Equities, Inc., 89 N.C. App. 656, 366 S.E.2d 901 (1988), rev'd in part, 324 N.C. 63, 376 S.E.2d 425 (1989) (developer's compliance with building code did not preclude liability for fire. RRAA supplements, but does not preempt common law duty of care)
 - c) Allen v. Equity & Investors Management Corp., 56 N.C. App. 706, 289 S.E.2d 623 (1982) (child on bike hit 4- to 6-inch tree stump in common pathway)
 - d) O'Neal v. Kellett, 55 N.C. App. 225, 284 S.E.2d 707 (1981) (fall on unlighted outside common stairs)
 - e) Lenz v. Ridgewood Associates, 55 N.C. App. 115, 284 S.E.2d 702 (1981) (fall on icy sidewalk)
- 2. Negligence in maintaining private areas
 - a) DiOrio v. Penny, 331 N.C. 726, 417 S.E.2d 457 (1992) (L not liable under G.S. 42-42 for injuries sustained by T who slipped on staircase where L had not been notified of defect)
 - b) Bolkhir v. NC State University, 321 N.C. 706, 365 S.E.2d 898 (1988) (L liable when tenant's child pushed out glass panel in storm door and injured himself)
 - c) Mudusar By & Through Baloch v. V.G. Murray & Co., 100 N.C. App. 395, 396 S.E.2d 325 (1990) (L not required, absent some specific agreement or covenant to repair, to install or maintain protective window screens)

- d) Jackson v. Housing Authority of High Point, 73 N.C. App. 363, 326 S.E.2d 295 (1985) (implied warranty or negligence from G.S. 42-42 allowed recovery for wrongful death)
 - e) Starkey v. Cimarron Apts., Inc., 70 N.C. App. 772, 321 S.E.2d 229 (1984)
 - f) Brooks v. Francis, 57 N.C. App. 556, 291 S.E.2d 889 (1982) (G.S. 42-42 did create duty of care but tenant was contributorily negligent by continuing to use step after knowing unsafe)
3. Common Law Duty to warn
- a) Prince v. Wright, 141 N.C. App. 262, 541 S.E.2d 191 (2000) (G.S. 42-42 does not supplant landlord's common law duty to warn tenants of hazardous conditions of which landlord knew or should know)

F. **Protections for Victims of Domestic Violence, Sexual Assault or Stalking**

- 1. "Protected tenant" means a tenant or household member who is a victim of domestic violence under Ch. 50B of the General Statutes or sexual assault or stalking under Ch. 14 of the General Statutes. (G.S. 42-40)
- 2. Nondiscrimination – (G.S. 42-42.2) - L shall not terminate, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate based substantially on (i) the tenant, applicant or a household member's status as a victim of domestic violence, sexual assault or stalking or (ii) the tenant or applicant having terminated a rental agreement under G.S. 42-45.1.
- 3. Changing locks – (G.S. 42-42.3) - L must change locks after oral or written request by a "protected tenant" or tenant may do so if L does not as follows:
 - a) If perpetrator is not a tenant in the same dwelling unit, no documentation required and locks must be changed within 48 hours of notice.
 - b) If perpetrator is a tenant in same dwelling unit, protected tenant must provide L with a copy a court order barring the

perpetrator from the unit and L has 72 hours to change locks.

- c) Once L is provided with court order requiring perpetrator to stay away from the dwelling unit, no duty of L to allow access unless court order allows for access to retrieve personal belongings and no liability of L if follow the law.
 - d) Excluded perpetrator remains liable under the lease for rent or damages to the dwelling unit.
 - e) Protected tenant bears expense of lock change and must provide key to L if change lock themselves.
4. Early Termination of Rental Agreement –(G.S. 42-45.1) Any “protected tenant” may terminate his or her rental agreement by providing L with written notice effective at least 30 days after L’s receipt of the notice.
- a) Notice to the L must be accompanied by either: (i) a copy of a valid protective order, other than an ex parte order; (ii) a criminal order restraining contact with the “protected tenant”; or (iii) a valid “Address Confidentiality Program” card issued pursuant to G.S. 15C-4.
 - b) A victim of domestic violence or sexual assault must also provide the L a copy of a safety plan which recommends relocation provided by a domestic violence or sexual assault program.
 - c) Upon termination of the rental agreement, the “protected tenant” is liable for rent prorated to the effective date of the termination notice.
 - d) Perpetrator excluded from the dwelling unit and any other tenant of the dwelling unit remain liable for rent or damages to the unit.
5. See VIII.C. *Infra* for federal protections for Public Housing, Section 8 Voucher and Section 8 Project Based Housing tenants.

G. **Early Termination of Rental Agreements by Military Personnel** (G.S. 42-45) *Compare with Servicemembers Civil Relief Act, 50 U.S.C. App. 501, et seq.*

- 1. Members of U.S. Armed Forces may terminate their rental agreement by providing the L written notice accompanied by either

a copy of official military orders or written verification signed by their commanding officer if:

- a) required to move more than 50 miles or more from the rental dwelling due to a permanent change of station order; or
- b) prematurely or involuntarily discharged or released from active duty; or

(Notice of lease termination under either “a” or “b” above shall be effective on a date stated in the notice that is at least 30 days after the L’s receipt.

- c) deployed for more than 90 days. Notice of lease termination shall be effective 30 days after the date the next rental payment is due or 45 days after the L’s receipt of the notice, whichever is shorter.
- 2. The T is not liable for any damages or penalties if the rental agreement is terminated 14 or more days prior to occupancy.
 - 3. T is liable for rent due under the rental agreement prorated to the effective date of the termination date.
 - 4. T is liable for liquidated damages, as set out below, if less than 9 months of the tenancy has been completed and the L has suffered actual damages due to loss of tenancy:
 - a) one month’s rent or less if less than 6 months of lease completed.
 - b) ½ month’s rent if at least 6 but less than 9 months of lease completed.

(*BUT see Servicemembers Relief Act, 50 U.S.C. App. 501, et seq. –which does not provide for any liquidated damages*)
 - 5. These provisions may not be waived or modified by the parties.

IV. RETALIATORY EVICTION (G.S. 42-37.1)

- A. Applies to evictions filed substantially in response to tenant’s good-faith attempt to secure repairs or other rights within twelve months prior to filing.
- B. L may prevail if T has failed to pay rent or otherwise breached the lease.

C. Cases

1. Spinks v. Taylor, *supra*
2. Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968)

V. **EXECUTIONS IN EJECTMENT CASES**

A. **Stay is obtained by posting rent bond**, (G.S. 42-34)

1. Absent a stay, the writ of execution may be issued on the eleventh day after judgment. No execution may occur without a duly issued writ.
2. Three Requirements for obtaining a stay of execution:
 - a) Tenant must sign an undertaking to pay the tenant's share of future rent as it comes due (G.S. 42-34(b));
 - b) If the magistrate's judgment was entered more than five (5) working days before the next rent is due, tenant must post, in cash, the prorated amount of rent for the days between the date that the judgment was entered and the next day when rent will be due under the lease (G.S. 42-34(c)); and
 - c) Tenant must post, in cash, the amount of rent in arrears or, if the rent was in dispute, the undisputed amount as determined by the magistrate in the "Findings" portion of the judgment. A defendant who is authorized to appeal as an indigent does not have to pay the rent in arrears to stay execution, but must comply with a. and b. above (G.S. 42-34(c1)).
 - (1) Tenant may post a different amount than the one found by the magistrate if:
 - a. the tenant appeared in the small claims trial;
 - b. the magistrate's findings indicate that the rent in arrears was not in dispute; and
 - c. an attorney representing the tenant on appeal signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears. (G.S. 42-34(b)).
 - (2) [Note: Laing v. Lewis, 133 N.C. App. 172, 515 S.E.2d 40 (1999) (landlord is not entitled to default

judgment because tenant failed to file bond with answer)]

- d) Any party may move for modification of amount or due date and clerk or the court shall hold a hearing within 10 days. No writ of possession or execution of judgment may take place while such motion is pending.

3. Cases

- a) Fairchild Properties v. Hall, 122 N.C. App. 286, 468 S.E. 2d 605 (1996)(rent bond is only required to stay execution, not perfect appeal)
- b) River Hill Apt. v. Hardy, N.C. App (2005)(unpublished opinion)(tenant's failure to pay rent bond during the course of an appeal does not deprive court of jurisdiction over the appeal)

B. **Dispossessed tenants who win on appeal may recover damages**, (G.S. 42-35 and 42-36)

C. LLs cannot execute on judgments for possession which are more than 30 days old unless they sign an affidavit that they have not entered into a "formal lease" with the defendant/tenant nor accepted rent for any period of time after entry of judgment (G.S. 42-36.1A)

D. **Disposition of Tenants' Personal Property**

- 1. Tenant has ten days after execution of the judgment for possession to claim his/her property. After expiration of the ten day period, the LL may dispose of the property. If the LL wishes to sell the property, he/she must give the tenant 7 days notice of the sale. The tenant can claim the property up to the day of the sale.
 - a) Presumption - Of abandonment arises 10 days after LL posts notice of suspected abandonment inside and outside the premises if T does not respond and the paid rental period has expired.
 - b) Abandoned Property - If the property left on the premises at the time of execution is worth less than \$100, it is deemed abandoned 5 days after execution and can be disposed of by the LL.

- c) Less than \$500 - may be delivered to a qualified non-profit if the organization agrees to identify and separately store it for 30 days, releasing it to the T without charge during that time. LL must post a notice on the premises if she/he elects this method.
- d) Manufactured homes - A T leasing the space for a manufactured home with a current value in excess of \$500 shall have 21 days instead of 10 after the LL receives a writ of possession to remove the manufactured home and any personal property within. LL may sell the property after the lien has attached.

2. Statutes include:

- a) G.S. 42-25.9
- b) G.S. 42-36.2
- c) G.S. 44A-2(e)

E. **Ejectment of Tenants in Foreclosed Properties**

- 1. The Federal “Protecting Tenants at Foreclosure Act” (PTFA), part of the “Helping Families Save Their Homes Act of 2009” (Pub. L.111-22) applies to any foreclosure sale of residential properties on or after May 20, 2009 until December 31, 2014 & controls the manner of ejectment of “bona-fide tenants” after the sale of foreclosed properties.
 - a) PTFA preserves the remaining term of any Section 8 voucher lease and accompanying Housing Assistance Payment (HAP) contract or other bona-fide tenancy of any foreclosed residential rental property, and requires 90 days notice to terminate any such tenancy.
 - b) Bona-fide tenancy: (1) does not include the mortgagor (former owner), or the child, spouse or parent of the mortgagor; (2) must be the result of an arms length transaction; and (3) requires receipt of rent that is not substantially less than fair market value.
 - c) If occupants of foreclosed residential rental property are not a Section 8 voucher recipient or other bona-fide tenant subject to the protections of the PTFA, the provisions of G.S. 45-21.29(k)(5) apply. See 2.c) & 3.a) below.
- 2. Property with less than 15 rental units

- a) Notice of foreclosure sale shall be mailed to the tenant at least 20 days prior to the sale (G.S. 45-21.17(4))
 - b) Tenant has right to terminate lease after receiving notice of foreclosure sale by giving LL written notice effective at least 10 days after the date of the notice of sale. (G.S. 42-45.2)
 - c) Purchaser of foreclosed property must give 10 days' notice to tenant before obtaining order of possession from Clerk of Court. (G.S. 45-21.29(k)(5))
- 3.. Property with 15 or more rental units
- a) Purchaser of foreclosed property must give 30 days' notice to tenant before obtaining order of possession from Clerk of Court. (G.S. 45-21.29(k)(5)) – No other notice required

VI. OTHER CLAIMS AND DEFENSES

A. Real Party in Interest/Necessary Party

- 1. Rules 17 and 19 N.C.R. Civ. P.
- 2. The owner(s) of property are the real parties in interest and are necessary parties. Rental agents who are not owners may not sue in their own names, and owners may not sue under assumed (“d/b/a”) names.

B. Failure to State a Claim on which Relief Can be Granted arises in two common ways, (Rule 12(b)(6))

- 1. L fills out the form complaint improperly; or
- 2. L alleges an installment sales contract; these are mortgages, not leases, and summary ejectment is not the proper remedy for breach. See, Marantz PianoCo., Inc. v. Kincaid, 108 N.C. App. 693, 424 S.E. 2d 671 (1993)

C. Unfair and Deceptive Trade Practices

- 1. Fraud
- 2. Inequitable assertion of L's position

3. Coercive conduct on the part of L
4. Failure to make repairs, after notice, and continuing to demand rent
5. Cases
 - a) Stolfo v. Kernodle, 118 N.C. App. 580, 455 S.E.2d 869 (1995) (LL rented out only single house and trailer space, such rentals were “in or affecting commerce” so as to be covered by G.S. 75-1.1)
 - b) Johnson v. Phoenix Mutual Life Ins. Co., 44 N.C. App. 210, 261 S.E.2d 135 (1979), rev'd, 300 N.C. 247, 266 S.E.2d 610 (1980) (interpretation of “unfair and deceptive”)
 - c) Love v. Pressley, 34 N.C. App. 503, 239 S.E.2d 574, cert. denied, 294 N.C. 441, 241 S.E.2d 843 (1978) (Landlord-tenant relations are within scope of G.S. 75-1.1)
 - d) Allen v. Simmons, supra (discussion of factual basis for finding of UTP in a landlord-tenant repair case)
 - e) Foy v. Spinks, supra (affirms holding of Allen v. Simmons)
 - f) Stanley v. Moore, supra (UTP and treble damages possible for forcible self help eviction)
 - g) Creekside Apartments v. Poteat, supra (UTP when LL had due notice of conditions, delayed making repairs, and continued to collect rent; proof of actual deception not required)
 - h) Leardi v. Brown, 474 N.E.2d 1094 (Mass. 1985) (lease that attempted to limit implied warranty of habitability was unfair and deceptive)
6. Remedies
 - a) treble the actual damages
 - b) attorney’s fees
 - c) costs

D. **Violations of North Carolina or Federal Fair Housing Act**

(Protected Classes: race, color, creed, national origin, sex, handicap, familial status and affordable housing (NC only))

1. Statutes and Regs: N.C.G.S. 41A
42 U.S.C. 3601 et seq
24 C.F.R. Parts 100 et seq.
2. Racial discrimination: Brown v. Artery Organization, Inc., 654 F. Supp. 1106 (D.D.C. 1987) (preliminary injunction against eviction of blacks and Hispanic tenants through landlord's renovation plans)
3. Gender Discrimination: Beliveau v. Caras, 873 F. Supp. 1393 (C.D. Cal. 1995) (Offensive touching of tenant by manager could be sexual discrimination)
4. Familial status (with children): US v. Grishman, 818 F. Supp. 21 (D. Me. 1993); Hooker v. Weathers, 990 F.2d 913 (6th Cir. 1993); US v. Lepore, 816 F. Supp. 1011 (M.D. Pa. 1991); US v. Badgett, 976 F.2d 1176 (8th Cir. 1992) (landlord's policy of limiting one-bedroom units to one-person households was discriminatory); Fair Housing Council of Orange County, Inc. v. Ayers, 855 F. Supp. 315 (C.D. Cal 1994) (once plaintiff has established prima facie case of discriminatory effect of policy, burden is on owner to show legitimate non-discriminatory business reason, and some circuits require that defendant show that its policy is the least restrictive means; here defendant's policy of limiting family size of maximum of two person in small two-bedroom units was discriminatory, and defendants' proffered business reason of minimizing wear and tear on the apartments was not deemed least restrictive means); Guider v. Bauer, 865 F. Supp. 492 (N.D. Ill. 1994) (prospective tenants stated good claims against landlord and newspaper for printing discriminatory ad which stated that two-bedroom apartment was "perfect for single or couple")
5. Handicap discrimination: Roe v. Sugar River Mills Associates, 820 F. Supp. 636 (D.N.H. 1993) (duty to accommodate physical and mental handicaps and status of former drug addicts)
6. Affordable Housing: Unlawful to discriminate in land-use decisions or in permitting of development based on fact that a development contains affordable housing units for residents with incomes below 80% of area median incomes. G.S. 41A-4(f); G.S. 41A-5(a)(3) & (4).

E. **Condominium Conversions**, (G.S. 47A, Article 2)

F. **Authorized Fees**, (G.S. 42-46)

1. Late Fees

- a) Late fees can not exceed \$15 or 5% of rental payment if paid monthly, whichever is greater.
- b) Late fees can not exceed \$4 or 5% of rental payment if paid weekly, whichever is greater.
- c) Late fees where the rent is subsidized are calculated based on the tenant's share of the rent only.
- d) May be imposed only one time for each late rental payment
- e) Late fee may not be deducted from a subsequent rental payment so as to cause default
- f) No late fee allowed for tenant's failure to pay water and sewer services provided pursuant to G.S. 62-110(g).

2. Other Authorized Fees

- a) Complaint Filing Fee: Lease may allow a complaint filing fee of \$15 or 5% of the monthly rent, whichever is greater, if L files a complaint for Summary Ejectment.
- b) Court Appearance Fee: Lease may allow a court appearance fee of 10% of the monthly rent if L successfully prosecutes a Complaint for Summary Ejectment or for Money Owed.
- c) Second Trial Fee: Lease may allow a second trial fee of 12% of the monthly rent for a new trial following an appeal of the magistrate's judgment and the L prevails.
- d) The fees authorized in 2.a)-c) above where the rent is subsidized are calculated based on the tenant's share of the rent only.
- e) A L is allowed to claim only one of the fees described in 2. a)- c) above.
- f) The fees described in 2. a)- c) above may not be deducted from a subsequent rental payment so as to cause default.

VII. APPEAL FOR TRIAL DE NOVO IN DISTRICT COURT

- A. Appeals from Small Claims Court to District Court must be taken within ten days under G.S. 7A-228(a) & perfected within 20 days of judgment under 7A-228 (b).
- B. Right to jury trial on appeal may be waived if not demanded in a timely manner by appellant during time to perfect the appeal. G.S. 7A-228 (b) Appellee has ten days to demand a jury trial after receipt of the notice of appeal “stating that the costs of the appeal have been paid.” G.S. 7A-230.
- C. Where magistrate does not announce and sign judgment in open court at conclusion of trial, magistrate is to serve copies of judgment on all parties within three days of entry under Rule 58 of the NC Rules of Civil Procedure.
- D. In trial de novo, no written answer is required, with all claims being generally denied, as in Small Claims Court, even for affirmative defenses. See *Don Setliff & Associates, Inc. v. Subway Real Estate Corp.*, 178 N.C. App. 385, 631 S.E. 2d 526 (2006) The judge may, however, order repleading or further pleading by some or all of the parties; may try the action on stipulation as to the issue; or may try it on the pleadings as filed. G.S. 7A-229. But, the judge shall allow appropriate counterclaims, cross-claims, third party claims, replies and answers to cross-claims, in accordance with Rules of Civil Procedure. G.S. 7A-220.
- E. Expedited trials upon demand by either party. If the case has not been previously continued in District Court, the court shall continue the case if any party initiates discovery or files a motion to allow further pleading or for summary judgment. G.S. 42-34 (a).
- F. Staying execution of summary ejectment judgments under G.S. 42-34 (b) et. seq (see V. above):
 - 1. time for payment calculated under Rule 6;
 - 2. different obligation for indigents;
 - 3. default on the bond followed by eviction of the tenant does not make ejectment moot because tenant can get writ of restitution and damages under G.S. 42-35 and 42-36. See River Hill Apt., supra. V.A.3.

- G. A corporate landlord must be represented by counsel on appeal in District Court. See Lexis-Nexis v. Travishan Corp., 155 N.C. App. 205, 573 S.E.2d 547 (2002).
- H. If a tenant appeals to District Court and the landlord files a new summary ejectment action in Small Claims Court, then the prior action abates the new action. See Clark v. Craven Regional Medical Auth., 326 N.C. 44, 387 S.E. 2d 168 (1990).
- I. A tenant has thirty (30) days from entry of judgment in District Court to appeal, during which time any execution is automatically stayed. See N.C.R.App.P. 3; N.C.R.Civ.P. 62(a).

VIII. PUBLIC AND SUBSIDIZED HOUSING

Tenants who reside in public or subsidized housing have certain rights that tenants in private housing do not.

Federal Law dictates how rent is computed, and how tenants are selected and evicted. What rights a tenant has depends in large part on the type of federally assisted housing a tenant lives in. This is a complex area of the law and practitioners are cautioned to seek the advice of their local Legal Aid Program before proceeding with a case involving federally assisted housing. For referrals to the nearest Legal Aid office, call (919) 856-2564.

- A. **Resource Materials Regarding Federal Housing Law:**
 - 1. 42 U.S.C. 1400 et seq. (statutes for public housing, Section 8 programs and Voucher Program)
 - 2. Title 24 of the Code of Federal regulations - regulations for public housing, Section 8 programs and Housing Voucher Program.
 - 3. “HUD Housing Programs: Tenants’ Rights” (3rd Ed.2004) and 2006-2007 Supplement, & 2010 Supplement to HUD Housing Programs, National Housing Law Project, 614 Grand Ave., Suite 320, Oakland, CA 94610, (510) 251-9400; www.nhlp.org.
- B. **Special defense for subsidized housing tenants in conventional public housing or receiving Section 8 rental assistance**, (National Housing Act of 1937, as amended, 42 U.S.C. 1437 et seq.; 24 C.F.R.982.310; 24 C.F.R. 966 et seq.; N.C.G.S. 157-1 et seq.)

* Note: The following cases must be read in light of Department of Housing and Urban Development v. Rucker, et al., 535 U.S.125 (2002). The U.S. Supreme Court held that 42 U.S.C. 1437d(1)(6)

gives local public housing authorities the discretion to terminate the lease of a tenant when a member of the household or a guest engages in drug related activity, regardless of whether the tenant knew, or should have known, of the drug related activity. (See also Section II. D. “Expedited Eviction of Drug Traffickers and Other Criminals” and G.S. 157-29(c) (“...(F)ault on the part of the tenant may be considered in determining whether good cause exists to terminate a rental agreement.” * Call Legal Services for advice*)

1. Because of the federally created housing entitlement belonging to the tenant, leases may be terminated only for good cause; and private landlords must strictly follow the content and procedural requirements of the lease and federal regulations in terminating the lease. Goler Metropolitan Apartments, Inc. v. Williams, 43 N.C. App. 648, 260 S.E.2d 146 (1979).
2. Good cause and material noncompliance with lease may include tenants’ failure to maintain electric service because of potential risks of frozen pipes, fire, and uninsurability. Long Drive Apartments v. Parker, 107 N.C. App. 724, 421 S.E.2d 631 (1992).
3. Even if a tenant technically breaches the lease, the tenant may raise an affirmative defense that he/she was not personally at fault for the breach. Maxton Housing Authority v. McLean, 313 N.C. 277, 328 S.E.2d 290 (1985) (where wife failed to pay rent, she had a good defense that she was not personally at fault because the amount of rent was based, in part, on husband’s income and husband had abandoned her).
4. The federal statute at 42 U.S.C. 1437d(1)(5) defines lease requirements for housing authorities seeking to evict families for criminal activities. On the face of it, the statute may allow eviction for the whole family if a household member or guest commits a crime. But, the Congressional legislative intent, as found by the NC Court of Appeals, was to not allow eviction of innocent heads of household and family members when the tenant was not personally at fault for a household member’s criminal act. In Charlotte Housing Authority v. Patterson, 120 N.C. App. 552, 464 S.E.2d 68 (1995), the tenant’s son left the apartment, borrowed a gun and shot a child in another part of the housing authority property - all without the knowledge of the tenant. The court held that since the tenant was not at fault, there was no good cause to evict her and the remaining children. The court also mentioned that there was similar legislative intent regarding eviction of innocent Section 8 tenants.

5. Section 8 subsidy for the tenant's rent may not be terminated without the tenant's having a pre-termination hearing with due process rights, including cross-examination of witnesses and a decision based on competent evidence other than hearsay. Edgecomb v. Housing Authority of Town of Vernon, 824 F. Supp. 312 (D. Conn. 1993).
6. Note: For those with vouchers, once a lease has expired the landlord can evict without good cause...also, leases can now be less than one year in duration.

- C. **Federal Violence Against Women & Department of Justice Reauthorization Act of 2005 (VAWA)** (Public Law 109-162, (VAWA): Provides protections from denials, evictions and subsidy terminations for tenants and applicants of public housing, Section Vouchers, & project based Section 8 because they were a victim of domestic violence, dating violence or stalking. (See III.F. for NC protections)

IX. **VACATION RENTALS, (Chapter 42A)**

- A. **Vacation rental:** (G.S. 42A-4) Recent legislation has carved a niche for vacation rentals apart from other residential rental agreements as governed by Chapter 42 of the N.C. General Statutes (largely in response to Conley). Under the new act, a "vacation rental" is "the rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return." The following, though, are not included in this act:
1. Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes;
 2. Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes;
 3. Rentals to persons having no other place of primary residence; and,
 4. Rentals for which no more than nominal consideration is given. (G.S. 42A-3)
- B. **Expedited eviction:** (G.S. 42A-24) Tenants need to be concerned about the possibility of landlords trying to use the expedited eviction process set out in this act. The expedited eviction allows a landlord to give only 4 hours notice in addition to other stipulations.

- C. **Penalties for abuse:** (G.S. 42A-27) However, landlords trying to evict a tenant under this act inappropriately “shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.”

X. INTERVIEW NOTES FOR LANDLORD/TENANT CASES

A. **Two Questions to Keep In Mind:**

1. What defenses does the client have to an eviction action?
2. What possible causes of action does the client have against the landlord?

B. **Minimum Topics to Be Discussed**

1. Rent
 - a) Amount of rent;
 - b) How often is it supposed to be paid;
 - c) What date is it due;
 - d) If it is paid up or behind, and if behind, how far;
 - e) Whether the client receives any rental subsidies, i.e. Farmer’s Home, Section 8, Public Housing;
 - f) Did the client pay a security deposit?
2. Notices Received By The Client

You need to know if any communication has been received from the landlord. If so, what did it say and was it written or oral. Also, how was it received? Regular mail, tacking, hand delivered? When was it received?
3. The Condition of The Leased Dwelling
 - a) General condition of the leased unit including the roof, wiring, plumbing, flooring, doors, windows; if in bad condition, how long has it been that way?
 - b) If repairs have been requested. Were the requests made orally or in writing? How often? What was covered in the

requests? Did the client keep copies? Were there any witnesses?

- c) Whether or not any requested repairs have been made and, if so, which ones, and when.
- d) Whether or not the client has made repairs, and if so, money spent toward making those repairs; does the tenant have receipts?
- e) Whether or not the client has requested an inspection from the local Housing Inspection Department.
- f) Results of an inspection, including a list of deficiencies.
- g) Does the client know of any earlier inspections or condemnations?

4. Terms of The Lease

- a) Is it written or oral;
- b) Is it week-to-week, month-to-month, year-to-year;
- c) Are there any special or unusual terms or understanding, such as an option to buy or an exchange of the leased dwelling for work to be done by the client?

5. Court Action

- a) Has the client or any member of the client's family been served with court papers or has the client been to court? Find out where the case is procedurally and what the important dates are, i.e. Magistrate's hearing or last day to appeal, or when the sheriff is coming; how were any court papers served? What are the landlord's grounds for eviction? What are the client's possible defenses.
- b) Has the client or any member of the client's family been told they were going to be served with any court papers?

C. **Client Goals**

Find out from your client what he or she wants to accomplish. In discussing your client's goals, provide them with enough advice and information so that their expectations are not unreasonably high nor unnecessarily low. A general discussion of the client's goals should include the following topics: staying versus moving, forcing the landlord

to make repairs, avoiding a money judgment; tacking; obtaining retroactive rent abatement, and in some circumstances the availability of relocation money, public housing, and Section 8.

D. **Answering The Unasked Questions**

Clients commonly have questions which they don't ask. Some of these questions are common to so many clients that they should be answered even if they're not asked. Providing the answers will often relieve your client of a great amount of anxiety and make them a more educated consumer in the future. Some of the common questions are:

1. Can I be put in jail;
2. Can my wages be garnished;
3. Can my landlord shut off my utilities;
4. Can my landlord throw my property on the street and change the locks;
5. What does it mean to be "Judgment Proof"?

Part of answering these questions is telling your client what to do if the landlord/creditor attempts any of these actions.



NC LANDLORD-TENANT LAWS - October 2010

*Bill Rowe, General Counsel
North Carolina Justice Center*

Overview of NC Landlord-Tenant Law

Understand where your rights and responsibilities come from.

- NC Law – Some laws are mandatory and cannot be changed, even if everybody agrees
- Lease – A contract that explains what is agreed to and controls the parties behavior.

DISCLAIMER: Handout and presentation intended only as a reference and is not a substitute for legal advice.

2

OVERVIEW

- Basic Fit Housing Laws
- Security Deposits
- Late & Other Authorized Fees
- Evictions
- Retaliatory Evictions
- Special Protections for Victims of Domestic Violence, Sexual Assault or Stalking
- Tenants in Foreclosed Properties

3

BASIC FIT HOUSING G.S. 42-42 Landlords Must:

- Obey Local Housing Code
- Keep premises in "Fit and Habitable" condition
- Repair 12 "imminently dangerous conditions" within a reasonable period of time based on severity
- Keep common areas safe
- Keep electrical, plumbing, sanitary and electrical equipment in good & safe working order
- Install smoke detectors
- Install carbon monoxide detectors- (1/1/2010)-

4

What are 12 "imminently dangerous conditions?"

1. Unsafe wiring.
2. Unsafe flooring.
3. Unsafe ceilings and roofs.
4. Unsafe chimneys and flues.
5. Lack of drinkable water.
6. Lack of operable locks on all doors to outside.
7. Broken windows or lack of operable locks on all windows on ground floor.

5

12 Imminently Dangerous Conditions, cont'd.

8. Lack of heat for all living areas.
9. Lack of operable toilet.
10. Lack of operable bathtub or shower.
11. Rat infestation as a result of defects in structure.
12. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation and mold.

6

BASIC FIT HOUSING, Continued

- ❑ Landlord's duties cannot be waived or avoided.
- ❑ Realtor/Managing agent jointly liable with owner/landlord.

7

Tenant's Actions regarding Repairs

- ❑ Do no damage & keep premises as clean and safe as possible
- ❑ Notify the Landlord of needed repairs (In writing best; Keep copy)
- ❑ If local housing code, call for Inspection
- ❑ Do not stop paying rent

8

What if Repairs Are Not Done?

- Tenant may sue owner/landlord and agent and recover:
 - Money damages (Rent Abatement; consequential damages like repair costs, higher utility bills).
 - Future Rent reduction until repairs made.
 - Treble damages, plus attorneys' fees if landlord's actions found to be an unfair trade practice.
 - Landlord ordered to make repairs.

9

Rent Abatement Damages

- ❑ Difference between fair market rental value "as warranted" and actual FMV in defective condition
- ❑ Limited by amount of rent paid by T
- ❑ "Warranted" value=value if fully fit and habitable
- ❑ Setoff against rent owed LL
- ❑ Expert testimony not necessary

10

SECURITY DEPOSITS – How Much Can be Charged? G.S. 42-50 et seq.

- ❑ Week to Week Rental – 2 Weeks Rent Security Deposit
- ❑ Month to Month Rental – 1 & ½ Months Rent Security Deposit
- ❑ Rental is Longer than a Month – 2 Months Security Deposit

11

SECURITY DEPOSITS – Other Rights:

- ❑ Landlord must give tenant written notice of where security deposit being held;
- ❑ Landlord has 30 days after tenant moves out to return security deposit to tenant or explain in writing how deposit was spent, **BUT**

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Security Deposits, cont'd.

- If landlord cannot determine the amount of damages within 30 days of when tenant moves out, then must send tenant an "interim" accounting within the 30 days **AND** a final accounting within 60 days of tenant moving out.
- Landlord's willful failure to comply with all security deposit requirements **VOIDS** landlord's right to keep any portion of the deposit.

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What Can Security Deposit be Kept for:

- Back Rent Owed to Landlord
- Costs for repairs for damage beyond normal wear & tear
- Lost rent and expenses for finding another tenant if tenant moved before lease over.
- Court Costs, if evicted.

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LATE FEES – G.S. 42-46

- When? Only after rent is 5 days or more late.
- How Much? \$15 or 5% of monthly rent, whichever is greater; \$4 or 5% of weekly rent, whichever is greater.
- Subsidized Rent? Late fee based on tenant's share of the rent only.
- *May only be charged one time.*
- *May not deduct from rent payment so as to make tenant late with rent.*

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Other Authorized Fees for Eviction Actions- G.S. 42-46

Applies to leases entered into after October 1, 2009

- Complaint Filing Fee: A lease may allow a complaint filing fee of \$15.00 or 5% of the monthly rent, whichever is greater, if a landlord files a complaint for Summary Ejectment.
- Court Appearance Fee: A lease may allow a court appearance fee of 10% of the monthly rent if a landlord wins in Small Claims Court on a Complaint for Summary Ejectment or for Money Owed.
- Second Trial Fee: A lease may allow a second trial fee of 12% of the monthly rent for a new trial following an appeal of the magistrate's judgment and the landlord wins at the second trial.

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Other Authorized Fees, cont'd.

- Where the rent is subsidized, the authorized fees are based on the tenant's share of the rent only.
- A landlord is allowed to claim only one of the fees.
- The fees may not be deducted from a subsequent rental payment so as to make the tenant late with his/her rent.

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EVICTIONS – "Summary Ejectment"- G.S. 42-26 et seq.

- Landlord must follow court process & obtain court order
- Landlord may not evict by changing locks, turning off utilities, using threats, or any other way other than court
- Landlord & tenant cannot agree to not use court process

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Evictions, continued – Grounds for eviction:

- ❑ Nonpayment of Rent
- ❑ Staying after the lease has ended and proper notice given
- ❑ Breach of the Lease that allows lease to be ended
- ❑ Certain Criminal activities

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Ground 1 – Nonpayment of Rent

- ❑ Separate basis from breach of lease
- ❑ GS 42-3 applies if nothing in lease
- ❑ G.S. 42-3 requires: (1) LL make clear demand for rent, and (2) Wait 10 days before filing summary ejectment action

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Defenses in Nonpayment Cases

- ❑ Tender of rent – GS 42-33 (not available if automatic forfeiture clause in lease)
- ❑ T current with rent
- ❑ Retaliatory Eviction – 42-37.1
- ❑ Breach of GS 42-42 obligations by LL

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Ground 2- Holdover- 42-14; 42-14.3; & 42-26

- ❑ Notice required based on lease. If lease is silent then statutory notice requirements apply
- ❑ Notice must be effective at end of term
- ❑ Insufficient notice means lease renewed

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Statutory Notice – 42-14

If Lease is for is for a period of:

- ❑ One Year – One month notice
- ❑ One month –7 days notice
- ❑ Week – 2 days notice
- ❑ Manufactured Home lot – 60 days
- ❑ Mfg Home Park Conversion – 180 days

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Defenses to Holdover Claim

- ❑ Defective Notice
- ❑ Retaliatory eviction per GS 42-37.1
- ❑ Violation of Fair Housing Laws
- ❑ Novation –acceptance of rent creates new periodic tenancy

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Ground 3 – Breach of Lease – 42-26

- ❑ Requires written lease
- ❑ Lease must state that breach authorizes LL to terminate lease
- ❑ Breach was clear
- ❑ Enforcement prompt and not unconscionable

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Defenses to Breach Claim

- ❑ On merits – No breach
- ❑ Insufficient notice, if required by lease
- ❑ Retaliatory – GS 42-37.1
- ❑ Waiver – accepting rent after knowledge of breach (not criminal activity GS 42-73)

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RETALIATORY EVICTIONS 42-37.1

- ❑ Tenant cannot be evicted for:
 1. Asking for Repairs
 2. Complaining to a government agency
 3. Trying to enforce any right under the law
 4. Organizing

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Ground 4 – Criminal Activity-42-59 et seq.

- ❑ Criminal activity defined as drug crime
- ❑ Special pleading Rules
- ❑ Expedited proceeding
- ❑ Criminal act may also be basis for “breach of lease” claim by LL

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Defenses to Criminal Activity

- ❑ Statutory defenses per 42-64 – T did not know or have reason to know of criminal activity, or, T did all possible to prevent the criminal activity
- ❑ Conditional/Partial eviction possible – wrongdoer evicted & T remains

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How Do Court Evictions Work?

- ❑ Landlord files a “Summary Ejectment Complaint” with the Court – states the grounds for the eviction
- Eviction cases heard in Small Claims Court - \$5,000 cap on damages
- ❑ Nothing in Writing needs to be filed by the tenant/defendant
 - ❑ Failure to file counterclaim not a bar to filing separate action – G.S. 7A-219

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What Happens if Lose in Small Claims Court?

- ❑ Right to Appeal for new trial in District Court within 10 days of decision
- ❑ Cost of appeal can be waived if can show unable to afford costs
- ❑ Case will be set for trial in District Court for a new trial.

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Can Tenant Stay While Case is Appealed? G.S. 42-34

- ❑ YES – Tenant must get a “Stay of Execution”
- ❑ Stay is obtained by tenant filing a form with the Clerk of Court that says they will pay rent to the Clerk as it comes due
- ❑ Tenant may also have to pay back rent unless Magistrate found the amount to be in dispute

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What Happens to Tenant's Property if Lose Eviction Case?

- ❑ Once Judgment is final (11 days after judgment entered), landlord obtains writ of possession from Clerk of Court
- ❑ Sheriff will “execute” order within 7 days of receiving it – Will give tenant some advance notice
- ❑ Sheriff will order tenant to leave the premises and belongings will be padlocked inside

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Tenant's Property, Cont'd.

- ❑ Tenant has 10 days to get property out of premises after being put out by Sheriff
* 21 days in case of manufactured home on rental lot
- ❑ Landlord must allow tenant to remove property – Cannot require any payment
- ❑ Landlord may dispose of tenant's property if not removed within 10 days after execution by Sheriff

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Eviction Time Line

- ❑ Small Claims Trial usually within 10 days of filing of Complaint
- ❑ Small Claims Judgment final after 10 days when no appeal
- ❑ Sheriff will put tenant out within 7 days of landlord getting writ of possession
- ❑ Tenant has 10 days to remove property from rental premises

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Protection for Victims of Domestic Violence

- ❑ Landlord may not terminate lease, refuse to rent or otherwise retaliate against a tenant who is a victim of DV. G.S. 42-42.2
- ❑ Landlord must change locks at tenant's expense. G.S. 42-42.3
- ❑ Tenant may end lease after 30 days written notice with copy of court order or valid “Address Confidentiality” card and safety plan recommending relocation. G.S. 42-45.1

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New Federal Law for Tenants in Foreclosed Properties -

- After May 20, 2009 until December 31, 2014, buyers of foreclosed rental properties must:
 1. Allow "bona-fide tenants" to continue to lease from the new owner.
 2. Provide 90 days notice to evict after the end of the lease term.
 3. Use the "Summary Ejectment" court process to evict.
 4. Accept Section 8 voucher lease and payment if tenant has Section 8 voucher.

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Bona-Fide Tenancy

- Does not include the former owner, or the child, spouse or parent of the former owner.
- Must be the result of an "arms length" transaction.
- Rent cannot be set at an amount substantially less than fair market value.

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Early Lease Termination by Military Personnel – GS 42-45

Allowed for members of US Armed Forces if:

- Permanent Change of Station Order requiring move of 50+ miles, or
- Prematurely or involuntarily discharged or released, or
- Deployed for more than 90 days.
- Must give written notice (generally 30 days) and provide copy of official orders or verification from commanding officer

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Liability for early lease termination?

- T liable for rent due prorated to the effective date of the lease termination
- If less than 9 months of tenancy completed and L has actual damages, T liable for
 - 1 month's rent if less than 6 months of lease completed
 - ½ month rent if at least 6 to 9 months of lease completed

*Compare: Servicemembers Civil Relief Act, 50 U.S.C. App. 501, et seq.

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QUESTIONS

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