



**NC LANDLORD-TENANT LAWS - August 2012**

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## Overview of NC Landlord-Tenant Law

**Understand where 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.

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## 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
- Early Lease Termination Members of US Armed Forces

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## 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-

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## 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.

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## 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.

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## BASIC FIT HOUSING, Continued

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

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## Tenant's Actions regarding Repairs

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- ❑ 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

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## What if Repairs Are Not Done?

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- 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.

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## Rent Abatement Damages

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- ❑ 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

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

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- ❑ 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

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## SECURITY DEPOSITS – Other Rights:

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- ❑ 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

- 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 Ejection.
- 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 Ejection 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 Ejection"- 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:

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- ❑ 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

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- ❑ 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 ejection action

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## Defenses in Nonpayment Cases

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- ❑ 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

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- ❑ 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

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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

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- ❑ 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

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- ❑ 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

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- ❑ 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 & not for partial rent acceptance)

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## RETALIATORY EVICTIONS 42-37.1

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- ❑ 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.

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- ❑ 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

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- ❑ 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?

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- ❑ 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
  - \* 5 days if property worth less than \$500
  - \* 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 the relevant # of 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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## Federal Law for Tenants in Foreclosed Properties -

- *After May 20, 2009, 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.
- Died while on active duty.
- 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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