

LANDLORD TENANT CLE

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Overview

- MAVL Program
- Termination of tenancy
- Rent Abatement
- Security Deposit
- Small Claims in District Court
- Eviction Exercises

NOT GOING TO COVER IN DEPTH

- DV protections in §42-42.2 and 42.3
- Retaliatory eviction §42-37
- FHA (Chapter §41A)
- Claims for:
 - Wrongful Eviction, Unjust enrichment, Conversion, unfair debt collection, illegal utility charges, Quiet enjoyment, trespass
- Subsidized Housing, VAWA
- Rucker, Lofton

MAVL Program

- MAVL forms
- Types of cases
- Malpractice insurance
- Use Pisgah's resources
- Dealing with difficult clients...

Termination of leasehold

- §42-3 Failure to pay (statutory)
- §42-14 Holdover
- §42-26 Breach of lease
- §42-63 Criminal Activity

§42-3 Failure to pay (statutory)

- History
- Requirements:
 - 10 day grace period...full days
 - Clear and unequivocal demand for rent
- Default provision... Parties are stuck with contract terms

§42-3 Defenses

- Statutory defense: §42-33 tender
 - Tender must be made before **final judgment**
 - Need not include late fees and other non-rent charges
 - Must include all rent past due and cost of court
- Set-off
- Notice issues

§42-14 & §42-14.3 Holdover

- Notice requirements
 - Year to Year: one month
 - Month to month: one week
 - Week to week: two days
 - Mobile Home lot rental: 60 days regardless of the length of tenancy
 - §42-14.3 Mobile home park closing: 180 days notice (plus notice to NC Housing Finance Agency)

§42-14 & §42-14.3 Holdover

- Common law requirement that notice run with the term
 - What about “wrap around notice”?
- Written or Oral notice?
- Default or immutable? (Cherry v. Whitehurst)

§42-26(a)(2) BREACH

- Landlord Must prove by preponderance
 - Right to declare a forfeiture must be distinctly reserved in the lease
 - Proof of the happening of the event on which the right is exercised must be clear
 - The party must exercise his right promptly
 - ~~– The result must not be unconscionable~~

§42-26(a)(2) BREACH

- Ambiguous lease terms are interpreted against the LL
- The law “abhors a forfeiture”
 - Landlord must follow notice and other procedural requirements in the lease or face dismissal
 - Substantially increased in subsidized properties

DEFENSES to BREACH

- Common Law Waiver:
 - Landlord, after learning of the breach may choose to exercise right to evict or allow tenancy to remain by accepting rent, can't do both
 - After acceptance, Landlord has waived breach for the remainder of tenancy
 - Holding but not cashing a check counts as acceptance
 - Multiple “violations” constituting a breach?

DEFENSES to BREACH

- Waiver Continued
 - Non-waiver clauses in a lease are invalid unless only partial rent paid *see §42-26(c)*
 - §157-29(d)- Public Housing Authorities only waive after 120 days....
 - Payment of subsidy without payment of tenant portion is not waiver

§42-59 Criminal activity

- (2) "Criminal activity" means (i) activity that would constitute a violation of G.S. 90-95 **other than a violation of G.S. 90-95(a)(3)**,...or (ii) other criminal activity that threatens the health, safety, or right of peaceful enjoyment of the entire premises by other residents or employees of the landlord.
- (3) "Entire premises" or "leased residential premises" means a house, building, mobile home, or apartment, whether publicly or privately owned, which is leased for residential purposes. These terms include the entire building or complex of buildings or mobile home park and all real property of any nature appurtenant thereto and used in connection therewith, including all individual rental units, streets, sidewalks, and common areas. These terms do not include a hotel, motel, or other guest house or part thereof rented to a transient guest.

§42-63 Criminal activity

- “occurred on or within individual rental unit” or immediate vicinity of the entire premises;
- Unit was used in furtherance of
- Tenant with knowledge allows banned person to reenter or does not call law enforcement
- Eviction can be partial or conditional

§42-64 Criminal activity

- Affirmative defense:
 - Tenant not involved in activity; AND
 - Did not know it was occurring; OR
 - Did everything that could be reasonably expected to prevent commission of criminal activity; such as
 - Calling law enforcement, requesting LL remove household member from lease, seeking help from a church, dss, Pisgah legal?, etc
 - Second time around, tenant's burden is clear and convincing standard

§42-64 Criminal activity (cont)

- Exemption: “the court is clearly convinced that immediate eviction or removal would be a serious injustice, the prevention of which overrides the need to protect the rights, safety, and health of the other tenants and residents of the leased residential premises”.
- 42-67: it is not a defense that activity was isolated or criminal no longer lives there BUT is admissible to support exemption in 42-64

Crim. Activity misc.

- §42-60 and 68 appear to allow original filing in District Court, §42-68 & §42-70 establish procedure for discovery and timing
- §42-74: TRO option is available
- §42-73: LL can collect rent with knowledge, no waiver
- §42-61: preponderance standard...is pending criminal charge admissible?

APPEAL for trial de novo

- 3 documents needed
 - Notice of appeal (AOC-CVM-303)
 - Bond to Stay (AOC-CVM-304)
 - Petition to Sue/Appeal/File Motions as an indigent (AOC-G-106)
 - food stamps, TANF, SSI, Represented by Legal Services (or pro bono atty), or catchall

Bond to Stay

- NCGS §42-34
 - Tenant must sign an undertaking to pay periodic rent as it becomes due under the lease.
 - Five day grace period (days calculated using rule 6 of NC rules of Civ. Pro.)
 - If the eviction was based on failure to pay rent AND the Magistrate's judgment falls on a day more than 5 days (actual days) before rent becomes due, T must pay prorated rent for those days.
 - Failure to pay....stay dissolves

Small Claims in District Court

- §42-34(a)- Upon appeal to the district court, either party may demand that the case be tried at the first session of the court after the appeal is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.
- If the case has not been previously continued in district court, the court **shall** continue the case for an appropriate period of time if any party initiates discovery or files a motion to allow further pleadings pursuant to G.S. 7A-220 or G.S. 7A-229, or for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure

§7A Article 19

- § 7A-220. No required pleadings other than complaint.
- § 7A-218- Failure of defendant to file a written answer after being subjected to the jurisdiction of the court over his person constitutes a **general denial**
- § 7A-220- On appeal from the judgment of the magistrate for trial de novo before a district judge, the judge shall allow appropriate counterclaims, cross claims, third party claims, replies, and answers to cross claims, in accordance with G.S. 1A-1, et seq.

§7A Article 19

- § 7A-229. Trial de novo on appeal. The district judge before whom the action is tried may 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.

§7A Article 19

- §7A-228(d)- Plaintiff may serve a motion to dismiss appeal if:
 - Failed to raise a defense in small claims; AND
 - Failed to file a responsive pleading in District Court; AND
 - Failed to comply with an obligation set forth in the Bond to stay
- Defendant may defeat by filing an answer or paying the bond.

Misc. Ejectment in DC

- §42-34.1 (after District Court)
 - Judgment is stayed for 30 days after District Court.
 - Conditions in 42-34(b) apply
 - (a1) If judgment is to be executed before rent is due, rent is prorated.
- §42-35- Tenant dispossessed of premises after Magistrate's Order.
 - If proceeding is quashed in District Court, the Court SHALL restore Tenant to Possession (if necessary).

Breach/ Warranty of Habitability

- Residential leases include an implied warranty of habitability which creates numerous landlord responsibilities
- Responsibilities include:
 - Duty to Make Repairs
 - Duty under Express Covenants
 - Liability for Defects
- Remedy: Rent Abatement
 - Difference between the fair rental value of the property in a warranted condition and the fair rental value of the property in its unwarranted condition.

Breach/ Warranty of Habitability

- What is uninhabitable?
- §42-42(a) Landlord Obligations
 - Comply with all applicable housing codes
 - Make all repairs and keep premises in a fit and habitable condition
 - Keep all common areas in safe condition
 - Provide operable smoke alarms
 - Repair or remedy any imminently dangerous condition on the premises
 - Unsafe wiring, flooring, ceiling, chimney
 - Lack of potable water, operable locks, heating, operable toilet and bathtub or shower, structural defects that can lead to infestation, sewage, etc ...

Chapter 75 claims

- A landlord who leases a home containing defects and subsequent to learning of these defects attempts to collect rent on the home commits an unfair and deceptive trade practice.
- Remedy: If unfair and deceptive trade practices are found damages are “trebled automatically” and a party may recover attorneys’ fees upon a showing that the opposing party acted “willfully.”

Misc. Considerations

- Take pictures of all defects.
- Contact the fire marshal or building inspector for a safety check.
- Request Repairs in writing in order to place landlord on notice of defects.
- Go look at the premises yourself before you file
- Client can testify as to the value of the property

SECURITY DEPOSIT

- Statutes are immutable
- Tenant must provide forwarding address (or face dismissal without prejudice)
- LL must provide
 - information about location of Security Deposit
 - LL must keep deposit in an NC trust account or bond from an insurance company lic. To do business in NC
 - interim accounting within 30 days
 - 60 days for final accounting
 - LL forfeits security deposit if they violate these rules.

SECURITY DEPOSIT

- If month to month, can only demand 1 ½ months rent
- If term is longer, can demand 2 months rent
- May apply to: unpaid rent, cost of court, late fees, damage beyond normal wear and tear, Cost of re-renting
- Transfers from old LL to new LL if property is sold.

SECURITY DEPOSIT

- Treble damages and attorney's fees are available if non-compliance was willful (see §42-55 and Chapter 75)
- Reasonable and nonrefundable pet deposits are allowed by statute
- What about first month, last month of rent PLUS security deposit?

Allowable Fees- §42-46

- Late fees- §42-46(a) through (d)
 - For rent paid monthly, LL can charge the greater of \$15.00 or 5% of monthly rent (if subsidized, then calculated based on T's share of the rent)
 - May be imposed only 1 time (no late fee on failure to pay late fee, no daily late fee, etc)
 - Shall not be imposed on failure to pay utilities
 - Shall not be deducted from future rental payments

NCGS §42-46(e) through (g)

- Complaint filing fee
- Court appearance fee
- Second Trial fee
- I have never seen a pro se LL get these right on a complaint.
- Willful violations = chapter 75 counterclaims
- Cannot contract around

THANKS

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