Big Law: The SE Judgment Form, Part 1

This post is the first in a series responding to questions that sometimes come up about the judgment form in actions for summary ejectment. Today, I'm focusing on #3 under FINDINGS (which I'm going to call "#3" for the rest of this post). It looks like this:

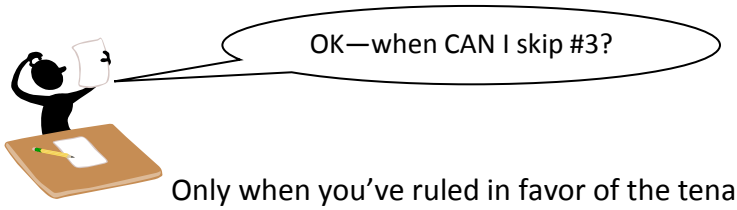
3. ☐ a. there is no dispute as to the amount of rent in arrears, and the amount is $ _____ .
   ☐ b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is $ _____, and this amount is the undisputed amount of rent in arrears.

(Don't you love the law? Only lawyers could come up with a form that says there's a dispute about the amount followed by a blank labeled *undisputed amount*!)

Confusion Worse Confounded

Question:	What does #3 have to do with the amount of rent I award?
Answer:	Nothing at all.
Response:	Well, THAT certainly clears things up. . . .

It's important to understand that what you write on the form for #3 is unrelated to the amount of back rent the plaintiff wants or the magistrate awards; these amounts may be the same, or they may be completely different. Because #3 is not actually part of what the court is ordering, some magistrates routinely ignore it as unnecessary surplusage. But that's a mistake. You should fill out #3 in any case in which the plaintiff seeks possession and a money judgment and you find in plaintiff's favor. And you should also fill out #3 in when plaintiff wins possession in a case served by posting. What if the landlord asks for back rent and possession, and you ruled against him on his claim for money, awarding possession only? Fill out #3. What if the plaintiff isn't even asking for money damages? Fill out #3.



Only when you've ruled in favor of the tenant. As we shall see, when there's no possibility of an appeal by the tenant, #3 is unnecessary surplusage, and you can cruise right on by.

Why It's Important:

The clerk is first on the list of people you'll help by filling out #3, because this information is vital to the performance of the clerk's responsibilities. It's a good idea for you to understand why this is true, so you can do <u>your</u> job of providing citizens with accurate information about small claims procedure.

Citizen-Defendant:	*Do I have to get out right away?*
Mighty Magistrate:	*You have 10 days to decide whether you want to appeal my decision for another trial, next time in district court. After 10 days, the plaintiff has the right to have the sheriff put you out.*
Citizen-Defendant:	*If I appeal, do I still have to get out after 10 days?*
Mighty Magistrate:	*Not necessarily. There's a procedure for "staying"—delaying—the judgment and you can see the clerk for details if you want to do that. Usually, the procedure requires that you* ***pay the clerk the amount of rent you both agree is due . . . .***

There it is: *undisputed rent* is <u>the amount that the landlord claims is due and the tenant does not contest.</u> It is important because this is the amount, for starters, that the tenant must pay in order to remain on the rental property while an appeal is pending. The tenant also must pay future rent as it comes due into the clerk's office while the case is on appeal. Requiring the tenant to make these payments is an effort to minimize the harm to the landlord caused by the tenant remaining on the property while the parties wait for the district court trial.

But the law does not require the tenant to come up with just any amount the landlord demands, regardless of how unreasonable it might be. G.S. 42-34(b) directs a magistrate to determine the amount of *undisputed* rent due. For example, a tenant claiming payment to the landlord or seeking rent abatement due to violation of the Residential Rental Agreements Act will be required to pay only that amount s/he agrees is owed in order to stay the judgment (in addition to paying rent as it comes due, of course). Whatever amount is actually due will be determined by the district court judge at the de novo trial, and the clerk will disburse the funds being held as directed by the judge. If the funds held by the clerk are insufficient, the landlord will of course have the usual option of seeking to execute on his judgment for the balance due.

Determining how to fill out FINDING #3 is usually pretty simple. Most of the questions that come up involve cases in which the defendant, for one reason or another, has not been heard from at all. The General Assembly anticipated that problem, making it clear that an amount becomes "disputed" only when a tenant appears at trial to dispute it. You can test your understanding by considering the following four scenarios. In each case, ask yourself whether you would check Box 3(a), 3(b), or no box at all, as well as the amount you'd write in the blank on this part of the judgment form.

Scenario 1: Larry Landlord files an action for possession of commercial property. He contends that Tammy Tenant Inc. owes $40,000 in back rent, but obviously Larry is seeking only possession in your court. He'll file a Superior Court action for the money. Tammy Tenant Inc. contends that a proper interpretation of the lease reveals that the company owes only $20,000.

☐ 3(a) $_____ ☐3(b) $_____ ___ No box at all.

Scenario 2: Larry Landlord files an action for possession of commercial property. He contends that Tammy Tenant Inc. owes $40,000 in back rent, but Larry is in small claims court seeking possession only. Tammy Tenant Inc. was served, but does not appear at trial.

☐ 3(a) $_____ ☐3(b) $_____ ___ No box at all.

Scenario 3: Luke Landlord files a summary ejectment action seeking possession, back rent of $4,000, and $1,000 damage to property. Tonya Tenant appears and denies that she owes Luke any money at all. You believe Luke's evidence, and rule in his favor, entering a judgment for possession and $5,725.

☐ 3(a) $_____ ☐3(b) $_____ ___ No box at all.

Scenario 4: Luke Landlord files a summary ejectment action seeking possession, back rent of $4,000, and $1,000 damage to property. Service is by posting, and Tonya Tenant does not appear at trial.

☐ 3(a) $_____ ☐3(b) $_____ ___ No box at all.

(See Answers, last page.)

Potential Problem: When a plaintiff is seeking only possession of rental property, plaintiff's testimony sometimes does not include information about the amount of rent in arrears. After all, that is not an issue in the case, and so a plaintiff might understandably omit that information. Absent such testimony, how can a magistrate complete #3? The statute provides two acceptable answers. First, the magistrate can simply ask the plaintiff—and the defendant, if the defendant is present—what rent, if any, is in arrears. Second, the law permits a magistrate to rely on allegations made in the complaint (assuming the defendant does not appear and dispute that amount). In either event, it is important to remember that the magistrate is not making a judicial determination of the amount actually owed by the defendant, but is instead merely recording the parties' contentions about the amount.

Back to our small claims case:

Citizen-Defendant: *If I appeal, do I still have to get out after 10 days?*

Mighty Magistrate: *Not necessarily. There's a procedure for "staying"—delaying—the judgment and you can see the clerk for details if you want to do that. Usually, the procedure requires that you pay the clerk the amount of rent you both agree is due . . . .*

Citizen-Defendant: *But I owe $4,000! I can't come up with all of that money right away. I don't HAVE any money—if I did, I would pay my rent!*

Mighty Magistrate: *If you are indigent, you are not required to pay all of the rent in arrears in order to remain on the property while the appeal is pending. You will be required to pay rent into the clerk's office each month as it comes due, however, and you may be required to make a payment for the rent for the rest of this month. If you decide to appeal and want to remain on the property until your appeal is decided, you should talk with the clerk about whether you qualify as an indigent for the purpose of the bond required to stay the judgment of this court.*

A Little Something Extra:

I'm going to close with a different answer to the tenant's question. This answer combines a variety of responses to the tenant's indication that she might be indigent. It might be interesting to ask yourself whether you've ever said any of these things—or all of these things! While I respectfully argue that these comments should be avoided, that's just my opinion, and there are many magistrates who take a contrary position. What's your opinion? I'll include responses—without identifying information—in the next post.

Citizen-Defendant: *But I owe $4,000! I can't come up with all of that money right away. I don't HAVE any money—if I did, I would pay my rent!*

Mighty Magistrate: *Well, if you admit you owe the rent, what are you appealing for? If you're just appealing so that you can stay on the property, you're not supposed to do that anyway. You expect Mr. Landlord here to just let you live there rent-free? He has to make a living too, you know. If you can come up with what you owe, that's one thing, but if you can't pay the bond to stay while you appeal, you'd be better off just going ahead and moving out. If you need more time, maybe Mr. Landlord will work with you here—I don't know. Otherwise, you're going to have to either come up with what you owe, or move.*

Here's my argument for why you should resist the impulse to say something like this, however tempting it may be: Your most important responsibility is to offer citizens a *neutral* and *detached* forum for resolving their disputes. Even though the magistrate has entered judgment and the case is over, a magistrate who abandons the appearance of neutrality at this point and begins to advocate for the landlord leaves everyone in the courtroom with the impression that s/he wasn't really neutral to begin with.

DGL/SOG/2010

A second argument relates to the important and complex topic of how to respond appropriately to questions from litigants about procedure—including how to appeal. Because that topic could easily be the subject of a Big Law post in its own right, I'm going to save it for another day. Let me just state my opinion, though, that it is improper to respond to questions from either party with non-responsive statements amounting to lecturing about what the magistrate believes is proper or improper behavior. That's my argument. Let me know what you think.

(Answers to Scenarios)

Scenario 1: Larry Landlord files an action for possession of commercial property. He contends that Tammy Tenant Inc. owes $40,000 in back rent, but obviously Larry is asking for only possession in your court. He'll file a Superior Court action for the money. Tammy Tenant Inc. contends that a proper interpretation of the lease reveals that the company owes only $20,000.

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