WHAT IS A "SIMPLE LANDLORD-TENANT RELATIONSHIP?

BASIC PRINCIPLES

- Jurisdictional requirement in SE actions.
- Reason for this special rule.
- Remember what it typically looks like.

NORTH CAROLINA LAW

- Does not define with specificity.

- *Upon a careful consideration of this Act we think it was intended only to apply to a case in which the tenant entered into the possession under some contract, either actual or implied with the supposed landlord, or with some person under whom the supposed landlord claimed in privity, or when the tenant himself was in privity with some person who had so entered.*[1]

- *Regardless of the label attached by the parties, a landlord-tenant relationship is created when: (1) there is reversion in the landlord; (2) creation of an estate in the tenant either at will or for a term less than that which the landlord holds; (3) transfer of exclusive possession and control to the tenant; and (4) a contract.*[2]

THREE CATEGORIES

Legal issues related to the existence of a "simple landlord-tenant relationship" tend to fall within one of three broad categories:

- The facts indicate that a lease exists – or existed at some point – but not necessarily that these particular litigants are involved in a landlord-tenant relationship.
- The facts do not clearly establish that the nature of the agreement, if any, between the parties is a lease.
- The facts indicate that the parties are or have been involved in an agreement having at least some components of a lease but additional facts raise an issue as to whether the agreement considered as a whole may be characterized as a simple landlord-tenant relationship.

[1] McCombs v. Wallace, 66 N.C. 481 (1872)

[2] In re Hawkins v. Wiseman, Quoting Santa Fe Trail Neighborhood v. W.F. Coehn, 154 S.W.3d 432, 440 (Mo.App.W.D.2005). In a footnote, the Court said, "This concise summary of the basic incidents of the landlord-tenant relationship from Missouri is not inconsistent with our case law applying N.C. Gen.Stat. § 42-26, is quoted in 49 Am.Jur.2d Landlord and Tenant § 1 n. 4 (2006) and appears in substantially similar form in Black's Law Dictionary 895 (8th ed.2004); we therefore find it persuasive."

ARE THESE THE RIGHT PARTIES?

Sometimes the legal issue is not whether the agreement of the parties is a lease, but rather whether these particular litigants are the proper parties for a SE lawsuit. Certainly, the original parties to a lease are proper parties. What are the rules when some other person is before you?

In a lease agreement, there are two separate property interests involved, and either may be transferred. The owner of property may transfer her *reversionary interest*, and/or a tenant may transfer his *leasehold interest.* When the new owner "steps into the shoes" of the old owner, the parties are said to be in *privity.* The rights and obligations of the former owner are transferred to the new owner.

Landowners are in privity with subsequent owners for the purposes of landlord-tenant law when the transfer occurs (1) by voluntary sale, (2) by inheritance, or (3) by foreclosure.

Tenants are in privity with subsequent owners of the leasehold when transfer occurs (1) by assignment (NOT sub-leasing), or (2) by inheritance (subject to some exceptions).

As is true of small claims cases in general, the involvement of a corporate litigant or other business entity may raise complex issues related to whether the named party is actually the proper plaintiff or defendant. In addition to sale of the reversionary or leasehold interest, corporations sometimes transform their identity by merging or otherwise reforming their business structure.

A separate issue is sometimes presented when rental property is owned or leased jointly but one of the co-owners/tenants have acted independently. For example, property owned by A and B is leased to a tenant by A without B's knowledge or consent. Upon discovering the tenant in possession, B files a summary ejectment action. In such a case, the threshold question is whether B and the tenant are involved in a landlord-tenant relationship. A similar issue arises when H enters into a rental agreement acting both on his own behalf and also on behalf of his wife. If H later abandons the property, leaving W behind, the question of whether W has a landlord-tenant relationship with the landlord must be answered before the landlord can proceed with a summary ejectment action to evict W.

IS IT A LEASE, OR SOMETHING ELSE?

Maybe it's a license.

A license is a temporary right to make use of property. A licensee is entitled to use property, rather than possess it. In these cases, the nature of the property itself will often trigger the need to examine more closely the nature of the agreement. A common example is an agreement involving storage of property.

Four important factors: (1) To what degree does person have exclusive use and right to control property? (2) Is agreement for specifically identified piece of property? (3) Does the agreement give the person rights for a specific period of time? (4) Does the person make regular payments in exchange? (5) What terms did the parties themselves use to describe the agreement?

Maybe it's one aspect of an employment contract.

When an employee resides on property owned by an employer, it is sometimes difficult to know whether the premises are being provided as part of an independent lease agreement. In North Carolina, such an agreement is assumed unless the defendant's occupancy is "reasonably necessary for the better

performance of the particular service, inseparable from it, or required by the [employer] as essential to it." Simons v. Lebrun, 219 N.C. 42 (1941).

Maybe it's transient lodging.

The traditional *innkeeper-guest* relationship is usually apparent, but there is one situation in which it may be difficult to distinguish this relationship from a landlord-tenant relationship. That arises when the nature of the premises is typical of transient lodging, but the terms of the agreement between the parties are more traditionally associated with a lease. Whether the premises are a hotel, campground, or boarding house, the magistrate must consider all of the circumstances in determining whether a particular agreement is a lease. In Baker v. Rushing, 104 N.C. App. 240 (1991), the court found sufficient evidence to support a conclusion that the occupants were residential tenants based on the following evidence:

- Each plaintiff resided in The Franklin Hotel pursuant to an oral lease.
- Each plaintiff leased his apartment as his sole and permanent residence.
- Some plaintiffs had resided in the building for as long as six years.
- Each apartment contained either one or two bedrooms, a kitchen/living room, and a separate bath.
- The payments for the apartments were made weekly and were referred to by each party as "rent."
- The evidence showed that in January 1988, Mosley obtained a hotel license for the building, but that thereafter no significant changes in the operation of the premises occurred. Plaintiffs continued to make payments on a weekly basis as they had prior to January 1988, and these payments continued to be described as "rent."

See also Shepard v. Bonita Vista Properties, 191 N.C.App. 614 (2008), *aff'd per curiam*, 363 N.C. 252, (2009), a case involving long-term occupants at a campground. While the trial court found that the plaintiffs in that case were residential tenants under G.S. Ch. 42, the Court of Appeals found it unnecessary to consider that finding in light of evidence that defendant had committed an unfair practice under GS Ch. 75 regardless of whether the plaintiffs were properly categorized as tenants.

Maybe occupancy is secondary to primary purpose.

When an occupant resides at a facility such as a nursing home, group home, or substance abuse treatment center, an issue sometimes arises as to whether summary ejectment is an available means of ousting the occupant. North Carolina has no case law addressing this issue. It seems likely that our appellate courts would utilize an analysis similar to that in employment cases, focusing on whether residence is an essential or required component of the services provided. If it is, the relationship seems unlikely to be characterized as a "simple landlord-tenant relationship."

A more difficult question is presented when the primary benefit provided by the facility is a place to live. Domestic violence shelters and shelters for the homeless are examples. When the shelter offered is brief, free of charge, and/or does not provide an occupant with exclusive possession of a specifically identified space, a magistrate may readily conclude that the arrangement does not meet the criteria for summary ejectment. To the degree that it offers exclusive possession of a designated space for a longer term in exchange for some regular contribution by the occupant, however, its proper classification is less clear.

Shared occupancy.

One of the most common – and least clear – agreements between people is simply to share living space, and quite often to share expenses as well. When a property owner invites someone to make use of their guest room for an unspecified period with no expectation of compensation, the occupant is a *guest*. On the other

hand, if the agreement is that the person will make regular payments in exchange for exclusive possession of the guest room and shared use of common areas, the occupant is a tenant. But what about when Paul Property Owner invites his girlfriend, Olivia Occupant, to move in with him? Whether Paul owns or leases the premises, he is the person with a possessory interest in the property. Does that interest change if Olivia begins to contribute toward the couple's living expenses? Does it make a difference whether Paul's contributions are earmarked for the rent or mortgage and Olivia's for other expenses?

The easy analysis on these facts arises if Paul is himself a tenant and Olivia, with Paul's consent, asks to be added to the lease as a co-tenant. In such a case, both Paul and Olivia are involved in a simple landlord-tenant relationship with the property owner. The more challenging question, of course, arises when Olivia's only agreement is with Paul, and that agreement is essentially "let's live together and share expenses." No North Carolina case directly addresses this situation. Bearing in mind the "typical" landlord-tenant relationship described above as well as the requirements set out in In re Hawkins v. Wiseman, *supra* p. 1[3], my opinion is that this arrangement bears little resemblance to a simple landlord-tenant relationship. There is no indication that Paul has conveyed an estate to Olivia, transferring his right of exclusive control and possession to her for a limited term. While Olivia's legal residence is the property she shares with Paul, that has no relevance whatsoever to the separate question of the nature of her interest – if any – in the property itself.

Maybe occupant is a guest or tenant-at-will.

When an occupant enters property not as a result of a contract but rather simply with the permission of the owner, no landlord-tenant relationship is created. When the occupant resides on the same premises as the owner, the occupant is typically termed a *guest*. When the occupant takes possession of a separate piece of property, the agreement is a *tenancy at will*. In either case, the right to occupancy derives from the consent of the owner, and the right ceases immediately when consent is withdrawn.[4]

It is altogether unclear whether a tenant at will is by definition involved in a "simple landlord-tenant relationship." Consider the following situations:

Scenario #1: Property Owner agrees to allow John to move into a mobile home "so long as it is agreeable to each of us." John pays Property Owner money in varying amounts irregularly, as he is able.

Scenario #2: Property Owner tells John that he has an old mobile home sitting empty, and that John is free to move in or not as he likes, rent-free. John begins sleeping there a few weeks later. Property Owner sees John occasionally, but the subject of whether John ever moved into the mobile home never comes up.

It seems to me that there is a better argument that a landlord-tenant relationship exists in Scenario #1 than in Scenario #2, although I believe both situations are correctly classified as tenancies at will.

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[4] While the right of a tenant at will to occupy the property terminates instantly when the owner demands possession, Stout v. Crutchfield, 21 N.C. App. 387 (1974), several cases and commentators have noted that the tenant must be allowed a reasonable time to leave. *See, e.g.,* Jones v. Potter, 89 N.C. 220 (1883); Choate Rental v. Justice, 212 N.C. 523 (1937); Webster's Real Estate Law in North Carolina, €6.46.

Maybe it has features of both a sale and a lease..

In 1872 the North Carolina Supreme Court decided McCombs v. Wallace, 66 NC 481. In McCombs, the defendant, who was in debt to the plaintiff, deeded his property to the plaintiff as security for his promise to pay what he owed by a certain date. The agreement specified that (1) the plaintiff had the right to sell the property if the debt had not been satisfied by that date; and (2) that defendant had the right to continue in possession of the property until and unless it was sold. The defendant failed to pay what he owed, and the property was sold to a third party. When Mr. Wallace refused to vacate and Mr. McCombs sought his eviction, the question before the Court was whether summary ejectment was an available remedy on these facts. The Court acknowledged that Mr. Wallace was a tenant but stated that the question was "whether he is such a tenant as is embraced within" the summary ejectment statute. The opinion says that two classes of cases do not fall within the scope of that statute: "vendees entering into possession under a contract of purchase, and vendors continuing in possession under circumstances" similar to those in McCombs. Because the defendant did not enter possession pursuant to a conveyance, but rather continued on in possession of his own property subject to divestiture, the agreement was not, said the Court, "within the mischief which [the summary ejectment statute] was intended to remedy."

Three years later, the NC Supreme Court decided another important case, Greer v. Wilbar, 72 N.C. 592 (1875). Like McCombs, Greer involved a property owner desperate to retain possession of property which he had pledged as security for personal debts. Unlike McCombs, Mr. Wilbar prevailed upon some friends to purchase the property themselves. His agreement with his friends was that he would continue to reside on the property as a tenant, paying "a peppercorn" as rent, for two months, and then retake ownership of the property after reimbursing his friends for the purchase price. After some considerable time and several extensions had lapsed, Mr. Wilbar's former friends filed a summary ejectment action. Again, the Court refused to categorize the relationship between the parties as a simple landlord-tenant relationship, pointing out that the actual relationship was more complicated, requiring "an adjustment of the equities" falling outside the scope of the summary ejectment statute. As to the agreement for rent in the amount of a peppercorn, the Court described this as "the cunning contrivance of the form of the relation in lessor and lessee – in order to extend the operation of the [summary ejectment statute] so as to give the mortgagor the benefit of having summary process." The opinion concludes, "The policy of the law cannot be thus evaded and [the summary ejectment statute] cannot "by this form" of a "lease for a barley corn," be made to apply to a case outside of the simple relation of landlord and a tenant."

The Court reiterated the principle established in McCombs and Greer in several cases involving various fact situations over the next few years. In Parker v. Allen, 84 N.C. 466 (1881), the Court stated: "Although there has been a contract of lease for a definite period, which has expired and the lessee refuses to restore possession to the lessor, if there is also a subsisting unperformed executory agreement between the parties for a sale of the land," this additional complicating relationship negates the requirement of a simple landlord-tenant relationship.

In 2010 the General Assembly enacted two new chapters, GS 47G, governing *Leases with Options to Purchase*, and GS 47H, governing *Contracts for Deed*. It is unclear whether and to what extent the former changes the traditional law related to a magistrate's jurisdiction to hear summary ejectment actions when the lease is intertwined with an "option" to purchase agreement calling for what would previously have been deemed an installment sales agreement. It has long been clear that a lease accompanied by a "pure option" – i.e., an agreement, distinct from the lease, that the tenant may at some point in the future cease being a

tenant and become instead a purchaser – is not rendered ineligible for summary ejectment merely because of a purchase that may occur at some future time. That rule clearly continues to apply. What is not clear, however, is the treatment of a combined lease and option to purchase pursuant to which rent payments are credited toward the purchase price of the property in the event that the tenant elects to exercise the option to buy the property. There is statutory language in GS 47G that suggests that any combination of lease and option to purchase executed contemporaneously qualifies for the remedy of summary ejectment, regardless of the degree to which the "option" actually involves monies being advanced toward purchase. That language, while explicit, is far from being so clear and comprehensive as to make me confident that GS 47G is intended to overrule the rules set down by the NC Supreme Court. Until the appellate courts have spoken further on the matter, there are a number of important unanswered questions raised by this legislation.