

Small Claims Appeals District Court Judges' Summer Conference 2025

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Session Objectives

- Part I: Assignment and Pretrial Issues: Is the case properly before you?
- Part II: Where the Story Starts Matters: How starting off in Small Claims changes what happens in District Court?
- Part III: After Small Claims: How are post trial motions handled in small claims cases?
- Part IV: Landlord-Tenant Law: What is the story with summary ejectment cases?

Part I: Is the case properly before you?

NCGS 7A-210 Small Claims Subject Matter Jurisdiction

[A] small claim action is a civil action wherein:

- The amount in controversy...does not exceed **ten thousand dollars** (\$10,000); and
- The only **principal relief** prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and
- The plaintiff has **requested assignment** to a magistrate in the manner provided in this Article.

NCGS 7A-211 Small claim actions assignable to magistrates.

In the interest of speedy and convenient determination, the chief district judge may, in his discretion, by specific order or general rule, assign to any magistrate of his district any small claim action pending in his district if the **defendant is a resident of the county in which the magistrate was appointed**. If there is more than one defendant, at least one of them must be a bona fide resident of the county in which the magistrate was appointed.

HYPOTHETICAL #1

Prince Charming files Small Claims Complaint for money owed and seeks damages in the amount of \$12,500. Magistrate enters a Continuance Order, stating that the amount sought by Plaintiff exceeds the \$10,000 small claims threshold and orders that the case be transferred to district court. The case is given a CVD number by the clerk's office and the parties were noticed for hearing in civil district court, but the clerk's office did not issue a new summons to initiate an action in the general district court division. Can the District Court Judge hear this case?

- a. YES ~ Fits like Cinderella's glass slipper!
- b. NO ~ Fits like a stepsister's foot in the glass slipper!

There is no statutory authority for a magistrate to "transfer" a case to general civil district court.

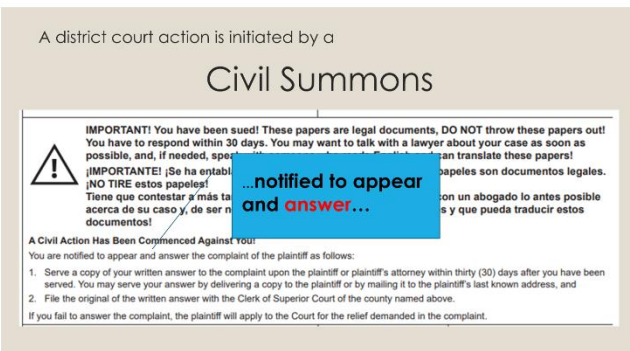
NCGS 7A-258 Motion to transfer.

- Written motion containing a short statement of the grounds and a good faith belief
- Filed in the action sought to be transferred
- Heard and determined by a judge of the superior court division
- Parties can consent to the motion to transfer



If a magistrate “transfers” a case to civil district court, the judge should:

(a) dismiss the case for lack of subject matter jurisdiction or
(b) return the case to the Clerk of Superior Court with instructions that the clerk's office should treat the case as “nonassigned.”



NCGS 7A-215 Procedure upon nonassignment of small claim action

...Upon nonassignment, the clerk immediately **issues summons** in the manner and

form provided **for commencement of civil actions generally**, whereupon process is served, return made, and **pleadings are required to be filed in the manner provided for civil actions generally**....Upon the joining of the issue, the clerk places the action upon the civil issue docket for trial in the district court division.

HYPOTHETICAL #2

The defendant in a small claims action raised an oral objection to venue at trial before the magistrate. Defendant argues that the rental property at issue is located in an adjoining county and the matter should be heard in that county. The magistrate suspends the small claims action pending a district court judge's ruling on the motion and directs that the matter be placed on a civil district court calendar. How should the district court judge proceed?

- Hear the oral motion challenging venue.
- Return the case to small claims for trial.

NCGS 7A-221 Objections to venue and jurisdiction over person.

By motion prior to filing answer, or in the answer, the defendant may object [to venue or personal jurisdiction]. These motions...are heard on notice by the chief district judge or a [designated] district judge... Assignment to the magistrate is suspended pending determination... **All these objections are waived if not made prior to the date set for trial.** If venue is determined to be improper, or is ordered changed, the action is transferred to the district court of the new venue, and is not thereafter assigned to a magistrate, but proceeds as in the case of civil actions generally.

NCGS 7A-223 Practice and procedure in small claim actions for summary ejectment.

"...if the defendant by written answer **denies the title of the plaintiff**, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the **clerk withdraws assignment** of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may **request trial by jury**. Failure to request jury trial within the time limited is a waiver of the right to trial by jury."

HYPOTHETICAL #3

Stepmother brings an action for summary ejectment in small claims court. Cinderella successfully proves that Stepmother failed to follow the procedures in the forfeiture clause. The magistrate dismisses the action. Cinderella appeals the decision so that she can file an answer and counterclaims seeking \$15,000 for violations of the Residential Rental Agreements Act and unfair and deceptive practices. The judge should:

- a. Dismiss the appeal because the defendant is not an aggrieved party.
- b. Proceed with the case because the defendant could not have filed the counterclaims in small claims.

NCGS 7A-228 Appeal for trial de novo

“After final disposition before the magistrate, the sole remedy for an **aggrieved party** is appeal for trial de novo before a district court judge or a jury.”

NCGS 7A-219 Certain counterclaims; cross claims; third party claims not permissible

“**No counterclaim, cross claim or third-party claim** which would make the amount in controversy **exceed the jurisdictional amount** ... is permissible in a small claim No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, **Rule 13**, failure by a defendant to file a counterclaim in a small claims action ..., or failure by a defendant to appeal a judgment in a small claims action to district court, **shall not bar such claims** in a separate action.”

Jury Trial

- The appealing party waives right to jury trial if they fail to request one prior to expiration of appeal period. NCGS 7A-228(b).
- Appellee has ten days from being served with notice of appeal (and payment of costs) to file written request for jury trial, to be served on all parties. NCGS 7A-230.

Remember NCRCP, Rule 38

- Right of trial by jury preserved to the parties inviolate
- Failure to demand trial by jury=waiver
- A proper demand may not be withdrawn without consent of the parties who have pleaded or appear in the action

Part I Legislative Update

- Petition seeking to file as an indigent must be filed before time expires to pay court costs. NCGS 7A-228(b1)
- If denied, then the appellant has 5 days to pay court costs. NCGS 7A-228(b)

- ***NEW* NCGS 7A-228(b2)** DCJ shall do at least one:
 1. Make written findings including
 - (1) all criteria listed in NCGS 1-110 that led to the authorization of the person to appeal as indigent and
 - (2) all evidence used to determine that one or more criteria in NCGS 1-110 existed, **OR**
 2. Make written findings indicating
 - (1) that the authorization was not based on criteria in NCGS 1-110 and
 - (2) all evidence used to determine the person would otherwise be authorized to appeal as indigent

Part II: How does starting off in Small Claims Court change what happens in District Court?

HYPOTHETICAL #4

Plaintiff appeals from a judgment in small claims denying summary ejectment. The parties appear in district court for trial *de novo*, and plaintiff asks the judge to grant her properly filed motion for default judgment based on defendant's failure to file a written answer. You should:

- a. Allow plaintiff's motion.
- b. Deny plaintiff's motion and proceed to trial.

NCGS 7A-218 Answer of defendant

At any time prior to time set for trial, the defendant **may** file a written answer admitting or denying all or any of the allegations in the complaint or pleading new matter in avoidance...**Failure** of defendant to file a written answer after being subjected to the jurisdiction of the court over his person **constitutes a general denial**. (Italics added.)

NCGS 7A-229 Trial de novo on appeal.

"The district judge before whom the [appeal] 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.**"

HYPTOTHETICAL #5

Defendant appeals from a judgment in favor of plaintiff in a summary ejectment action. Having filed no answer or counterclaim, defendant testifies during the trial de novo that any rent he allegedly owes should be offset by the poor condition of the rental property that he is leasing.

Plaintiff objects to this evidence, arguing that defendant waived the defense of offset by failing to file an answer.

Defendant responds that he did not think he needed to file an answer, so he just showed up on court.

Should the judge consider defendant's evidence as an offset to the rent allegedly owed at the time of breach?

- a. Yes
- b. No

Relevant Case Law

Where no defenses are required to be pled in small claims court, and where a district court judge can try the case on the pleadings as filed in the small claims action, then tenants do not waive defenses by failing to plead them and can raise such defenses orally during trial.

See, Don Setliff & Associates, Inc. v Subway Real Estate Corp., 178 N.C. App. 385, 387, 631 S.E.2d 526, 528 (2006), *aff'd*, 361 N.C. 586, 650 S.E.2d 593 (2007), holding that tenant did not have to file an answer in small claims court to preserve the affirmative defense of estoppel for the de novo trial in district court, and the district court did not err in considering the estoppel defense.

HYPOTHETICAL #6

Defendant did not file an Answer in the small claims summary ejectment action. Upon appeal for trial de novo, defendant files an Answer and Counterclaims for breach of the NC Residential Rental Agreements Act and Unfair and Deceptive Trade Practices, requesting \$20,000 in treble damages and attorney fees. If Defendant's counterclaims have been properly served and neither party requests a continuance, do you proceed to trial on Plaintiff's Complaint and Defendant's counterclaims?

- a. Yes
- b. No

NCGS 7A-220 No required pleadings other than complaint.

"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..."

See Silwal v. Akshar Lenoir, Inc., 292 N.C. App. 274 (2024) (disc. rev. denied). Defendant has the right to file pleadings on appeal from small claims to district court and does not have to ask the court for permission, but where the defendant files a motion asking to file pleadings, it would be error to deny the motion if timely made.

HYPOTHETICAL #7

Coyote v. ACME Corporation

In his never-ending quest to capture Roadrunner, Wylie Coyote purchased a pair of ACME Rocket-Powered Roller Skates, hoping they would give him the kick he needed to match Roadrunner's speed. He bought the skates from Peter at the ACME Corporation Supply Store in Cumberland County, North Carolina.

Wylie took the skates out for a test run. Not only did they make Wylie faster than Roadrunner, Wylie could not get them to stop before he collided with a water station.

HYPOTHETICAL #7, cont'd

Wylie suffered injuries as a result of the roller skates' brake failure. He is suing ACME Corporation in small claims court for \$5,040: \$40 for the skates, \$2,500 for medical expenses, and \$2,500 for pain and suffering.

In small claims court, the magistrate entered judgment for Wylie, and ACME appealed to district court. In small claims and at the hearing in district court, the president of ACME represented the company in court. Wylie objected, arguing the president was committing the unauthorized practice of law. The district court judge allowed the president to appear in the trial de novo. Was the judge correct?

- a. Yes, parties in actions appealed from small claims are not required to hire an attorney.
- b. No, the corporation is not a natural person, and only natural persons can represent themselves in court.

NCGS 7A-228 Appeal for trial de novo

(e) "Notwithstanding G.S. 84-4, **any party** in an action appealed for a trial de novo, as provided for in this section, shall **not be required to obtain legal representation.**"

Points to Remember about Cases that Start in Small Claims

- Defendant can waive personal jurisdiction.
- Complaint must be brought in the name of the real party in interest.
- Summons must be issued commencing the action.
- Once in District Court, plaintiff's complaint is subject to Rule 12(b)(6) scrutiny if plaintiff ordered to amend and fails to give notice to defendant. GS 7A-229.
- Small claims "amount in controversy" limits no longer in effect.
- DC Judge is required to make findings of fact and conclusions of law in support of all judgments entered.
- Appellant may dismiss its appeal. More notably, no matter which party appealed, the plaintiff may take a voluntary

dismissal of the case (not the appeal) pursuant to Rule 41(a), which dismisses the action (in small claims court and district court) effectively erasing small claims judgment. Defendant's pending counterclaims can still be heard.

- Arbitration eligible cases are selected for arbitration whether they were commenced in District Court or appealed to District Court.

Part III: How are post-trial motions handled in small claims cases?

HYPOTHETICAL #8

Landlord files Complaint for Summary Ejectment against Tenant, alleging \$650 in rent arrears. Landlord and tenant orally agree if tenant pays the arrears plus court costs prior to trial, then tenant need not appear before the magistrate because landlord will dismiss the action.

Tenant pays landlord the agreed upon amount, leaves town to care for her ailing mother and does not appear for trial. Landlord nevertheless appears before the magistrate and moves for summary ejectment, falsely alleging that Tenant is still \$650 in arrears. Magistrate enters judgment of possession in favor of landlord.

When Tenant returns to the premises, she finds the Judgment and Notice that the Writ of Possession will be executed in three days. Tenant files a Motion alleging that the magistrate's judgment should be set aside on the basis that landlord procured tenant's absence from trial by fraud and presented fraudulent evidence that tenant owed a rent arrearage; on the basis of common law waiver and/or any other reason justifying relief under Rule 60(b)(3), (5) & (6).

Which judicial officer is authorized to hear this Rule 60(b)(3),(5)&(6) motion?

- a. The magistrate, if the Chief District Court Judge has delegated authority to hear such motions
- b. A district court judge
- c. Both a & b.

NCGS 7A-228 New trial before magistrate...

- (a) The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment pursuant to G.S. 1A-1, **Rule 60(b)(1)** and order a new trial before a magistrate. [This] exercise of authority...shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate...

Remember NCRCP, Rule 60(b)

- 1) Mistake, inadvertence, surprise, or excusable neglect;
- 2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- 4) The judgment is void;
- 5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- 6) Any other reason justifying relief from the operation of the judgment.

Rule 65 TROs/Preliminary Injunctions Stemming from Rule 60(b) Motions to Set Aside

A tenant who alleges cognizable grounds to set aside a magistrate's judgment pursuant to Rule 60(b)(1)-(6) may also seek a TRO & a Preliminary Injunction to stay execution of the writ of possession pursuant to Rule 65 of the NC Rule of Civil Procedure. These motions are properly heard by a district court judge.

NCRCP, Rule 65 Injunctions

- A temporary restraining order may be granted without notice if it clearly appears from specific facts shown by affidavit or by

verified complaint that **immediate and irreparable injury, loss or damage will result** to the applicant before the adverse party...can be heard in opposition...

- Judge shall set a **security bond**; in summary ejectment cases, the bond is usually the amount of pro-rated rent for the 10-day period that the TRO is in effect prior to the hearing on the preliminary injunction where both sides are present.

HYPOTHETICAL #9

Landlord files Complaint for Summary Ejectment against Tenant, alleging \$9,000 in rent arrears. Tenant tenders the \$9,000 plus the costs of court prior to the hearing date. Tenant warns Landlord that, if Landlord pursues the summary ejectment action, Tenant will ask the court for sanctions because the tender rendered the claim baseless. Landlord wants to use the summary ejectment action to try to get Tenant to agree to lease modifications. Following the magistrate's dismissal of the summary ejectment action, Tenant filed a motion for sanctions under Rule 11 of the NCRCP. Who can hear the motion?

- a. The magistrate who heard the case
- b. The chief district court judge or his/her designee
- c. Maybe both

Relevant Case Law

District court had authority to order landlords to pay sanctions following magistrate's dismissal of landlords' action against tenants; once magistrate entered judgment, that judgment became a judgment of the district court, and the DCJ had thus regained authority to act on post-judgment sanction motion.

"We note that because it is not before us, we do not decide whether the district court judge may refer to the magistrate a motion for Rule 11 sanctions or whether a district court judge may consider a Rule 11 motion prior to the entry of judgment. We expressly limit our holding to the facts here." Chandak v. Electronic Interconnect Corp., 144 N.C. App. 258 (2001).

Part III: Legislative Update

- 2024 Amendment to NCGS 7A-228(d) requires motions to dismiss the appeal to allege defendant failed to raise a defense in SC and failed either (1) to file a motion, answer, or counterclaim in the district court; or (2) to comply with the Rent Bond.
- Prior to the amendment, all three allegations were required.

Part IV: What is the story with summary ejectment cases?

The Landlord-Tenant Relationship in Summary Ejectment Proceedings

Plot Lines

Breach of a Lease Condition	Failure to Pay Rent	Holding Over	Criminal Activity
<ul style="list-style-type: none">• LL/T Relationship• Forfeiture clause• Breach of forfeiture clause• LL followed procedure in forfeiture clause	<ul style="list-style-type: none">• LL/T Relationship• Terms of lease related to rent and due date• T failed to pay rent when due• LL made clear and unequivocal demand• LL waited 10 days after demand to file• T has not yet paid the full rent owed	<ul style="list-style-type: none">• LL/T Relationship• Terms of lease related to duration and procedure for termination, if any• LL followed procedure set out in lease or statutory notice to terminate• T has not vacated	<ul style="list-style-type: none">• LL/T Relationship• Criminal activity within rental unit OR,• Rental unit was used to further criminal activity OR,• T gave permission for a barred person to return to property OR,• When barred person re-entered unit, T failed to notify LL or LEO

Four
Grounds for
Summary
Ejectment

Plot Twists

Breach of a Lease Condition	Failure to Pay Rent	Holding Over	Criminal Activity
<ul style="list-style-type: none">• LL failed to strictly follow procedure for termination set out in lease• LL fails to prove T breached forfeiture clause• LL continues with rental even after becoming aware of T's breach* <p>*Exception GS 42-26(c) partial rent not waiver in lease</p>	<ul style="list-style-type: none">• T does not owe rent because• T paid all rent due OR• LL's violation of RRAA offsets total amount of rent due• LL failed to make proper demand because<ul style="list-style-type: none">• LL made demand before rent was due• Demand was not clear and unequivocal• LL failed to wait 10 days after demand before filing• Lease contains forfeiture clause• Tender	<ul style="list-style-type: none">• LL accepted rent for period(s) after the termination date• Improper notice	<ul style="list-style-type: none">• T did not know or have reason to know of first three grounds• T took all reasonable steps to prevent criminal activity• Eviction would create serious injustice

Possible
Defenses to
Summary
Ejectment

HYPOTHETICAL #10

Plaintiff filed a Complaint for Summary Ejectment in small claims court; the magistrate finds that the parties lack a landlord tenant relationship and dismisses the Complaint; Plaintiff appeals to Civil District Court.

Upon appeal for trial *de novo*, the district court judge finds that: Defendant is a squatter who entered the premises owned by Plaintiff which were vacant at the time. Defendant never entered into a lease agreement, oral or written, with the Plaintiff. Plaintiff wants Defendant out of the premises; Defendant refuses to leave.

- a. Grant Plaintiff's Complaint for Summary Ejectment.
- b. Dismiss Plaintiff's Complaint for Summary Ejectment for lack of subject matter jurisdiction.

Relevant Case Law

A **landlord-tenant relationship** is an **essential element** of a summary ejectment action; the burden of proof is on landlord to establish the existence of such a relationship in order to avail itself of the specialized procedure and remedy established by NCGS 42-26. See, e.g., Credle v Gibbs, 65 N.C. 192 (1871); McCombs v Wallace, 66 N.C. 482 (1872); Hughes v Mason, 84 N.C. 472, 474 (1881).

In appeal for trial *de novo* from small claims judgment in summary ejectment action, the district court should **determine whether a landlord-tenant relationship exists between the parties regardless of whether either side raises the issue**; if such a relationship is not established, the district court should dismiss the case for lack of subject matter jurisdiction. See, e.g. Hayes v Turner, 98 N.C.App. 451, 454 (1990).

NO LL-T RELATIONSHIP=NO SUBJECT MATTER JURISDICTION

Where the evidence fails to establish the existence of a landlord-tenant relationship, then the district court judge -- whether hearing a summary ejectment action on appeal or hearing the action as an

initial matter because it was filed in district court -- shall dismiss the claim for summary ejectment for lack of subject matter jurisdiction.

Failure to Pay Rent One of these things...

Breach of a Lease Condition

- LL/T Relationship
- Forfeiture clause for failing to pay rent
- Breach of condition for which reentry is specified, *i.e.*, failure to pay rent
- LL followed procedures, if any, in the forfeiture clause

Tender of rent + court costs NOT a defense

Statutory Implied Forfeiture

- LL/T Relationship
- Terms of lease related to rent and due date
- T failed to pay rent when due
- LL made a clear and unequivocal demand for the rent
- LL waited 10 days after demand to file the summary ejectment action
- T has not yet paid the full rent owed

Tender of rent + court costs=defense

ONE EXAMPLE OF A FORFEITURE CLAUSE IN A LEASE*

17. Tenant's Breach:

(a) Events Constituting Breach: It shall constitute a breach of this Agreement if Tenant fails to:

- (i) pay the full amount of rent herein reserved as and when it shall become due hereunder; or
- (ii) perform any other promise, duty or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure or shall occur again any time thereafter without any requirement of further notice from the Landlord.

In either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either terminate this lease or terminate the Tenant's right to possession of the Premises without terminating this lease.*

*From the North Carolina Association of REALTORS®, Inc. "Residential Rental Contract" - Standard Form 410-T, Revised 11/2019

Statutory Implied Forfeiture for Failure to Pay Rent

NCGS 42-3

- Implied in all leases, verbal or written
- Failure to pay rent within 10 days after demand
- Right of LL to reenter and retake possession (follow judicial process for summary ejectment)

NCGS 42-33

- Tender allowed in actions to recover possession upon a forfeiture for the nonpayment of rent (GS 42-3)
- A sum equal to all rent due and the costs
- Case dismissed

HYPOTHETICAL #11

Landlord Wolf and Tenant Pig entered into a written residential lease agreement. The lease provided that the Pig would pay Wolf \$100 per week, payable on Friday, and if rent was not paid, Pig would vacate by Tuesday.

The lease contained the following provision:

In the event of any breach of the payment of rent or any other allowed charge, or other breach of this Lease, Landlord shall have full rights to terminate this Lease in accordance with state law and re-enter and reclaim possession of the leased premises, in addition to such other remedies available to Landlord arising from said breach.

When Pig failed to pay rent on Friday and failed to vacate by Tuesday, Wolf filed an action for summary ejectment. Wolf prevailed in small claims, and Pig appealed. In district court, Pig argued that Wolf's claim should be dismissed because he failed to demand payment and wait 10 days before filing. How should you rule?

- a. Grant Wolf's claim
- b. Dismiss Wolf's claim

Relevant Case Law

GS 42-3 (statutory implied forfeiture for nonpayment) and GS 42-33 (tender) only apply where the parties' lease does not cover the issue of forfeiture of the lease term upon nonpayment of rent. Where the parties have included a forfeiture clause in the leases, the trial court should decline to apply these statutory provisions. Charlotte Office Tower Assocs. v. Carolina SNS Corp., 89 N.C. App. 697 (1988).

Points to Remember about Summary Ejectment

- Parties have 30 days to appeal from district court to the court of appeals. The tenant must pay bond and sign undertaking to stay execution of the judgment for possession. NCGS 42-34.1.
- Your order should include how the rent in arrears and the rental payments accrued in the clerk's office should be disbursed. NCGS 42-32, -34(g), -34.1.
- You should order judgment through the date of trial. NCGS 42-32.
- If the landlord loses on appeal, your order should restore tenant to possession, if necessary. NCGS 42-35
- If the tenant was dispossessed based on the magistrate's judgment, and the landlord loses on appeal, the tenant is entitled to damages. NCGS 42-36, see also NCGS 42-25.9.

The Residential Rental Agreements Act NCGS Ch. 42, Art. 5

HYPOTHETICAL #12

Prior to the appeal, Tenant Pig filed an answer and counterclaims for breach of the implied warranty of habitability, rent abatement, and unfair trade practices. Pig argued that he should not be evicted because of Landlord Wolf's violations of the Residential Rental Agreements Act (RRAA). Pig introduced a report from the county fire marshal detailing the needed repairs, as well as photographs of the property.

The report found that the furnace needed repairs, the exterior underpinning was failing, the front door frame was rotten, the front

HYPOTHETICAL #12, cont'd

and rear doors were not properly sealed, there were holes in the walls throughout the mobile home, floors needed to be replaced throughout, a hole in the ceiling, a hole in front of the bathtub, and exposed wiring where the kitchen light used to be. The photos showed the same defects. Pig also presented text messages requesting repairs and Wolf's refusals. How should the judge treat Pig's counterclaims?

- a. Grant Wolf's claim and Deny Pig's counterclaims and defenses as being without merit. Pig accepted the property in that condition and waived any violations of the RRAA.
- b. Abate the rent based on the violations of the RRAA. If after the rent is abated, Pig does not owe Wolf, deny claim for summary ejectment and enter judgment for Pig's counterclaims.

Purpose of the Act

- Creates an implied warranty of habitability in residential leases
- Requires landlords to provide fit and habitable premises
- Creates mutually dependent obligations of landlord and tenant, but tenant cannot unilaterally withhold rent prior to a judicial determination of the right to do so

NCGS 42-40(b)

- **Covered Property**
 - Dwelling units, including mobile homes and mobile home spaces
 - Grounds, areas, and facilities held out for use by tenants, including yards
- **Property Not Covered**
 - Hotels, motels or similar temporary lodging
 - Vacation rentals
 - Dwelling furnished without charge

NCGS 42-40(3) Who's Covered

Landlord=owners, rental management company, rental agency, or others who have or appear to have authority

NCGS 42-42 Landlord's Obligations

- Comply with building and housing codes and elevator safety requirements
- Keep premises in a fit and habitable condition
- Keep common areas safe
- Maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances
- Install and keep in good repair smoke and carbon monoxide alarms
- Notify tenant if water LL charges to provide exceeds a certain contaminant level
- Repair within a reasonable time any "imminently dangerous condition"
 - Unsafe wiring
 - Unsafe flooring or steps
 - Unsafe ceilings or roofs
 - Unsafe chimneys or flues
 - Lack of potable water
 - Lack of operable locks on all doors leading to the outside
 - Broken windows or lack of operable locks on all windows on the ground level
 - Lack of operable heating facilities
 - Lack of an operable toilet
 - Lack of an operable bathtub or shower
 - Rat infestation as a result of defects in the structure
 - Excessive standing water, sewage, or flooding

Unsuccessful Arguments for Not Applying the RRAA

- T's waiver
- Lack of notice from T to LL where condition was known to LL
- LL's reasonable efforts
- Rent reduced to fair price due to defects
- T unilaterally withheld rent

Rent Abatement: Consequence for Breaches of the Warranty of Habitability

How is the claim asserted?

- Affirmative cause of action
- Counterclaim
- Defense to avoid eviction
- Defense for a setoff

What evidence is required?

Notice-Tenant to Landlord

- T must give whatever notice is necessary to reasonably permit the LL to fulfill his obligations, subject to exceptions.
- Owner is presumed to have knowledge of conditions in existence at the beginning of the tenancy, and no further notice by T is required.
- Owner has no duty to inspect during tenancy.

Written Notice Required-Tenant to Landlord

- Repairs to electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, except in emergencies-G.S. 42-42(a)(4)
- Replace or repair smoke or carbon monoxide alarm-G.S. 42-43(a)(7)

Written Notice Required-Landlord to Tenant

For Violations of G.S. 42-43(a)

- Keep premises clean and safe
- Dispose of waste
- Keep plumbing fixtures clean
- Not destroy, deface, damage or remove any part of premises
- Comply with building and housing codes
- Be responsible for damage beyond ordinary wear and tear
- Notify LL in writing of replacement/repair smoke or carbon monoxide alarm

Defect

- Type of defect that violates the RRAA
- Duration of the defect after notice to LL
- Months T paid rent and defect went unrepaired

Fair Rental Value (FRV)

- “FRV as warranted”-value of the premises in full compliance with G.S. 42-42
- “FRV as is”-value of the premises in their unfit condition for any period of the tenant’s occupancy

Evidence of FRV

Indirect Evidence

- Other facts from which the FRV may be determined, including the dilapidated condition of the premises
- Contractual rent amount

Direct Evidence

Opinion of what the premises would rent for on the open market from either an expert or a witness qualified by familiarity with the specific piece of property

What is the measure of damages?

- Difference in “FRV as warranted” & “FRV as is” up to the amount of rent actually paid
- Incidental damages
- Treble damages if T also proves unfair trade practice

HYPOTHETICAL #13

Rapunzel rented a two-bedroom, two-bathroom tower whose “FRV as warranted” was \$1,000.00 per month. She began experiencing plumbing problems in one of the bathrooms, due to no fault of her own, which caused the bathroom to be inoperable. Rapunzel notified the landlord in writing of the plumbing problems, but the repairs were not made for three months, and she paid the full amount of rent each month. In a suit against the landlord for violating the RRAA, if the court finds that without the use of one of

HYPOTHETICAL #13, cont'd

the bathrooms, the "FRV as is" is \$800 per month, what rent abatement damages would the court award to Rapunzel?

- a. \$600
- b. \$2,400

HYPOTHETICAL #14

Same facts as Hypothetical #13, but this time, Rapunzel paid \$1,000 for month one but failed to pay anything for months two and three. The landlord sued for summary ejectment, and Rapunzel raises violations of the RRAA as a defense. How should the court rule?

- a. For Rapunzel, she should not owe rent while the property is in a defective state.
- b. For landlord, Rapunzel still owes rent of \$1400.

HYPOTHETICAL #15

Same facts as Hypothetical #14, but this time, Rapunzel wants to tender the rent due + court costs. Assume rent is due on the first, the case is heard on the second day of month four, and the plumbing has been fixed. How much will she have to tender and what happens to the case if she does?

- a. \$2400 + court costs, case dismissed
- b. \$1400 + court costs, judgment for possession

Part IV: Legislative Update

- Amendment to NCGS 42-34(e) & (g) requires clerk to disburse rental payments within 5 business days of written request from LL
- Amendment to NCGS 42-46(a) to clarify that late fee is permitted if rent is late 5 calendar days or more, with the first day being the day after rent was due
- Amendment to NCGS 42-46(i)(3) on appeal to district court, landlord is entitled to all actual reasonable attorneys' fees paid or owed if court determines the tenant knew or should have known the appeal was frivolous, unreasonable, without foundation, or in bad faith or solely for the purpose of delay