

Landlord-Tenant Law: North Carolina Small Claims Law by Brannon (2009)

The chapter on Landlord-Tenant Law in Joan Brannon's book on small claims law continues to be an outstanding reference. While a few portions of the text have been rendered inaccurate by subsequent legislation or case law, the majority of these relate to procedural modifications applicable to small claims court.

Readers should be aware of the following changes:

- References throughout the text to damages not exceeding \$5000 should read "\$10,000" due to legislation in 2013 increasing the jurisdictional amount for small claims cases.
- In 2010 the General Assembly passed GS 47G and GS 47H governing the buyer/seller relationship discussed on p. 151 when the agreement is an option to purchase contract executed with lease agreement or a contract for deed.
- In 2023 the General Assembly passed G.S. 72-1(c) defining "transient occupancy" as "the rental of an accommodation by an inn, hotel, motel, recreational vehicle park, campground, or similar lodging to the same guest or occupant for fewer than 90 consecutive days." Unless the parties have expressly agreed to create a landlord-tenant relationship, the provisions of Chapter 42 will not apply to transient occupancies.
- The unconscionability issue discussed on p. 160 was directly addressed by the NC Supreme Court in Eastern Carolina Regional Housing Authority v. Lofton, 789 SE2d 449 (2016), in an opinion holding that a landlord is not required to produce evidence negating the possibility that eviction in the particular circumstances would be unconscionable.
- Monetary damages are addressed starting on p. 165, and it should be added that if the landlord is seeking both money damages and possession, service is by posting, and defendant is not present, a 2017 amendment to G.S. 7A-223 allows plaintiff to ask that the claims be "severed," with claim for possession heard immediately and money damages claim heard at later time after defendant has been personally served.
- The section on p. 170 referring to "Other Contractual Fees" has been substantially amended by legislation enacted in 2009 amending GS 42-46 establishing a hierarchy of permissible administrative fees as well as out-of-pocket and other litigation expenses.
- In 2012 the General Assembly added GS 42-26(c) permitting a landlord to accept partial payment of rent in certain circumstances without waiving the right to pursue eviction. This legislation is an important addition to the discussion of waiver beginning on p. 171 of the book.

- The section labeled Security Deposits on p. 189 of the book should be supplemented with legislation making minor amendments to GS 42-51. In addition, Neil v. Kuester Real Estate Services, Inc., 237 NC App 132 (2014) is an important case limiting the “full refund” remedy for violation of the Act to willful violations of GS 42-50, the provision related to the deposit of funds to a trust account.
- The section on pp. 190-192 governing a landlord’s right to dispose of tenant’s property should be revised to correct references to dollar amounts and time periods in accordance with statutory amendments set out in GS 42-25.9 and 42-36.2. In 2012 the General Assembly passed 42-36.3 which allows a landlord to file an affidavit in special proceedings in accordance with G.S. 28A-25-7 rather than having to file for summary ejectment when a tenant who is the sole occupant of the property dies leaving personal property in the unit.
- GS 42-42 was amended to add to the Landlord’s Duties under the RRAA listed on p. 193 to include complying with all applicable elevator safety requirements in statute, providing an operable carbon monoxide alarm and repairing and remedying any imminently dangerous conditions on the premises as defined by statute.

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Small Claims Appeals: Cases

Corporations may appear through an agent in small claims court, ~~but this exception does not apply on appeal to district court.~~ Duke Power Co. v. Daniels, 86 NC App 469 (1987); Lexis-Nexis v. Travishan Corp., 155 NC App 205 (2002). In 2017 the General Assembly amended GS 7A-228 to add new subsection (e), which provides “*Notwithstanding GS 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.*” S.L. 2017-143.

Even under the relaxed standards applicable to small claims complaints (requiring only that a complaint include enough information to “enable a person of common understanding to know” the basis of the lawsuit, plaintiff’s AOC form complaint for slander contained so little information that dismissal pursuant to Rule 12(b)(6) was appropriate on appeal for trial de novo. Franklin v. Wiggins, 179 NC App 434 (2006) (unpublished opinion).

Defendant is not required to file an answer, even if defendant wishes to assert an affirmative defense. Don Setliff & Assoc. Inc. v. Subway Real Estate, 178 NC App 385 (2006), *aff’d per curiam* 361 NC 586 (2007).

Counterclaims are never compulsory in small claims court, but failure to assert a compulsory counterclaim on appeal to district court may lead to defendant's loss of the right to assert it in a subsequent action. Holloway v. Holloway, 726 SE2d 198 (2012).

Plaintiff was entitled to seek substantially increased amount of damages on appeal for trial de novo after initially seeking reduced amount in small claims in order to avoid exceeding that court's jurisdictional limit. Blevins Workshop, Inc. v. Williams, 206 NC App 596 (2010) (unpublished opinion).

Tenant who prevailed in landlord's summary ejectment action in small claims court was not an "aggrieved party" who could bring counterclaims, which were arguably compulsory counterclaims, that exceeded the jurisdictional limit of small claims court in an appeal to district court from the summary ejectment decision; tenant was still free to seek appropriate redress for her claims against landlord by bringing a separate action in district court. J.S. & Assoc., Inc. v. Stevenson, 265 N.C. App. 199 (2019).

District court judgment in appeal for trial de novo in small claims court must be supported by findings of fact and conclusions of law. Jones v. Ratley, 360 NC 50 (2005).

"When plaintiff [gives] notice of appeal for trial de novo in district court, it [is] as if the case had been brought there originally." First Union National Bank v. Richards, 90 NC App 650 (1988).

Plaintiff is entitled to voluntarily dismiss his case pursuant to Rule 41(a) after small claims judgment, while de novo appeal is pending. First Union National Bank v. Richards, 90 NC App 650 (1988). This dismissal does not prevent the court from hearing defendant's counterclaims, however. Surratt v. Newton, 99 NC App 396 (1990) (*dicta*).

DCJ had jurisdiction to hear post-judgment motion for sanctions pursuant to Rule 11 in small claims action from which there was no appeal. Chandak v. Electronic Interconnect Corp., 177 NC App 568 (2014). NOTE the Court expressly declined to address the magistrate's authority to consider a motion for sanctions as well as the district court judge's authority to consider such a motion in a small claims case prior to entry of judgment.

Effective notice to terminate a tenancy must comply with federal regulations, including the Violence Against Women's Act, with regard to the contents of the notice, the delivery of the notice, and the amount of notice. L.I.C. Assoc. I, Ltd. P'Ship v. Brown, 294 N.C. App. 577 (2024).

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. Silwal v. Akshar Lenoir, Inc., 292 N.C. App. 274 (2024) (*disc. rev. denied*).

The Residential Rental Agreements Act does not create a duty for the landlord to inspect property. Landlord did not violate the Act by failing to make repairs when landlord did not have actual knowledge or notice of the problem. Terry v. Public Service Co. of NC, Inc., 385 N.C. 797 (2024).

A landlord's trespass upon leased premises to perform self-help eviction violated landlord-tenant statute and public policy and constituted an unfair and deceptive practice under the consumer protection statute. The owner and the agent who carried out the self-help eviction are both liable under the Ejectment of Residential Tenants Act. Myers v. Broome-Edwards, 294 N.C. App. 364 (2024).

For purposes of the NC Debt Collection Act, a landlord is a debt collector, and a tenant is a consumer. The landlord did not violate the NCDCA by charging the tenant for access to the well at a rented house. Onnipauper LLC v. Dunston, 290 N.C. App. 486 (2023) (*disc. rev. denied*).

Tenant's status as holdover tenant precluded success on assertion of retaliatory eviction. Waters v. Pumphrey, 286 N.C. App. 151 (2022) (*disc. rev. denied*).

Defendants entered into a "Property Rental Agreement" and "Offer to Purchase and Contract" with owner's agent. The court analyzed the writings under GS 47G and GS 47 H and determined that the writings formed an installment land contract. Since the defendants had a land installment contract giving them equitable title and not a lease, the court reversed the trial court's order declaring the owner's estate as the sole owner and ordering the defendants to vacate the property. Matthews v. Fields, 284 N.C. App. 408 (2022).

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