

The Landlord-Tenant Relationship

Melanie Crenshaw
Teaching Assistant Professor
UNC School of Government
mcrenshaw@sog.unc.edu
(919)962-2761

Objectives

- ✓ Understand the importance of the landlord-tenant relationship to subject matter jurisdiction in summary ejectment cases.
- ✓ Explore definitions of the landlord-tenant relationship.
- ✓ Analyze situations where there is no landlord-tenant relationship and summary ejectment is not an available remedy.

Disclaimer: Some images in this presentation were created by using Bing AI Image Creator.

UNC SCHOOL OF GOVERNMENT 2

SUBJECT MATTER JURISDICTION IN SMALL CLAIMS

- Small Claims Action Defined GS 7A-210
 - Amount in controversy **\$10,000 or less**
 - Remedy is **money, return of personal property, or summary ejectment**
 - Plaintiff **requested assignment** to small claims
- Assignment to Small Claims by CDCJ (GS 7A-211)
 - Defendant is **resident of county** where magistrate is appointed
 - If more than one defendant, at least **one defendant is resident** of county where magistrate is appointed

UNC SCHOOL OF GOVERNMENT

SUBJECT MATTER JURISDICTION IN SUMMARY EJECTMENT

- The remedy provided by GS 42-26 is restricted to cases where the relation between parties is simply that of landlord and tenant and must be proven in order for the **SUMMARY EJECTMENT** remedy to be granted.
- An action to recover possession of real property not involving a **SIMPLE LANDLORD-TENANT RELATIONSHIP** is not an action in summary ejectment.
- A judicial official is without **SUBJECT MATTER JURISDICTION** to hear such an action.

UNC SCHOOL OF GOVERNMENT

WHY DOES SUBJECT MATTER JURISDICTION MATTER?

- Without it, judgment is invalid.
- It can be challenged at any point, even for the first time on appeal.
- If there is no evidence to support a finding of a landlord-tenant relationship, the court must dismiss the plaintiff's summary ejectment proceeding.

UNC SCHOOL OF GOVERNMENT

Adams v. Woods, 169 N.C. App. 242 (2005).

Small claims is a court of limited jurisdiction, meaning small claims magistrates only have legal authority to hear cases authorized by statute and assigned by the chief district court judge.

What are some statutory definitions of “landlord” and “tenant”?

- Ch. 42, Art. 1 General Provisions
 - GS 42-14.4 Notice to State Bar of Attorney Default on Lease. Landlord means any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform duties imposed by the Article.
- Ch. 42, Art. 2A Ejectment of Residential Tenants
 - GS 42-25.9 Remedies. “lessor, landlord, or agent”
- Ch. 42, Art. 5 Residential Rental Agreements Act
 - GS 42-40 Definitions. Landlord means any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform duties imposed by the Article.
- Ch. 42, Art. 6 Tenant Security Deposit Act
 - GS 42-56 Application of Article. The provisions of this article shall apply to all persons, firms, or corporations engaged in the business of renting or managing residential dwelling units, excluding single rooms, on a weekly, monthly, or annual basis.
- Ch. 42, Art. 7 Expedited Eviction of Drug Traffickers & Other Criminals
 - GS 42-59 Definitions.
 - (7) Landlord means person, entity, corporation, or agency who or which owns, operates, or manages any leased residential premises.
 - (10) Tenant means any natural person or entity who is a named party or signatory to a lease or rental agreement, and who occupies, resides in, or has a legal right to possess and use an individual rental unit.
- Ch. 42A, Art. 1 Vacation Rental Act
 - GS 42A-4 Definitions. (1a) Landlord-An owner of residential property offered for lease as a vacation rental with or without the assistance of a real estate broker.

There is no specific definition of “landlord-tenant relationship” in the statute, so we must look to case law. For a definition of “landlord-tenant relationship”, see *In Re Hawkins*, 191 N.C. App. 250 (2008) (unpublished).

DEFINITION OF LANDLORD-TENANT RELATIONSHIP

Regardless of the label attached by the parties, a landlord-tenant relationship is created when:

1. Landlord has the right of possession.
2. The landlord transfers that right to the tenant.
3. There is an exchange of value (rent).
4. There is an agreement, written or oral, specifying the duration of the transfer and the value the landlord is entitled to receive.

UNC School of Government

Common Questions

1. Does rent always have to be money?
2. Is residence the same as tenancy?
3. How do I determine the terms if the lease is oral?
4. What happens if there is not a landlord-tenant relationship?

Relationships Where Summary Ejectment May Not Be the Remedy



Inheritance

- If the party suing claims to be an heir, is the estate settled or is it clear who owns the property?
- Is the estate trying to remove deceased family member's live-in love?
- Is a family member trying to remove another family member or guest from the deceased's property?
- Was there a LL-T relationship between the deceased and/or plaintiff and the defendant?

Hayes v. Turner, 98 N.C. App. 451 (1990). Son of homeowner attempted to evict her caregiver after his mother's death but there was no landlord-tenant relationship.



Live-In Help

- Does the defendant reside in the property in exchange for performing a service? OR
- Is the defendant's occupancy "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. App. 41 (1941). Landlord-tenant relationship implied where tenant manages property in exchange for occupancy of part of the property when occupancy is not necessary to fulfilling the duties of employment.



Foreclosure

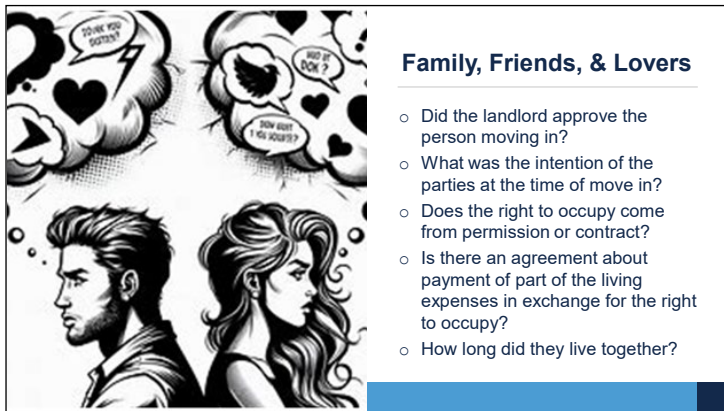
- Is mortgagee trying to remove mortgagor who retains possession after foreclosure?
- Is the defendant a "bona fide tenant" covered by the Protecting Tenants at Foreclosure Act?

Greer v. Wilbar, 72 N.C. 592 (1875). Landlord and Tenant Act does not apply to a mortgagor who is allowed to remain in possession, and on demand after default refuses to surrender possession to mortgagee.

Protecting Tenants at Foreclosure Act

- Protects bona fide tenants
 - “Bona fide” only if
 - The mortgagor, child, spouse, or parent is not the tenant,
 - Lease was product of arm’s length transaction, and
 - Lease requires the receipt of rent commensurate with FMV
- Bona fide tenants entitled to
 - Remain until end of lease except when
 - Property is sold after foreclosure to purchaser who will occupy as primary residence
 - There is no lease or tenancy is at-will
 - Notice to vacate at least 90 days before the effective date of the notice
- Purchaser must pursue summary ejectment to remove a bona fide tenant for breach/failure to pay rent during notice period but must seek an order of possession from clerk after PFTA requisite time period has expired.

For more information about the Protecting Tenants at Foreclosure Act, see “More on the Protecting Tenants at Foreclosure Act” by Meredith Smith, *On the Civil Side* blog at civil.sog.unc.edu/more-on-the-protecting-tenants-at-foreclosure-act/.



Family, Friends, & Lovers

- Did the landlord approve the person moving in?
- What was the intention of the parties at the time of move in?
- Does the right to occupy come from permission or contract?
- Is there an agreement about payment of part of the living expenses in exchange for the right to occupy?
- How long did they live together?

Bradley v. Tapia, 277 N.C. App. 385 (2021) (unpublished). Parties were in on-again-off-again romantic relationship when boyfriend purchased home and allowed girlfriend to live there in exchange for her paying one-half the mortgage and utilities. Court affirmed trial court’s judgment for possession because the relationship was that of landlord-tenant.

There is not a lot of case law in North Carolina, but cases in other jurisdictions have found guest to be a trespasser and not a tenant where parties did not intend to create a landlord-tenant relationship and did not exchange value. These cases looked at the frequency of contributions and whether rent was paid and/or demanded.

A Word about Trespass

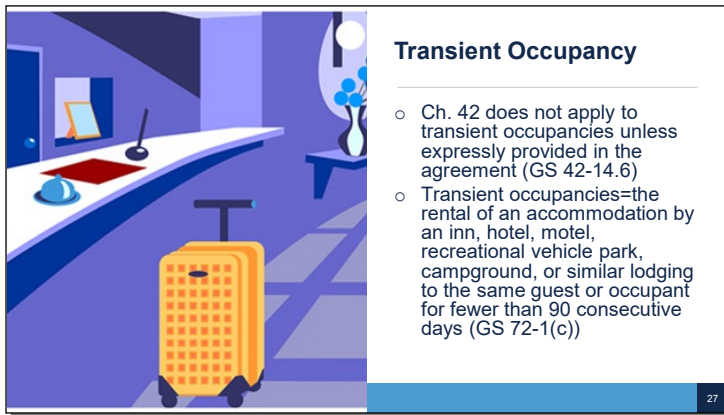
- Right to occupancy derives from consent of the owner (no LL-T relationship).
- Right ceases when consent is withdrawn.
- Trespass may be either civil or criminal.
 - Civil Trespass
 - Possession, entry, damage (invasion of possessory rights)
 - See *Adams v. Woods*, 169 N.C. App. 242 (2005) court of appeals vacated and remanded for dismissal the plaintiff’s summary ejectment action because there was no landlord-tenant relationship between the parties. The court noted the plaintiff was not without a remedy; as rightful owner of the

property, he may file a trespass action against defendants for invasion of his possessory rights.

- Criminal Trespass
 - 1st Deg.-unauthorized entry into building
 - 2nd Deg.-entry after notification not to enter or remain

A Word about Tenants-at-Will

- Occupancy of premises under agreement for uncertain and indefinite term (invalid lease), for example:
 - “for so long as property is a gas station”
 - “as long as sister-in-law and family lived on the property”
 - Oral lease “until not a hotel or owner tore it down”
 - Violates statute of frauds-oral lease for more than 3 years
- Terminable at will of either party
- Notice to vacate=reasonable (see GS 42-14)



The legislature passed a bill in 2023 that removes transient occupancies of less than 90 days in hotels, RV parks, campgrounds, and similar lodging from qualifying as residential tenancies governed by Ch. 42, unless the parties expressly provide in their agreement that a tenancy is created. For occupancies that last longer than 90 days or where the owner and the occupant enter into a lease

agreement, I think Ch. 42 will still apply. If there is a straightforward lease agreement, the owner will have to use summary ejectment to evict the tenant. If the occupancy lasts longer than 90 days and it's unclear if there was an intention to create a LL-T relationship, you may need to apply the factors from a case addressing whether long-term residents in a building that called itself a hotel were actually tenants. *Baker v. Rushing*, 104 N.C. App. 240 (1991).

Some facts from *Baker v. Rushing*:

- oral leases
- Weekly “rent” payments
- Sole and permanent residence
- Defects in premises not repaired
- Nothing changed after owners got hotel license
- Some residencies were as long as 6 years
- Layout of space similar to apartment w/ bedrooms, kitchen, living room/bathroom

Questions to ask when analyzing a case under *Baker v. Rushing*:

- Is there a lease?
- Is the property the sole and permanent residence of the occupant?

- What is the length of the party’s residence at the property?
- What is the layout of the property?
- Does the property have a hotel license and operate as such?
- Does the owner maintain control over the premises?
- Does the owner retain the room key?
- Does the owner provide maid service?
- Does the owner share facilities with the occupant?
- Does the owner repair and maintain the rooms?
- Does the owner or the occupant pay the utilities?

The screenshot shows a presentation slide with the title "What about Airbnb?". It contains two bullet points:

- *Poage v. Cox*, 265 N.C. App. 229 (2019)-rental of mountain cabin through Airbnb subjected the owners to the duties imposed on landlords in the Vacation Rental Act
- Airbnb Terms of Service-“Some jurisdictions have laws that create tenancy rights for Guests and additional obligations for Hosts. For example, some places have landlord-tenant, rent control, and eviction laws that may apply to longer stays. Check your local rules to learn what rules apply to the Host Services you plan to offer.”

 At the bottom of the slide, it says "Made possible by Hosts" and features the UNC School of Government logo. The slide number "29" is visible in the bottom right corner.

The slide is titled "Homebuyers" and features an illustration of two hands shaking in a firm grip, symbolizing a contract, with a yellow house and a "SOLD" sign in the background. The text on the slide lists four questions:

- Is there a contract for the sale of the property?
- Has there been a rescission of that contract?
- Is the agreement a lease with an option to purchase? Has the option been exercised?
- Does NCGS 47G or NCGS 47H apply?

There is established NC case law about buyers and sellers not being within the jurisdiction of magistrates because there is no landlord-tenant relationship.

Some examples include:

College Heights Credit Union v. Boyd, 104 N.C. App. 494 (1991)-There was no subject matter jurisdiction for the court to enter judgment for possession in summary ejectment action to remove owners after courthouse tax sale of defendants’ home to plaintiff.

Marantz Piano Co., Inc. v. Kincaid, 108 N.C. App. 693 (1993)-There was no subject matter jurisdiction for the court to enter a judgment for possession in summary ejectment action where sales contract had not been canceled and parties’ relationship remained vendor-vendee.

What about *Matthews v. Fields*?

Option to Purchase with Lease

- Offer open for a specified period of time.
- Specified period of time is necessary ingredient for option contract.

Installment Land Contract

- Seller agrees to sell interest in property and purchaser agrees to pay purchase price in 5 or more installments excluding down payment.
- Seller retains title as security.
- Purchaser has "equitable title."

↓

UNC SCHOOL OF GOVERNMENT 31

Matthews v. Fields, 284 N.C. App. 408 (2022). Defendants entered into "Property Rental Agreement" and "Offer to Purchase Contract" with owner's POA. The writings stated that the defendants would pay \$450/month toward the purchase price of \$50,000. On the purchase contract, the POA was listed as the seller and the defendant as the buyer with a settlement date TBD. After the owner died, her heirs unsuccessfully

attempted to evict the defendants in small claims. They filed a motion for declaratory judgment and the trial court ordered the defendants to vacate the property. On appeal, the defendants argued the agreement was either a valid option to purchase contract with lease under GS 47G or an installment land contract under GS 47H. The Court of Appeals reversed the trial court and held that the agreement was not an option to purchase because it did not have a specified time to exercise the option, but that the parties entered into an installment land contract, not a lease, and the defendants had at least an equitable title in the property and could not be evicted.

GS 47-G Option to Purchase Contracts with Lease

- Writing required
 - Recording by seller
- Contents
1. Names and addresses
 2. Date signed
 3. Legal description and address of property
 4. Sales price
 5. Option fee and any other fees/payments
 6. Obligations for which ~~breach forfeiture~~
 7. Time period to exercise the option
 8. Right to cure a default
 9. 3-Day right to cancel

GS 47-H Contracts for Deed

- Writing required
 - Recording by seller
- Contents
1. Names and addresses
 2. Date signed
 3. Legal description and address of property
 4. Sales price
 5. Charges or fees
 6. Amount of down payment
 7. Principal balance owed
 8. Amount and date of installment payments
 9. Interest rate
 10. Pending orders
 11. Rights to cure a default
 12. Obligations for the property
 13. Right to accelerate or prepay
 14. Residential Disclosure Statement
 15. Taxes, dues or assessments
 16. 3-Day right to cancel

What Does It All Mean?


Don't assume the relationship of the parties before you is that of landlord/tenant.

↓

Parties may have relationships that require you to analyze the facts and determine if the case is properly in small claims court.

↓

If there is no landlord-tenant relationship, you do not have subject matter jurisdiction for summary ejection.



UNC SCHOOL OF GOVERNMENT 34