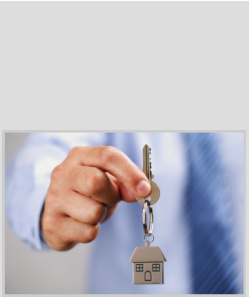




The Legal Beat

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The Legal Beat is a monthly legal update brought to you by the Police Attorneys' Office of the Greensboro Police Department.

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Tenant vs. Guest: Trespass or Eviction?

Encountering upset or angry people at an apartment, a house, or a mobile home in which one wants the other gone and one thinks they are entitled to remain is very frequent. It raises the questions of when a person is a tenant or a guest, and perhaps more importantly, when the direction is a criminal charge of trespass or the civil procedure of summary ejection. This article will address recent questions on this issue.

This situation usually arises when one person (Mary) has rented an apartment, another person (Joe) has been staying in the apartment for the last four weeks, an argument or fight occurs, and you are dispatched to the location. Mary wants Joe gone right now and Joe claims he has been living there with Mary and refuses to leave. What can or should you do in this situation? Ask these questions:

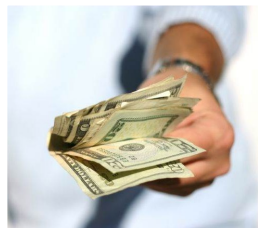
1. Is there a written lease, and if so, whose name is on the lease? Likely in this case Mary's name will be on the lease as she was already occupying the apartment. If there is no written lease, find out who owns or manages the property and what the arrangements are for Mary to reside in the apartment. In other words, establish Mary is a legitimate tenant. If Mary is not a legitimate tenant, she and Joe may both be trespassers and that will likely involve a different type of investigation.

2. Has Joe's name been added to the lease? Once you have confirmed Mary is the tenant, ask if she added Joe's name to the lease. If she has, Mary will have to seek summary ejection, a civil action, as Joe is a tenant, not a trespasser.



3. If Mary did not add Joe's name to the lease, ask what arrangements were made or if the parties came to an understanding or made an oral agreement since Joe began staying in the apartment. These arrangements do not need to be in writing, but there does need to be a "meeting of the minds" between Mary and Joe.

4. What services, as agreed upon by Mary and Joe, are Joe providing in exchange for living in the apartment? This does not have to be payment of a portion of the rent. It could be an agreement that Joe would pay certain bills, clean the apartment and/or provide the food. Whatever "services" Joe is providing - i.e., money, child care, cleaning - there has to be a mutual



agreement that Joe would provide this service or money to live in the property. Simply because Joe occasionally gives Mary money does not make Joe a tenant unless Joe and Mary agreed that Joe could live there if he gave Mary money on occasion. The important thing is not the services agreed upon but rather that there was an agreement between Mary and Joe that Mary would allow Joe to live in the apartment in exchange for payment or services provided by Joe.

Keep in mind the following:

- Guest vs. Trespasser: Mary says Joe just starting spending one or two nights and then it gradually increased to every night and Joe just helped out when he wanted. Joe agrees but states he gave her some money when he started spending the night more regularly. This is not an agreement between the parties as there has not been a "meeting of the minds." Without an agreement between the parties, even with some money paid and the length of time Joe has been in the apartment, Joe is a guest and must leave. If he refuses, he becomes a trespasser.
- Co-Tenants or Co-Owners: If Joe and Mary rented the apartment together, and both names are on the lease, both are tenants and both have the right to remain. If Joe and Mary purchased the property

Story continued on page 2

**EVICTION
NOTICE**

Tenant vs. Guest cont'd

and both names are on the deed, again both have the right to remain. In both these situations, neither Joe nor Mary is a trespasser and neither can seek to evict the other person. NOTE: If this is a domestic violence situation advise the appropriate party on the procedure for seeking a domestic restraining order. (Chapter 50 of the North Carolina General Statutes)

- Parent and child or two friends: Questions one through four apply in the same situation if the facts involve two friends or a parent and an adult child.
- Irrelevant facts: These facts are generally not relevant to determining if the person is a tenant or guest. For example:

receives mail at the address, has clothes or furniture at the apartment or house, or has a toothbrush in the bathroom.



Because these situations are not easy to determine, go the route of arrest for trespassing only if you think you have established probable cause that the person has entered or remained on the premises of another after he has been notified not to enter or remain

there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person. (N.C. Gen. Stat. §14-159.13)

Because these situations are not easy to determine, and different minds can reach a different conclusion, avoid a warrantless arrest if at all possible. Advise Mary to seek the warrant, accompany her if needed, or call the magistrate.

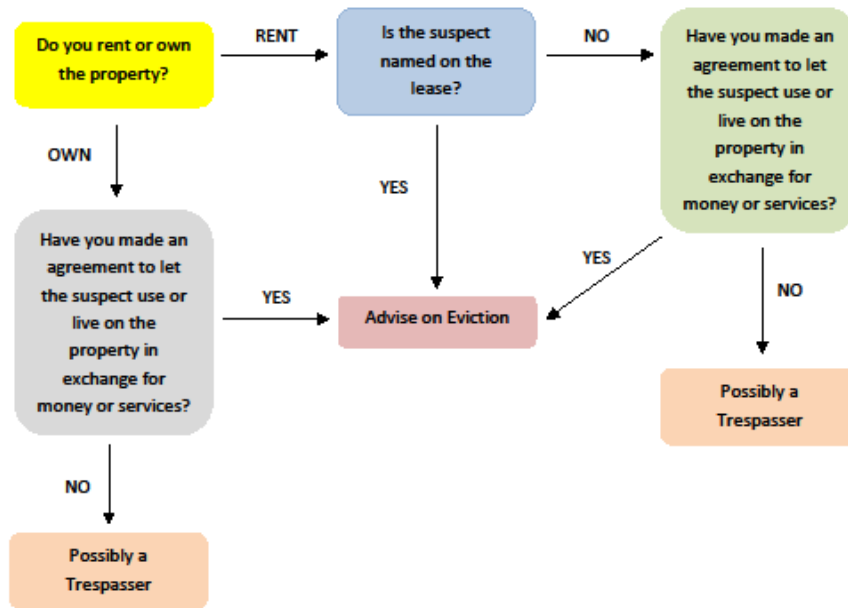
When you have not developed probable cause, advise the party to seek a summary ejection (Chapter 42 of the North Carolina General Statutes) at the Civil Section of the Clerk's office if there are facts creating a landlord/tenant relationship.¹

¹ The advice contained in this newsletter follows very closely the advice provided to the High Point Police Department and Guilford County Sheriff's Office, which should assist when you are seeking a warrant for trespassing as the Magistrates should hear similar factual situations from all officers.



The Flow Chart on the following page is helpful in determining the difference between a tenant or a trespasser.

FLOW CHART



Remember:

1. If in doubt about status, advise on both warrants for trespassing and inform about eviction process.
2. Leases may be written or oral, so long as the tenant has agreed to pay money or provide a service in exchange for the ability to stay.

Chart Credit: Rik Stevens, Guilford County Sheriff's Attorney.

Rik Stevens, Guilford County Sheriff's Attorney and Brian Beasley, High Point Police Attorney also provided assistance with the content of this newsletter.