

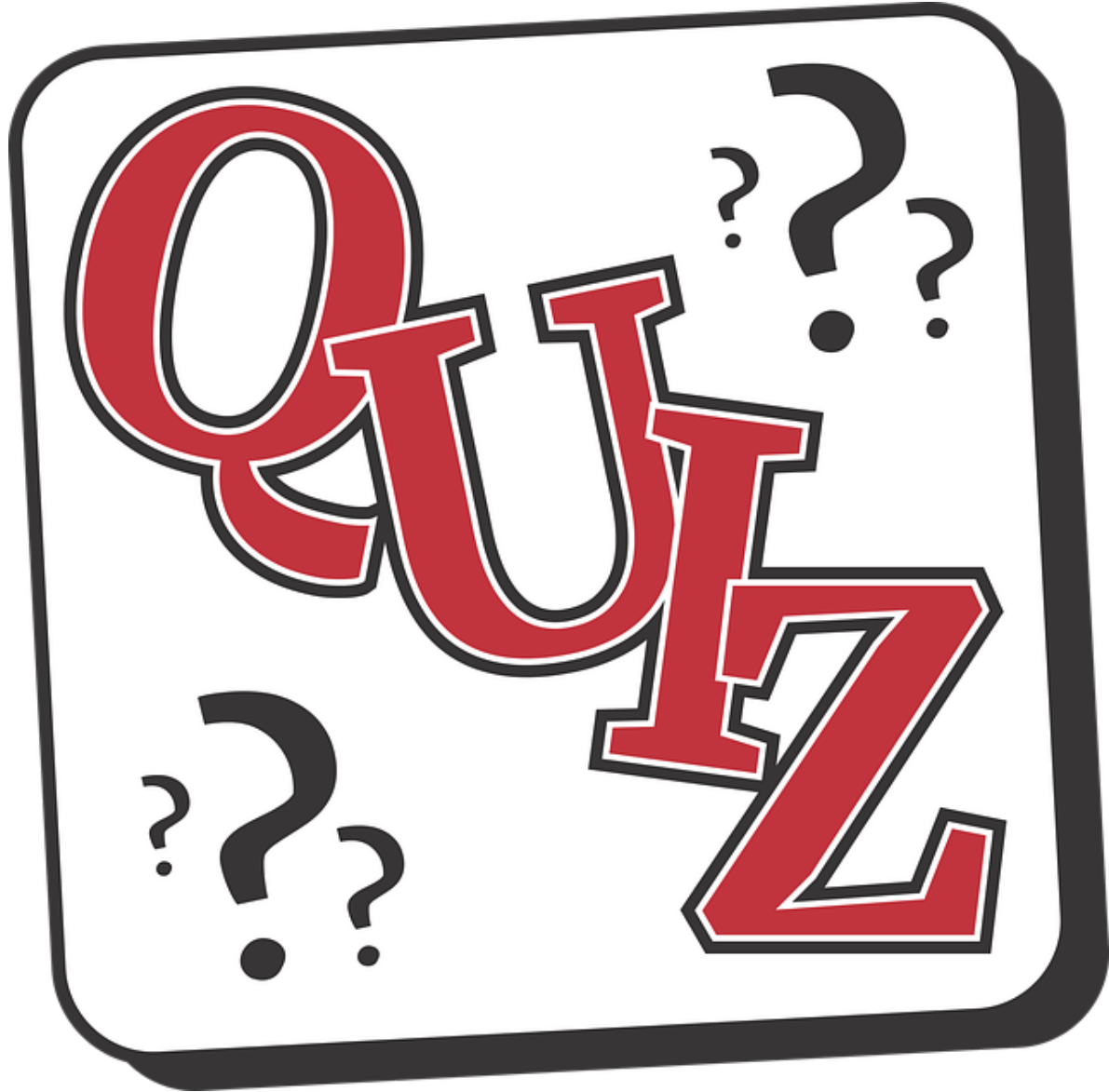
ISSUES IN SUMMARY EJECTMENT

**MELANIE CRENSHAW, UNC SCHOOL OF GOVERNMENT
ONE-DAY CIVIL LAW SEMINAR 2023**



OBJECTIVES

- **IDENTIFY ELEMENTS FOR GROUNDS FOR SUMMARY EJECTMENT**
- **IDENTIFY DEFENSES TO SUMMARY EJECTMENT**
- **ANALYZE RELATIONSHIPS TO DETERMINE IF A LANDLORD-TENANT RELATIONSHIP EXISTS**



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Grounds for Eviction



Breach of a Lease Condition



Failure to Pay Rent



Holding Over



Criminal Activity

Elements

Breach of a Lease Condition

- LL/T Relationship
- Forfeiture clause
- Breach of forfeiture clause
- LL followed procedure in forfeiture clause

Failure to Pay Rent

- 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

Holding Over

- 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

Criminal Activity

- 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

Common Defenses

Breach of a Lease Condition

- 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*

*Exception GS 42-26(c)
partial rent not waiver in lease

Failure to Pay Rent

- 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
 - 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

Holding Over

- LL accepted rent for period(s) after the termination date
- Improper notice

Criminal Activity

- 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

BREACH OF A LEASE CONDITION



BREACH OF A LEASE CONDITION: ELEMENTS

LL-T relationship

Forfeiture clause

T's breach

LL followed procedure in lease

WATCH OUT FOR WAIVER

- GENERAL RULE-WHEN A LL KNOWS T HAS BREACHED THE LEASE AND ACCEPTS RENT THAT COMES DUE AFTER THE BREACH, THE LL HAS WAIVES T' BREACH AND IS NOT ENTITLED TO EVICT T FOR THAT BREACH.
- BUT GS 42-26(C) ALLOWS LL TO INCLUDE A PROVISION IN THE LEASE THAT THE LANDLORD'S ACCEPTANCE OF PARTIAL RENT OR PARTIAL HOUSING SUBSIDY PAYMENT DOES NOT WAIVE THE TENANT'S BREACH FOR WHICH THE RIGHT OF REENTRY WAS RESERVED

FAILURE TO PAY RENT



GS 42-3 FAILURE TO PAY RENT: ELEMENTS

LL-T relationship

Lease requires T to pay a certain amount of rent by a certain time

T failed to pay rent when it was due

LL subsequently made demand for payment


LL waited at least 10 days after demand to file for se

WATCH OUT FOR DEMAND


Demand must occur after the tenant fails to pay rent on time



No particular form required, unless lease specifies a method



LL must communicate a “clear and unequivocal statement, either oral or written, requiring the lessee to pay all past due rent”

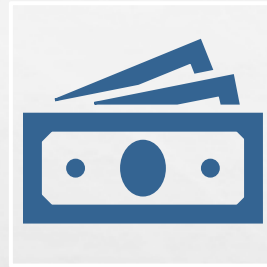


LL waited at least 10 days after demand to file SE action

WATCH OUT FOR TENDER



GS 42-33 allows T to avoid eviction by paying all rent due and court costs prior to judgment



Effective tender requires payment of all rent due + court costs in cash prior to judgment



Magistrate must dismiss when tender has been made, even if the LL does not want to accept the rent

HOLDING OVER



HOLDING OVER: ELEMENTS

LL-T relationship

Terms of lease related to duration and procedure for termination, if any

LL has followed procedure in lease, or if none, given statutory notice to terminate

T has not vacated

WATCH OUT FOR NOTICE

Lease provision regarding notice must be followed

OR

Lease is silent as to notice

Tenancy for years (definite period of time)-no notice is required because both parties know in advance when it is to end

Periodic tenancy-notice depends on the length of the period as set out in GS 42-14

Year-to-year lease 30 days

Month-to-month lease 7 days

Week-to-week lease 2 days

Mobile home space 60 days

SIMPLE LANDLORD-TENANT RELATIONSHIP

Don't let anyone
rent a space in your
head unless they're
a good tenant.



SIMPLE LANDLORD-TENANT RELATIONSHIP

Jurisdictional
requirement in
summary ejectment
actions

Characteristics of a
simple LL-T
relationship

Parties may have a
relationship, but not
necessarily a “simple”
LL-T relationship

SUBJECT MATTER JURISDICTION

- THE STATUTORY SUMMARY EJECTMENT REMEDY IS RESTRICTED TO SITUATIONS WHERE THE **RELATIONSHIP** OF **LANDLORD** AND **TENANT** EXISTS.
- A DISTRICT COURT HAS JURISDICTION TO HEAR A SUMMARY EJECTMENT PROCEEDING EVEN IF THE PLAINTIFF DOES NOT ALLEGE A **LANDLORD-TENANT RELATIONSHIP** IN THE COMPLAINT, BUT THIS **RELATIONSHIP** MUST BE PROVEN FOR THE PLAINTIFF'S REMEDY TO BE GRANTED.
- IF THE RECORD LACKS EVIDENCE TO SUPPORT A FINDING OF A **LANDLORD-TENANT RELATIONSHIP**, THE COURT MUST DISMISS THE PLAINTIFF'S SUMMARY EJECTMENT PROCEEDING.

SEE ADAMS V. WOODS, 169 N.C.APP. 242 (2005).

CHARACTERISTICS OF A SIMPLE LANDLORD-TENANT RELATIONSHIP

Reversion-right of the landlord to resume possession of the property after a period of time has elapsed or certain events have occurred

Possession-tenant has possession of the property for a term less than that which the landlord holds

Contract-written or oral, specifying the duration of the transfer and the value the landlord is entitled to receive

Consideration-an exchange of value, normally the payment of rent

See Estate of Hawkins v. Wiseman, 191 N.C.App. 250 (2008) (unpublished).

DOWN TO BASICS

- (1) EXCLUSIVE POSSESSION AND USE
- (2) OF A PARTICULAR PIECE OF REAL PROPERTY
- (3) FOR A SPECIFIED PERIOD OF TIME
- (4) IN EXCHANGE FOR PAYMENT.

WHEN IT'S NOT SO SIMPLE



License



Employment



**Transient
Lodging**



**Shared
Occupancy**



Buyers/Sellers



LICENSE

- TEMPORARY RIGHT TO USE PROPERTY FOR A SPECIFIC PURPOSE
- REVOCABLE AT WILL
- SOME SPACES MAY BE LICENSE OR LEASE
- SELF-SERVICE STORAGE AGREEMENT=LEASE GS 44A-44.1

EMPLOYMENT

- INDEPENDENT LEASE AGREEMENT ASSUMED
- UNLESS 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.
- *SEE SIMONS V. LEBRUN*, 219 N.C. 42 (1941).





TRANSIENT LODGING

- TRANSIENT OCCUPANCY=RENTAL OF ACCOMMODATION FOR FEWER THAN 90 CONSECUTIVE DAYS GS 72-1(C)
- APPLIES TO INNS, HOTELS, MOTELS, RV PARKS, CAMPGROUNDS, OR OTHER SIMILAR LODGING
- TRANSIENT OCCUPANCIES \neq TENANCY UNLESS EXPRESSLY PROVIDED IN AGREEMENT GS 42-14.6



90 DAYS OR MORE

- *SEE BAKER V. RUSHING*, 104 N.C.APP. 240 (1991)
- FACTORS TO CONSIDER
 - EXISTENCE OF LEASE
 - SOLE AND PERMANENT RESIDENCE
 - LENGTH OF RESIDENCE
 - LAYOUT OF UNIT
 - PAYMENT OF RENT
 - CONTROL OVER UNIT

SHARED OCCUPANCY

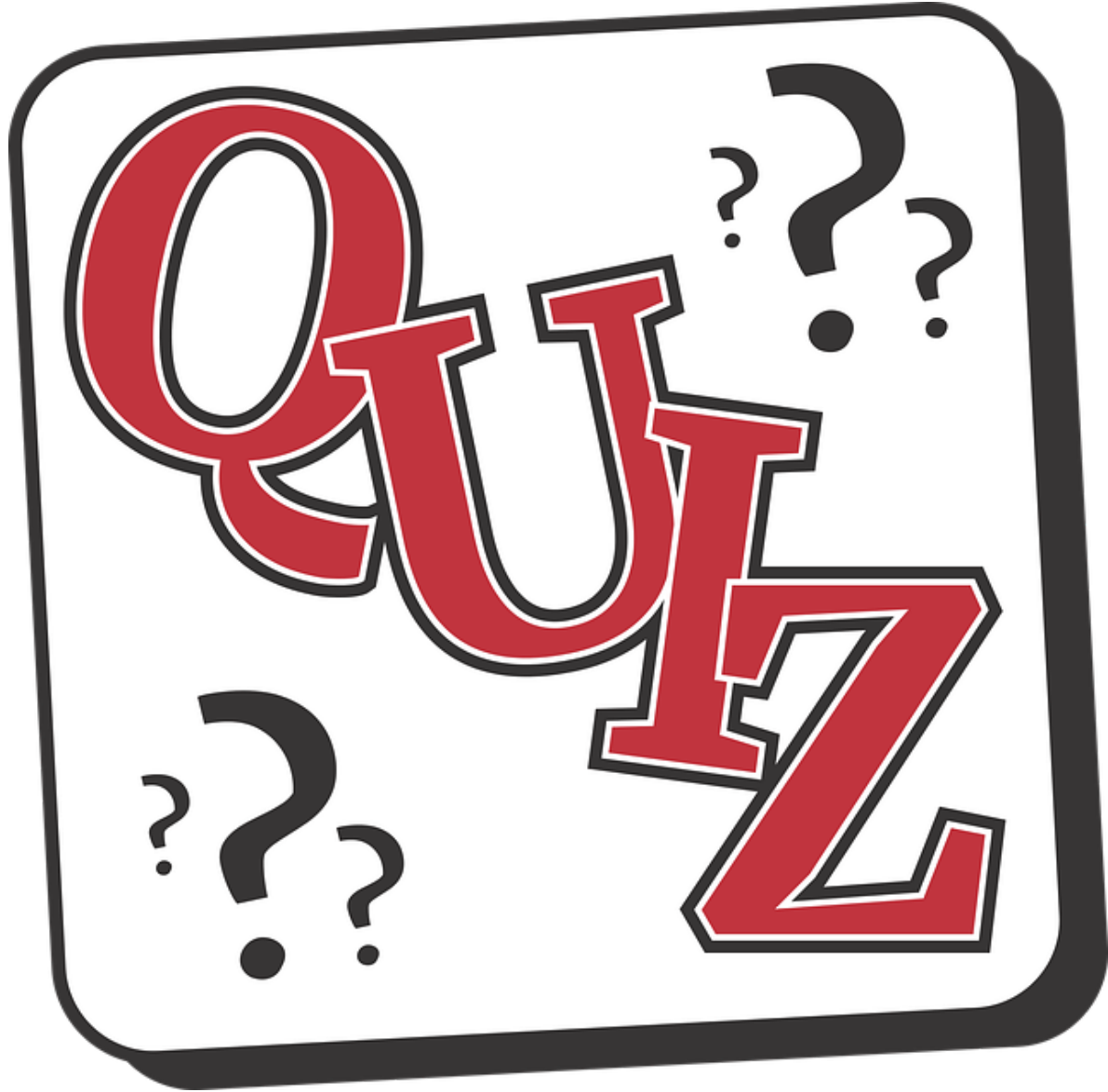


- INTENTION OF PARTIES AT TIME OF MOVE IN
- CHARACTERISTICS OF LANDLORD-TENANT RELATIONSHIP
- RESIDENCE ≠ TENANCY
- GUEST OR TENANT-AT-WILL
- *SEE BRADLEY V. TAPIA*, 277 N.C.APP. 385 (2021) (UNPUBLISHED).



BUYERS/SELLERS

- OPTION TO PURCHASE CONTRACTS EXECUTED WITH LEASE AGREEMENTS GS 47G
- CONTRACTS FOR DEED GS 47H
- RECISSION OF SALES CONTRACT
- *SEE MATTHEWS V. FIELDS, 284 N.C.APP. 408 (2022).*



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QUESTIONS?

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