




## **Working with Breach of Lease Condition**

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- Failure to pay rent
  - Breach of a lease condition
  - Holding over
  - Criminal activity

### **4 Good Reasons**

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Any tenant . . . may be removed from [rental] premises in the manner hereinafter prescribed in any of the following cases:

. . .

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

## **G.S. 42-26**

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“This lease will end if you miss a rent payment.”

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Forfeiture  
clause

If T Does X

LL Has the Right to Do  
Y

Provided That LL Does  
Z

### **3 Parts of Forfeiture Clause**

“In a default other than failure to pay rent, lessor will take no action to terminate lease without first giving leaseholder a reasonable time to cure default. Upon payment of rent and performing the other terms of the lease, the lessee shall have the quiet enjoyment of the property.”

**Is this a forfeiture clause?**

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"[T]he court finds and interprets the entire contract between the parties to provide for the termination of the lease agreement in the event that the Lessee does not make the payments of monies which includes rental, taxes and assessments, insurance premiums and mortgage payments and that the original parties to the lease agreement intended for the lease to so provide."

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“Unless we infer from the two lease provisions cited above that the lessors have the right to terminate in the event of a failure to pay rent or for some other breach, we can find nothing in the lease which gives the lessors this right. We do not believe we can make this inference. Unless there is an express provision for a forfeiture in a lease, a breach of a covenant does not work a forfeiture.”

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- May 18      New Owner
- June        T makes no rent payment
- July 11     T notified of new owner & rent in arrears for  
                June & July
- July 13     T gives LL check “for July rent”
- August 11   SE action filed
- August 13   T attempts tender
- August 17   Judgment for plaintiff (Δ not present)
- August 18   T receives unopened envelope with check
- August 29   Execution issued
- August 31   T files Rule 60(b) motion

## Sidetrack Bar

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Should the Defendant remain in default of the lease for 30 days following notice from the Plaintiffs of default, the Plaintiffs may thereupon enter upon the premises and expell the lessee therefrom, without prejudice to any other remedy which the lessor, his executors, administrators or assigns may have on account of such default.

Menache v. Atl. Coast Mgmt. Corp., 43 N.C. App. 733, 738, 260 S.E.2d 100, 103 (1979)

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It is understood and agreed that if said lessee shall fail to pay said sum when due or fail to comply with any other provision of this lease, then and in that event at the option of the lessor this lease shall be null and void, and the said lessee hereby contracts and agrees to vacate the above described lot or parcel of land on demand of the lessor or his agent, and the said lessee hereby waives all notice to vacate same

Tucker v. Arrowood, 211 N.C. 118, 189 S.E. 180, 180 (1937)

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If the Lessee shall fail to pay any installment of rent when due and payable or to perform any of the other conditions as herein provided, such failure shall *at the option of the Lessor, terminate this lease* and upon one days notice to the Lessee the Lessor may *without further notice or demand* reenter upon and take possession of said premises without prejudice to other remedies, the Lessee hereby expressly waiving all the legal formalities. *If Lessee defaults* on lease conditions herein or is evicted for non-payment of rent, *this action shall not void this lease* and Lessee shall be held liable and agrees to pay any lost rent, late payment charges, bad check charges, damages, and cost of advertising house or apartment at one dollar (\$1.00) per day.  
Stanley v. Harvey, 90 N.C. App. 535, 538, 369 S.E.2d 382, 384 (1988)

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Due to your default and failure to abide by the terms of your lease [the lessors] have elected to request that you vacate the premises by the 24th day of July 1982. Please take this as formal notice that [lessors] desire to take possession of the premises on July 25, 1982.

Stanley v. Harvey, 90 N.C. App. 535, 536, 369 S.E.2d 382, 383 (1988)

**Effective notice?**

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Nowhere does the notice state that lessors have elected to “terminate” the lease as required under the contract. This was not a clear and unequivocal notice that the lease was terminated since lessee could reasonably believe lessors were requesting that she vacate without terminating the lease.

**Stanley v. Harvey, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988)**

If T leaves said premises unoccupied for 15 days while rent is due and unpaid, LL is granted the right hereunder to take immediate possession thereof and to exclude T therefrom, removing all T’s property contained therein and placing it into storage at T’s expense.

**Real-life example**



Any lease or contract provision contrary to this Article shall be void as against public policy. (1981)

### **§ 42-25.8. Contrary lease provisions.**

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T is obligated to comply with all provisions of this agreement, particularly with respect to paying the rent on time and caring for the property. T warrants that she will meet the above conditions in every respect, and acknowledges that failure to perform the obligations herein stipulated will be considered grounds for termination of this agreement and loss of all deposits.

### **Real-life example**

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It is agreed that covenants contained in this lease, once breached, cannot afterward be performed, and that unlawful detainer proceedings may be commenced at once, without notice to T.

## **Real-life example**

If any monthly installment of rent is not paid by the 10<sup>th</sup> of the month, LL, upon written notice to the Ts, shall be able to re-enter said premises and re-lease or occupy the same as if this lease had never been executed.

## **Real-life example**

In the event of any default in the stipulations, agreements and covenants herein contained, and if Ts fail to comply with all conditions of this agreement, and if such default or failure shall continue for 30 days after LL has notified Ts of such default or failure, then LL may re-enter said premises, repossess and take possession of the same and use, enjoy, or re-let the same as if this agreement had not been entered into.

## **Real-life example**

(same lease)

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If rents are not paid by the 10<sup>th</sup>, LL may terminate this agreement.

. . . .

If T fails to perform any of the terms of this rental agreement, other than the payment of rent or non-compliance with safety and physical condition of this property, the owner may deliver written notice to the T specifying the breach. T shall have 5 days to remedy the discrepancy. Upon the 6<sup>th</sup> day, if T has failed to do so, owner may terminate the rental agreement.

## **Real-life example**

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T may maintain

## **Real-life example**

In order to evict a tenant in North Carolina, a landlord must prove: (1) That it distinctly reserved in the lease a right to declare a forfeiture for the alleged act or event; (2) that there is clear proof of the happening of an act or event for which the landlord reserved the right to declare a forfeiture; (3) that the landlord promptly exercised its right to declare a forfeiture, and (4) that the result of enforcing the forfeiture is not unconscionable.”

**East Carolina Regional Housing Authority v. Lofton, 767 S.E.2d 63 (NC App. 2014), rev. allowed 772 S.E.2d 702 (NC 2015)**

To maintain this action for the recovery of the land on the mere refusal to pay a monthly instalment, the contract of lease should have contained the stipulation as provided for in the statute under which the summary proceeding was begun. Not the failure to pay any month's instalment should have the effect to put an end to the estate or term, and the plaintiff not stipulating for any proviso or condition in the lease whereby the estate of the tenant was to cease, the court was not authorized to adjudge the *cesser* of defendant's term. 4 Kent., 106; and Arch. Land and Tenant, 161.

We concur therefore in the opinion of His Honor, that plaintiff's action was brought before the expiration of defendant's term, and that there was no stipulation in the lease by which his estate was made to cease earlier.

Meroney v. Wright, 81 N.C. 390, 393 (1879)

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On the trial in the superior court, the plaintiff proved by himself that he acquired the land in controversy in September, 1877, and that in a short time thereafter, the defendant, then in possession and claiming under one McEntyre, agreed to hold of him and pay him \_\_\_\_ dollars a year for rent, payable monthly, and rested his case.

Meroney v. Wright, 81 N.C. 390, 391 (1879)

## **What if there's no FC?**

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The contract, as deposed to by the plaintiff, contained no stipulation as to any act done or omitted which authorized a re-entry by the lessor, or itself limited, and put an end to the term. It was a lease at \_\_\_\_\_ dollars a year, payable monthly, and at most, in legal effect, that only referred to the mode and time of payment, and did not make the lease cease or enable the plaintiff to make it cease.

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There is no reason in the nature of the thing, why a refusal to pay the rent demanded to plaintiff should work any other liability than rests on any debtor on his failure or refusal to pay his creditor. The plaintiff on the refusal had the right to have action against the defendant and coerce the payments *toties quoties* they were not paid and that is all that the contract established by him imports.

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If T does X, I can  
end the lease early.

## Meroney Rule, 1879



No FC?

## Meroney Rule: LL loses.



- **§ 42-3. Term forfeited for nonpayment of rent.**
- In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. (1919)

In order to evict a tenant in North Carolina, a landlord must prove: (1) That it distinctly reserved in the lease a right to declare a forfeiture for the alleged act or event; (2) that there is clear proof of the happening of an act or event for which the landlord reserved the right to declare a forfeiture; (3) that the landlord promptly exercised its right to declare a forfeiture, and (4) that the result of enforcing the forfeiture is not unconscionable.”

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