

SUMMARY EJECTMENT--DEFENSE OF TENDER.

Note Well: This defense is available only if the landlord's action is brought for failure to pay rent (N.C.P.I.--Civil 845.05). It is not available if the action is based on breach of a provision of the lease (N.C.P.I.--Civil 845.00) or holding over after the end of the term (N.C.P.I.--Civil 845.10). If there is a factual issue about tenant's tender, this issue should be submitted to the jury first, to be followed by N.C.P.I.--Civil 845.05, if this issue is answered "No." If there is no factual dispute and tender was made, the lawsuit should be dismissed. G.S. 42-33.

This issue reads:

"Did tenant tender the rent due and court costs to the landlord?"

On this issue the burden of proof is on the tenant. This means that the tenant must prove, by the greater weight of the evidence, that he tendered the full amount of rent due and court costs to the landlord.

The law provides that a tenant has the right to pay or tender the rent due and the costs of the action before judgment is given in an action for ejectment.<sup>1</sup>

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<sup>1</sup>G.S. 42-33.

SUMMARY EJECTMENT--DEFENSE OF TENDER. (Continued)

A "tender" is an actual offer of money, not a promise to pay. A tender must be in cash and for the full amount of the rent due and court costs.<sup>2</sup> The court costs in this case are *(state amount of court costs incurred by the landlord as of the date of the alleged tender)*.<sup>3</sup>

Finally, as to this issue on which the tenant has the burden of proof, if you find by the greater weight of the evidence that the tenant tendered the full amount of rent due and court costs to the landlord, then it would be your duty to answer this issue "Yes" in favor of the tenant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the landlord.

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<sup>2</sup>Ryan v. Reynolds, 190 N.C. 563, 567, 130 S.E. 156, 159 (1925).

<sup>3</sup>The court may take judicial notice of the court costs. G.S. 8C-1, Rule 201.