

## Basic School/LL-T Part 2

The first two grounds for summary ejection . . .

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### Essential Elements and Common Defenses in Summary Ejection Actions

**Breach of a lease condition**  
Plaintiff must prove:  
— landlord-tenant relationship  
— lease contains a forfeiture clause  
— T breached lease condition for which forfeiture is specified  
— LL followed procedure set out in lease for declaring a forfeiture and terminating the lease.  
**Common defenses:**  
— failure to follow lease procedure?  
— T has not breached (often due to HAAJ)  
— waiver?

**Failure to pay rent**  
Plaintiff must prove:  
— landlord-tenant relationship  
— terms of the lease related to obligation to pay rent  
— LL demanded that tenant pay rent on correct date  
— LL waived or took 15 days after demand to file the action  
— T has not yet paid the full amount due.  
**Common defenses:**  
— T does not owe rent (often due to HAAJ)  
— lease contains forfeiture clause?  
— failure to make proper demand  
— filing too soon after demand  
— waiver?

**Holding over**  
Plaintiff must prove:  
— landlord-tenant relationship  
— terms of lease related to duration and procedure for termination, if any  
— LL has followed lease procedure or, if none, given adequate notice to terminate?  
— T has not vacated.  
**Plaintiff common defenses:**  
— waiver  
— improper notice

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There are 4 reasons – and only 4.

- Breach of a lease condition for which re-entry is specified.
- Failure to pay rent.
- Holding over.
- Criminal activity.

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Normal rule in contract law: Breach of contract gives innocent party the right to sue for money damages.

Measure of damages in breach of contract case? Amount required to restore innocent party to position that party would have occupied if there had been no breach.

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### Usual rule illustrated (No Forfeiture Clause)

- Our lease says no loud parties.
- Tenant has a loud party on the first of the month and thus has breached the lease.
- LL's remedy is to sue for breach of contract, collect money damages calculated based on evidence of damages LL has suffered due to T's loud party.
- Next month, T has another loud party.

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### Special preferential rule for LLS:

The LL and T have included in the contract the rule they've agreed on if T breaches a provision in the lease: "If T violates a term we've agreed to, LL has the right to cancel our lease and make T leave."

**Forfeiture Clause!!!**

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## Breach of a lease condition

- Breach of a lease condition for which reentry is specified.
- Plaintiff/LL must prove:
  - \_\_\_ landlord-tenant relationship
  - \_\_\_ lease contains a forfeiture clause
  - \_\_\_ T breached lease condition for which forfeiture is specified
  - \_\_\_ LL followed procedure set out in lease for declaring a forfeiture and terminating tenant's right to possession.

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ALWAYS BEGIN WITH *BREACH*  
OF A LEASE CONDITION

“Let me take a look at your lease.”

Written lease “left at home”? = Big Problem (*Best Evidence Rule*).

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“If Tenant shall continue in default in the payment of any rental or other sum of money becoming due hereunder for a period of fifteen (15) days after notice of such default has been given to Tenant ... then in any such event Landlord shall have the right and option to terminate this Lease.”

“Here is a copy of my lease. As you can see, the T is required to pay \$1000 on the first of the month. T did not pay on the 1<sup>st</sup>, and on the 3<sup>rd</sup> I emailed her informing her that I had not received her rent check and that the rent was overdue. When she had still not paid by the 20<sup>th</sup>, I filed this lawsuit.”

- Breach of a lease condition for which reentry is specified.
- Plaintiff/LL must prove:
  - \_\_\_ landlord-tenant relationship
  - \_\_\_ lease contains a forfeiture clause
  - \_\_\_ T breached lease condition for which forfeiture is specified
  - \_\_\_ LL followed procedure set out in lease for declaring a forfeiture and terminating tenant's right to possession.

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### Common defenses

- LL failed to strictly follow procedure for termination set out in lease
- LL fails to prove that T breached relevant lease provision (often due to RRAA)
- LL continues with rental even after becoming aware of T's breach.\*

\* Note GS 42-46(c)/LL can accept partial rent if written in lease/this ground only.

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### Usual rule illustrated:

- Our lease says ~~no loud parties~~- T must pay rent.
- Tenant ~~has a loud party~~- fails to pay rent on the first of the month and thus has breached the lease.
- LL's remedy is to sue for breach of contract, collect money damages calculated based on evidence of damages LL has suffered due to T's ~~loud party~~ failure to pay rent.
- Next month, T has another ~~loud party~~ fails to pay rent.

Uh-oh.

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### General Assembly to the rescue!!!

§ 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.



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## Failure to Pay Rent

The objective of this statutory ground for ejection is to give the landlord an enforcement mechanism to make the tenant pay rent.

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## What's the strategy for getting the tenant to pay?

Demanding that s/he do so.

Allowing the tenant to avoid eviction by paying all rent due and court costs at any time right up to the last minute.

And the last minute is immediately before you enter judgment.

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## What's the strategy for getting the tenant to pay?

Allowing the tenant to avoid eviction by paying all rent due and court costs at any time right up to the minute before you enter judgment is called . . .

# TENDER

**NOTE WELL:** Effective tender requires payment of all rent due + court costs in cash prior to judgment.

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## Failure to pay rent

Plaintiff/LL must prove:

- \_\_\_ landlord-tenant relationship
- \_\_\_ terms of lease related to amount of rent and when it is due
- \_\_\_ tenant breached the lease by failing to pay rent when it was due
- \_\_\_ LL made a clear and unequivocal demand after the rent was due that tenant pay all past-due rent
- \_\_\_ LL waited at least 10 days after demand to file action
- \_\_\_ T has not yet paid the full amount owed.

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## Failure to pay rent: Common defenses

- \_\_\_ T does not owe rent because
  - \_\_\_ T has paid all rent due
  - \_\_\_ LL's violation of the 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 ten days after demand before filing complaint
- \_\_\_ This ground is not available because lease contains a forfeiture clause
- \_\_\_ The tenant tenders (i.e., offers to pay) the full amount of rent due plus court costs in cash prior to judgment.

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### Breach of a lease condition . . .

- You're enforcing the contract
- Can apply to any rule LL wants
- LL chooses procedure
- Tender not available

### Failure to pay rent

- You're enforcing the statute despite the contract
- Applies ONLY to default in rent
- Demand/10 days mandatory
- Tender is an absolute defense.

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# Holding Over

The lease has ended and the tenant is still there.

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**Holding over**  
Practical legal issues:  
--- Implied lease relationship  
--- Terms of lease control duration and procedure for termination, if any  
--- U.S. Uniform Law procedure on 30 days, given statutory notice, to terminate?  
--- If not, not required  
**Next common defenses**  
--- waiver  
--- improper notice

- Lease determines duration of lease.  
    May be fixed term or period-to-period.  
    If not specified, assumed to = when payment occurs.
- Fixed term lease ends when it says it ends.
- If lease specifies procedure for ending, we enforce what lease says.
- If lease is silent on procedure, we "fill in the blank" with statutory notice periods.  
    FN #6.
- Twist: lease ends and parties ignore that, continuing on as before.  
    Intention controls, but assumption is that same terms carry over from prior lease.

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