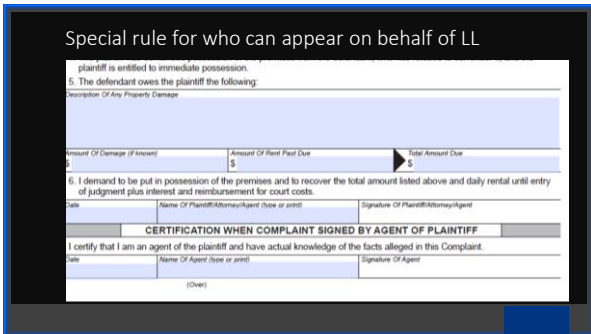
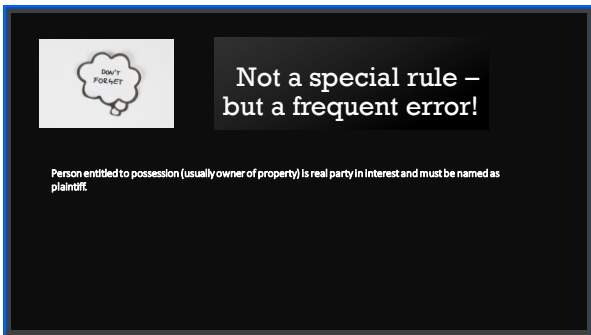


1



2



3

Mandatory minimum notice period for service of process in SE cases is 2 calendar days.

Contoso

4

Special rule for money damages (including costs of court) when service is by posting

<input type="checkbox"/> Costs of this action are taxed to the <input type="checkbox"/> plaintiff <input type="checkbox"/> defendant(s).		<input type="checkbox"/> Judgment Announced And Signed In Open Court	
Rate Of Rent / Renters Share	<input type="checkbox"/> Am. <input type="checkbox"/> Rent In Advance (owed to Date)	Date	Signature Of Magistrate
\$	\$		
Amount Of Other Damages	\$	Name Of Party Announcing Absence In Open Court	
TOTAL AMOUNT	\$		
CERTIFICATION			
<small>(NOTE: To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.)</small>			
<small>(Verify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.)</small>			
Date	Signature Of Magistrate		

5

Severance of Claims

- GS 7A-223(b1): In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(a). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.
- Applying the rule, what do you do?

6

Judgement on the Pleadings

• GS 42-30: [If the summons has been served] and . . . the defendant fails to appear on the day of court, and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading, the magistrate shall give judgment [for possession]; and if any rent or damages . . . be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be.

Translation: The court may enter a judgment for possession (ONLY—no \$!) if following conditions are met:

- Defendant has been served;
- Defendant does not appear at trial and has not filed an answer;
- Complaint has Box 3 checked (Breach of a lease condition . . .)
- Plaintiff requests judgment on the pleadings in open court.

Money judgment available as usual, i.e., plaintiff must prove case by greater weight of the evidence.

7

Note special rules for (1) continuances, and (2) reserving judgment.

Continuances only for good cause and not to exceed 5 business days without consent of both parties. GS 7A-223(b).

Judgment must be entered on day of trial unless parties agree or case is complex, with max of 5 business days. GS 7A-222(b)

Contoso

8

This action was tried before the undersigned on the issues stated in the complaint. Except as may be indicated below, the record shows that the defendant(s) was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

1. a. Defendant 1 was was not present, and was served personally (Rule 4) by posting was not served.
 b. Defendant 2 was was not present, and was served personally (Rule 4) by posting was not served.

2. a. the plaintiff has proved the case by the greater weight of the evidence.
 b. the plaintiff has failed to prove the case by the greater weight of the evidence.
 c. the plaintiff requested and was entitled to a judgment for possession based on the pleading.

3. a. there is no dispute as to the amount of rent in arrears, and the amount is \$ _____.
 b. there is an dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is \$ _____ and this amount is the undisputed amount of rent in arrears.
 4. other: _____

ORDER

3. a. ORDERED that:

- the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint.
- this action be dismissed with prejudice.
- this action be dismissed with prejudice because the defendant(s) tendered the rent due and the court costs of this action.
- the plaintiff recover rent of the defendant(s) in the amount and at the rate stated below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date and the judgment is paid.
- if the request of the plaintiff for money damages is awarded from the claim for possession and is not determined by this Judgment.
- other: (specify) _____

Entering judgment

9

Attorney fees in LL-T

* GS 42-46(f): Out-of-Pocket Expenses. -In addition to the late fees referenced in subsections (a) and (b) of this section and the administrative fees of a landlord referenced in subsections (e) through (g) of this section, a landlord is also permitted to charge and recover from a tenant the following actual out-of-pocket expenses:

- (1) Filing fees charged by the court.
- (2) Costs for service of process pursuant to G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure and G.S. 42-29.
- (3) Reasonable attorneys' fees actually incurred, pursuant to a written lease, not to exceed fifteen percent (15%) of the amount owed by the tenant, or fifteen percent (15%) of the monthly rent stated in the lease if the eviction is based on a default other than the nonpayment of rent.

See blog post *New Legislation on Landlord's Out-of-Pocket Expenses* on **On the Civil Side** 7/30/2018.

Cantoso
