

Review Questions on Summary Ejectment

IMPORTANT: In every case, first determine the grounds for SE.

1. T signed a lease for one year. Lease says nothing about notice required to terminate. When the year ended, T continued to occupy the property. LL files for summary ejectment. T defends on ground that LL failed to give notice of termination. Who wins? What legal principle explains your answer?

What are the grounds for SE? Holding over.

LL wins. A lease for one year ends when it says it ends – at the end of the year. Because it ends when the time runs out, no notice is required unless the parties have provided otherwise in the lease.

2. T had a lease for one year, with rent payable at the first of each month. At the end of the year he remained on the property and continued to pay rent. Six months later, LL filed a summary ejectment action on the ground that T held over after the one-year lease. (He's decided he could get more money if he rented to a new T.) Who wins? What legal principle explains your answer?

What are the grounds for SE? Holding over.

T wins. After the one-year lease term expired, the parties renewed the lease by their conduct: the tenant remained on the property and continued to pay rent, and the landlord continued to accept rent. While there may be some uncertainty in a future case about whether the term of the renewed lease is month-to-month or for an additional year, there's no uncertainty about the outcome in THIS case: the landlord cannot rely on the lease expiration six months ago as a basis for finding T is holding over at this point.

3. LL and T have an oral lease agreement to rent an apartment on a month-to-month basis for \$250/month. T agreed to pay \$250 and move in on July 1. He paid for July and August, but on Sept. 1 he failed to pay. On Sept. 2 LL demanded the rent. On Sept. 5 LL filed a summary ejectment lawsuit. Trial was held on Sept 30. LL proved that the Sept rent was due Sept. 1, that he demanded it on Sept. 2, and that it remained unpaid at the time of trial. T offers a check for \$250 in court, but LL insists on a judgment. Who wins? What legal principle explains your answer?

What are the grounds for SE? Failure to pay rent. (It's an oral/lease, and nothing in the problem suggests the existence of a forfeiture clause, ruling out "breach of a lease condition.")

T wins. The LL proved (1) failure to pay, and (2) demand, but the LL failed to allow the T ten days to come up with the rent before filing the complaint. By filing on Sept. 5, rather than waiting until Sept. 13, the LL lost the right to regain possession based on T's failure to pay for September. (If T fails to make another rent payment, that's a separate breach, and the LL may try again to regain possession.)

What about T's defense of tender? The court never reaches the question, because of LL's failure to establish a prima facie case.

4. LL and T have an oral lease providing for month-to-month tenancy, with rent due the first day of the month. T failed to pay rent on Jan. 1. On Jan. 10, LL gives T notice that he wants to end the lease at the end of the month, telling T she'll have to be out of the rental property by that day. When T remained on the property on Feb. 1 LL filed this action. At trial, T offers a cash payment for the Jan. and Feb. rent and court costs. LL insists on a judgment. Who wins? What legal principle explains your answer?

What are the grounds for SE? Holding over.

LL wins. The notice required to terminate a month-to-month lease, absent the parties' agreement to the contrary, is a seven-day notice. The LL gave plenty of notice and thus is entitled to repossess the property.

What about T's failure to pay rent? LL is entitled to a money judgment for the past-due rent, but this (smart) LL avoided the potential defense of tender by basing the action on holding over, rather than failure to pay rent. (Tender is a defense ONLY to SE based on failure to pay rent.)

5. LL and T have a written one-year lease requiring payment of \$400/month due on the first. The lease contains a forfeiture clause for failure to pay rent. T failed to pay rent on May 1, and LL filed an action seeking possession on May 3, seeking possession and back rent. At trial on May 25 Tasks you to dismiss the case because LL did not offer any evidence that he demanded the rent and waited ten days before filing the action. Who wins? What legal principle explains your answer?

What are the grounds for SE? Breach of a lease condition.

LL wins. Where the parties have agreed that failure to pay rent will terminate the lease and trigger the LL's right to possession, the LL need only prove (1) that was the agreement, and (2) the triggering event. The demand/wait 10 days requirements do not apply to SE based on a breach of a lease condition (regardless of whether the breach in question is owning a dog, failing to pay rent, or some other triggering condition).

6. Same facts, except that T is not present at trial and LL asks for judgment on the pleadings. Do you grant his request? What legal principle explains your answer?

See Small Claims Law p.30 for the 5 requirements for entering judgment on the pleadings. Assuming all 5 requirements are satisfied, judgment on the pleadings would be appropriate.

7. LL has filed a summary ejectment action based on holding over at the end of a lease for six months. The lease ended on May 31, and you hear the case on June 15. The monthly rent was \$250. At trial LL offers evidence that she has entered into a lease with a new tenant, who was to move in on June 1, at an increased rental rate of \$300/month. LL also seeks damages for injury to property: she found nicks in the living room wall and the clothesline in the backyard on the ground. She says it will cost \$75 to paint the living room and \$25 to put up a new clothesline. LL is seeking \$300 (rent for June) plus \$100 damage to property. T says he moved out on the 10th, and so should have to pay only \$83.33 (10 days, based on his rent of \$250). He also says the clothesline was at least 10 years old and fell down because the metal rusted through. What damages do you award? State your reasons.

What are the grounds for SE? Holding over.

What amount of past due rent do you award? The T is obligated to pay the fair rental value of the property for the period between the time the lease ended (May 31) and the time the magistrate hears the case and awards possession to the LL. Thus the LL is entitled to collect the fair rental value (which in this case is different from the contract rent) for the period between June 1 and June 15: \$150.

What about the damage to property? The LL is entitled to recover for damages to the property inflicted by the T in excess of normal wear and tear. The property damage described above is an example of normal wear and tear, and thus the LL would not be entitled to collect damages for those items.

8. LL filed a summary ejectment action on May 31 after T failed to pay rent for May. Trial is held on June 15. LL proves that rent was \$350 a month, T failed to pay, and that LL demanded the rent on May 10. Assuming you rule in LL's favor, what is the amount of your judgment? If T came to court and offered tender as a defense, what amount would be required for an effective tender?

What are the grounds for SE? Failure to pay rent.

The magistrate would award rent for May and 15 days in June: \$525 plus costs.

The T is required to tender rent for both May and June-- \$700-plus costs.

9. T rents a mobile home space from LL. She failed to pay rent on May 1. On May 2 LL demanded the rent and filed this action on May 15. At trial on June 10, LL proves the terms of the lease, that rent has not been paid, and that he made demand on the 2nd. T defends based on the special law requiring 60 days notice in cases involving rental of mobile home spaces. Who wins? Why?

What are the grounds for SE? Failure to pay rent.

LL wins, because LL proves (1) failure to pay rent, (2) demand, and (3) that ten days elapsed between demand and filing the action. Why doesn't T's defense work? Because the 60-day notice requirement applies to the notice required to terminate the lease for a mobile home space, and is thus relevant only to evictions based on holding over.

10. LL brings an action for summary ejectment based on failure to pay rent. At trial LL proves that the lease provided for a monthly rental of \$550, that she made demand, and that she waited 10 days before filing this action. She seeks possession, \$825 for 1.5 month's rent, a late fee of \$60 (for 2 months at \$30/month), and an administrative fee of \$150 for her inconvenience in having to come to court. Assume that the written lease has a late fee and administrative fee provision consistent with the amounts she seeks. What damages do you award?

What are the grounds for SE? Failure to pay rent.

LL wins possession and a money judgment for \$825. LL is not entitled to a late fee because \$30 exceeds the 5% limit. LL would not be entitled to an administrative fee at this point in any event, because the amount of the fee would vary based on whether the case goes on to district court. However, because the maximum allowable fee in any event is 12% of the monthly rent (\$66), the lease provision for \$150 is void as against public policy [GS 42-46 (h)(3) & (4)], and the judgment should specifically deny the request on this ground.

11. LL has filed a SE action against T based on breach of a lease condition (specifically, a clause stating that having a pet on the premises results in an automatic forfeiture of the lease). The one-year lease provides for monthly rent of \$450. LL testifies that he has seen a cat in T's apartment. He also states that T did not pay rent for this month (having been served with the complaint and summons on the first of the month), and so asks for two weeks back rent. T defends, saying (1) he has no proof she had a cat, (2) she certainly doesn't have a cat now, and (3) she's prepared to tender rent for the entire month in addition to court costs. How do you rule?

What are the grounds for SE? Breach of a lease condition.

LL wins if you are persuaded by his testimony. T wins if you aren't.

What about T's failure to pay rent? That evidence supports a money judgment for the back rent but does not support termination of the lease absent a forfeiture clause providing that failure to pay rent authorizes termination of the lease.

What about T's defense of tender? Tender is not a defense to breach of a lease condition.