

Pesky Questions

These are the questions you hear all the time, the ones you wish you could answer. But you shouldn't. Mostly because you don't KNOW the answer to the question they're really asking. But also because these folks usually need legal advice, not information. Sometimes—but not often—these questions actually come up in a small claims lawsuit. Here's where you can find some information to get you started.

Mobile Homes (Appendix pp. 119 – 138)

Information related to common misunderstandings:

Sixty-day notice is required only to end a tenancy (1) for a mobile home space (2) when the lease does not specify a different notice period and (3) the lease does not identify a definite end-date. Whether the lease has ended is relevant in summary ejection cases only when the ground for ejection is holding over.

A summary ejection action is not an inexpensive way for a landlord to have a mobile home removed from rental property. While the sheriff's office will enforce a writ of possession by removing all of the tenant's property, including a mobile home, the landlord is required to advance the costs of removal and one month's storage fee, which will be added to the costs owed by tenant.

Dead Parties (GS Rule 25(a)/Substitution of parties upon death. . . ; GS 28A-25-7/Removal of tangible personal property by landlord after death of residential tenant

Information related to common misunderstandings:

A leasehold interest in property survives the death of the tenant and passes as personal property to tenant's heirs. (NOTE: Whether this is true of tenancies from period to period and/or subsidized tenancies questionable.)

A landlord's death does not automatically terminate a lease.

Tenant's Property Left Behind (Appendix p. 107 & 135; GS 42-25.7, -25.9, -36.2, GS Ch. 44A, Art. 1)

Information related to common misunderstandings:

A landlord is prohibited from interfering with a residential tenant's personal property in a manner not specifically authorized by statute regardless of contrary provisions in a lease.

A landlord must file a summary ejectment action and obtain a writ of possession as a prerequisite to disposing of a residential tenant's property even if that property appears to have been abandoned, subject to one exception. GS 42-25.9(d) authorizes a landlord to donate abandoned property to a charitable organization under some conditions.

Liens (GS 44A, Arts. 1 & 4)

Information related to common misunderstandings:

A lien is a right to sell property belonging to a debtor in order to recover the amount owed from the proceeds of sale.

A residential landlord does not have a lien in a tenant's personal property, subject to one exception: a landlord of a mobile home space has a lien on a tenant's personal property left behind arising 21 days after execution of a writ of possession. GS 44A-2(e2) sets out detailed requirements for this lien.

A non-residential landlord has a lien on personal property remaining on the rental property arising when the tenant has vacated the rental premises for 21 days after the paid rental period has expired.

The owner of a self-storage facility has a lien on property stored at the facility, as well as the right shared by other non-residential lessors to self-help eviction, rendering SE actions typically unnecessary for these landlords. GS 44A, Art. 4.

While a landowner may assert a motor vehicle lien for storage of a motor vehicle abandoned for at least thirty days on the landowner's property pursuant to GS 20-77(d), this lien is not available to a residential landlord for a tenant's motor vehicle remaining on rental property.

What to Do about Unlawful Self-Help Eviction (GS Ch 42, Art 2A)

Information related to common misunderstandings:

Self-help eviction—meaning removing tenant from possession without filing a summary ejectment action—may be actual or constructive. The traditional common law rule permitting self-help eviction has been changed in NC, as it has in the majority of states, to permit its use only in commercial leases.

A residential landlord who engages in self-help eviction – whether actual or constructive – is responsible for resulting damages and is likely to be found to have committed an unfair trade practice as well.

Although a residential landlord who engages in self-help eviction has significant exposure to potential civil liability, there is no immediate action a magistrate can take to restore a tenant to the tenant’s home.

A magistrate should never attempt to advise a tenant about the legality of taking steps to re-enter the home.

“Would It Be OK if I Just ?”

Information related to common misunderstandings:

When a tenant owns a leasehold interest in rental property, that tenant owns the right to exclusive possession of the property. Unless a landlord has retained the right to re-enter the property, a landlord who does so is subject to being charged with trespass. Even if a landlord has retained such a right in the lease, the exercise of that right must be consistent with the specific provisions of the lease as to circumstances, required notice to tenant, and so on.

A tenant’s prolonged absence from rental property does not, in and of itself, terminate the lease nor does it give others the right to take possession of tenant’s property.

“How do I Get These *Other* People Out?”

Information related to common misunderstandings:

A judgment in favor of the landlord in a summary ejectment action authorizes removal of the named defendant from the rental premises as well as all others who “take through” the tenant, or in other words, are permissive occupants of the property.

A landlord should name and serve all tenants who joined in the lease, and should not name permissive occupants with whom the landlord has no landlord-tenant relationship (e.g., “all others”).

A tenant is presumed to have the right to sub-let the premises unless the lease provides otherwise. Even if the lease prohibits sub-letting, a sub-lease is not rendered invalid by such a provision, and it is grounds for termination of the original lease only if that lease so provides. If the landlord prevails in a summary ejectment action against the original tenant, the sub-lessees will be removed as permissive occupants of the tenant. A landlord cannot evict subtenants without evicting the original tenant, due to the lack of a landlord-tenant relationship with the former.