KEY POINTS ABOUT LANDLORD-TENANT LAW & DAMAGES

Damages that might be awarded to LL in summary ejectment action

Unpaid rent, up to date of judgment

Damages for occupancy after lease is terminated.

Damages for remainder of term[1]
> In lease for fixed period if T abandons property and stops paying rent prior to end of lease, LL has duty to mitigate by attempting to find new T, but is entitled to damages resulting from T's premature departure. Distinguish *surrender*, which involves agreement by both parties to early termination. Note also that early termination is permitted by statute, subject to some restrictions, in cases involving foreclosure, military service, and DV victims.

Late fees & administrative fees under GS 42-46 (residential leases)[2]
> Must be in lease
> LL forfeits completely if exceeds statutory maximum
> May not be deducted from rent payment so as to make rent late again
> Subsidized housing: based on T's share of rent
> Late fees: must provide 5-day grace period
> Administrative fees provision enacted since text; note correction on p. 170 SCL.
> 2018 legislative amendment to GS 42-46 allows LL to charge T for "out-of-pocket expenses" without violating statute.

Other fees contained in lease: often subject to rules re liquidated damages. Note particularly amount must be agreed to by both parties and be reasonable.

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[1] Summary ejectment (typically) terminates the lease, and the right to payments pursuant to the lease, but the LL nevertheless has a claim for breach of contract damages when lease period extended into future.

[2] GS 42-46 is not applicable to commercial leases, which are subject to the usual rules about liquidated damages provisions.

DGL/SOG/2021

Physical damage to rental property
> Must exceed normal wear & tear
> Measure is difference between FMV of property before and after damage.

Attorney fees under GS 42-46(i)(3):
> Must be agreed to in lease
> Amount must be (1) reasonable and (2) actually incurred
> Not to exceed 15% of amount owed by T, or 15% of monthly rent if eviction based on breach other than nonpayment of rent.

PROBLEM

On Jan. 1st, LL and T entered into a six-month lease, and T almost immediately began having problems paying the $600/month rent. After 3 months of T paying late and/or making partial payments, LL filed this action for summary ejectment and money damages, including:

> → $350 in unpaid rent as of the time T moved out
> → $1800 for the three months remaining on the lease period
> → $90 for six months of late fees,
> → $50 administrative fee
> → $75 attorney fees (LL is unrepresented, but he testifies that he paid $75 to an attorney for consultation about representing himself in this action, and has a receipt)
> → $1200 property damage. LL testifies that the entire rental premises were so dirty and in such disrepair that he was forced to
> > o have the unit professionally cleaned ($350),
> > o repaint the entire premises ($400),
> > o replace the 8-year-old carpet ($800),
> > o pay a landscaping company to weed and prune in the grown-up yard ($275),
> > o and replace the refrigerator ($500).

T defends, making the following arguments:

> → He offered to find a new tenant who could take over the lease, but LL refused, so he shouldn't have to pay for the three months remaining.
> → The lease doesn't say anything about late fees, so the LL shouldn't be allowed to charge for that.
> → He doesn't even know what an administrative fee IS, much less why he should have to pay one.

→ He shouldn't have to pay an attorney's fee since the landlord isn't represented by an attorney.
→ He was only there three months, and the LL hasn't introduced any evidence that he damaged the property. Each of the damage items alleged are actually related to maintenance of the property, which wasn't in great shape when he moved in. Leaving the place dirty and in need of cleaning does not constitute property damage.
→ In any event, the security deposit is more than sufficient to cover any minor property damage that might exist.