

**Breach of a lease condition for which reentry is specified<sup>1</sup>**

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.

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.<sup>2</sup>

**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.

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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<sup>1</sup> G.S. 42-30 authorizes a magistrate to enter judgment on the pleadings (i.e., without requiring plaintiff to present evidence at trial) if: (1) defendant has been served, but (2) is not present at trial and has not filed an answer; (3) Box #3 is checked on the complaint; and (4) plaintiff requests judgment on the pleadings in open court. Judgment in this instance is for possession only; if the plaintiff seeks money damages, that claim must be supported by evidence as usual.

<sup>2</sup> Exception in GS 42-26(c) provides that LL may accept partial rent without waiving breach if lease so states. Applies only to evictions based on breach of a lease condition triggering forfeiture.

**Holdover (*not applicable to federally-assisted tenancies*)**

Plaintiff/LL must prove:

- landlord-tenant relationship
- terms of lease related to duration and procedure for termination, if any
- LL has followed procedure set out in lease or, if none, given statutory notice, to terminate<sup>3</sup>
- T has not vacated.

Most common defenses:

- LL accepted rent for period(s) after the termination date
- improper notice

**Criminal activity<sup>4</sup>**

Plaintiff/LL must prove **one** of the following things:

- Criminal activity occurred within the rental unit
- The rental unit was used to further criminal activity
- T, household member, or guest engaged in criminal activity on premises or in immediate vicinity
- T gave permission for a barred person to return to property
- When person barred from unit re-entered unit, T failed to notify LL or LEO

Most common defenses:

- T did not know or have reason to know of first three grounds listed above
- T took all reasonable steps to prevent criminal activity
- Eviction would create serious injustice<sup>5</sup>

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<sup>3</sup> GS 42-14, -14.3 establishes notice requirements for termination in the absence of a provision in the lease:

Year-to-year lease	30 days
Month-to-month	7 days
Week-to-week	2 days
MH space	60 days

<sup>4</sup> GS Ch. 42, Art. 7; see Brannon, NC Small Claims Law pp. 176-186

<sup>5</sup> GS 42-46(c)