
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 term¹

Premature termination by T:

If T raises mitigation issue: measure is amount LL would have received had T not breached, reduced by amount recovered by mitigation.

If T does not raise mitigation issue: amount LL would have received, reduced to present value.

NOTE: possible issue about whether termination was in fact premature: DV victims; members of military & families; surrender of leasehold by T; constructive eviction by LL.

LL terminates possession, but not lease: damages same as above.

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

"Rent concession" may be challenged as disguised late fee

Administrative fees provision is new law: note correction on p. 170 SCL.

Other fees contained in lease: often subject to rules re liquidated damages.

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.

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 6-21.2

Must be agreed to in lease

15% of rent due, unless lease specifies lower amount

Notice requirement applies, giving T notice of claim for fees and 5 days from mailing to pay outstanding balance.

Damages That Might Be Awarded to Tenant in Action against Landlord in Residential Context

Unlawful self-help eviction (whether actual or constructive)

GS 42-25.6 – 25.9 gives T right to sue to recover possession of property and actual damages.

Courts have held this to be an UTP, with consequent availability of treble damages and attorney fees.

Unlawful interference with T's property

Same rules as above apply.

T also has option of suing for conversion.

Retaliatory/wrongful eviction: generally used as affirmative defense, but T may recover damages through UTP claim.

Violation of Security Deposit Act (GS 42-50 - -56)

Violation of trust account provisions: LL forfeits entire deposit

T may sue for accounting, return, & damages from other violation.

Willful violation: Actual damages plus attorney's fees.

Possible violation of UTP law.

Rent abatement

Measure of damages is difference between FRV of property as warranted and FRV of property as is.

T may not recover more than has paid.

LL who accepts rent while aware that premises violate RRAA commits an UTP.