

## **G.S. 42-3: The Landlord's Life Preserver**

At common law a landlord confronted with a non-paying tenant had only one hope for regaining possession of rental property: a lease provision spelling out that default by the tenant would trigger the landlord's right to repossess the property. In such a case, an action for summary ejectment amounts to a request that the court enforce the agreement of the parties. Absent such agreement, the landlord could only terminate the lease as soon as possible and attempt to collect unpaid rent in the usual way: an action for money owed, with all of the attendant problems associated with the collection of money judgments.

The common law rule is still the rule when it comes to personal property. If you buy a car on the installment plan, the seller has no right to repossess the car if you default unless part of your agreement specifically gives the seller that right. But North Carolina long ago established a different rule for unwary landlords. GS 42-3, sometimes referred as the statutory forfeiture provision, allows landlords to regain possession of rental property upon tenant's failure to pay rent even though the rental agreement is silent on the consequences of default. That statute says:

*In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease.*

The North Carolina Supreme Court explained the purpose of this provision in *Ryan v. Reynolds*, 190 N.C. 563 (1925): "The statute was passed to protect landlords who made verbal or written leases and omitted in their contracts to make provision for re-entry on nonpayment of rent when due. The consequence was that often an insolvent lessee would avoid payment of rent, refuse to vacate, and stay on until his term expired." This "life preserver" is available only under certain circumstances, however, which are discussed in this post.

The landlord (or the landlord's agent) must demand the rent.

As we shall see, the law related to statutory forfeiture is concerned first and foremost with avoiding the situation in which a tenant fails to pay rent and continues to occupy the property. Allowing the landlord to recover the property in the absence of a contractual right to do so is a last resort—after efforts to obtain rent have failed. Thus the statute requires the landlord to (1) demand payment of the rent, and (2) wait ten days for the tenant to comply with the demand, before filing an action to recover possession. A landlord who is unaware of this statutory purpose may find the requirement perplexing. "Why should I demand payment from a tenant in default when the tenant is well-aware that the rent is late?" Sometimes landlords attempt to accomplish this requirement by inserting a lease provision to the effect that a continuing demand for payment is in effect with no further action required. Sometimes the argument is made that the summary ejectment complaint itself is a demand. These arguments miss the point of the demand requirement: a landlord is more likely to recover rent if (1) the landlord communicates to the non-paying tenant that the rent is late, must be paid, and that the consequences of failure to pay will be eviction, and (2) waits ten days for the tenant to come up with the money.

What is required for an effective demand?

*Snipes v. Snipes*, 55 N.C. App. 408, *aff'd* 306 N.C. 373 (1982) is the only NC case to discuss the nature of the demand required by GS 42-3. In *Snipes* the landowner told the tenant that she "wanted

to get all this business settled.” The Court of Appeals said: “We hold that to constitute a ‘demand’ under N.C.G.S. 42-3, a clear, unequivocal statement, either oral or written, requiring the lessee to pay all past due rent is necessary. . . . The demand must be made with sufficient authority to place the lessee on notice that the lessor intends to exercise [the] statutory right to forfeiture for nonpayment of rent.”