

Lecture Notes from Module 1

I. Part 1: Why It's Hard

- a. Not just a matter of tenant breach = eviction
- b. Very challenging cases because
 - i. Law is old. Some statutes archaic, others have never been discussed by appellate courts and no one is absolutely certain what they mean.
 - ii. Originally property law, then combined with contract law, recently topped off by consumer protection law.
 - iii. Many common law concepts, but SE is statutory, and has been amended many times. Overall organization of Ch. 42 has become increasingly disorganized, and amendments sometimes don't jibe well with existing statutes.
 - iv. There are hundreds, if not thousands, of appellate cases concerned with landlord-tenant law. Some are published, some are unpublished, some are quite old, and many concern the interpretation of statutes that have since been repealed or amended. Some are decisions by the Court of Appeals that have been overruled by the NC Supreme Court. For these reasons, care must be taken in relying on any isolated case cited by a litigant or attorney, bearing in mind that some case law is no longer – or was never – authoritative.
 - v. Unusually distinct parties, compared to other typical small claims cases. LLs may be high-volume and perpetual plaintiffs, raising ethical issues, and also may be prominent citizens who are politically active and otherwise influential in community. LLs typically do not know law very well and may become belligerent when they lose. Most of the time tenants have defaulted on rent and may have few options if evicted, presenting no legal defense but asking for more time to pay or simply mercy.
 - vi. Numerous special procedural rules apply to SE cases.

II. Part 2: SE procedure applies both to residential and commercial leases.

- a. Residential leases are subject to numerous consumer protection statutes.
- b. Commercial leases are not subject to consumer protection statutes and for the most part simply require application of the lease provisions to the particular fact situation.
- c. The amount in controversy requirement does not apply to SE actions (which definitionally are actions for eviction), but magistrate does not have jurisdiction to hear associated claims for money damages exceeding \$10,000, an issue which sometimes comes up in commercial lease cases.

III. Part 3: Basic concepts/vocabulary

- a. *Landlord* generally refers to the owner of property (or person entitled to possession, which is sometimes a tenant who has sublet property). The terms *landlord* and *lessor* are used interchangeably. A *property manager/agent* is sometimes referred to as a *landlord*, but not in this seminar, because different rules sometimes apply to owners vs. agents.

- b. A *tenant*, sometimes referred to a *lessee*, is a person involved in a contractual relationship with a landlord. Other occupants of rental property—such as household members or sub-lessees—have a legal right to occupy the property which derives from the tenant’s right to possession. When a tenant no longer has a legal right to possession, all such occupants (i.e., those who *take through the tenant*) also lose their right to occupancy.
- c. A landlord and tenant have a *contractual* relationship, in which the landlord transfers to the tenant the right to exclusive possession and control of specific property for a specific period of time in exchange for the tenant’s agreement to pay rent or otherwise transfer something of value. This contract, which may be written or oral, is referred to as a *rental agreement* or *lease*. (Sometimes *lease* is used to refer only to written rental agreements, but the terms will be used interchangeably in this seminar.)
- d. *Summary ejectment* is the term for a specific type of lawsuit brought by a landlord against a tenant to recover possession of rental property. A landlord may or may not also claim money damages in such a lawsuit.
- e. While a lease is a contract, governed by traditional principles of contract law, it is also a *thing of value* that has been transferred by the property owner to the tenant. A tenant owns a *leasehold* or *interest in property* which may be bought, sold, inherited, or levied upon. This aspect of landlord-tenant law is governed by traditional principles of property law. An example of its significance arises when a property owner sells the rental property to another person. The sale does not affect the lease, because the property owner cannot sell more than s/he owns, and in this example the seller owns property with a piece missing, i.e., the leasehold. That piece is held by the tenant, whose right to exclusive possession and control continues for the duration of the lease agreement. In this situation, the new owner “steps into the shoes” of the old owner and is bound in the same way to the terms of the lease agreement with the tenant.
- f. The central concept in SE cases is that they are restricted to only one fact situation: A landlord is asserting that the tenant has breached the lease in a way that gives the landlord the right to force the tenant to vacate the property and return possession to the landlord. Other legal procedures are available to landowners who want to oust unwanted occupants (such as a guest who refuses to leave, for example), but they are generally not as streamlined or inexpensive. SE is a specifically designed remedy created by the General Assembly for use exclusively by one type of litigant: a landlord. This rule is so important that the appellate courts have held that magistrates and judges have no authority (*jurisdiction*) to even hold a trial in a summary ejectment case unless the parties are involved in a *simple landlord-tenant relationship*.