

Holding Over & Criminal Activity

Intro 2/Module 4

1

But first, a look back . . .



2

	YES	NO
1. Judgment on the pleadings is available for which ground?	BLC	FTPR
2. A LL can accept partial rent without waiving SE by including a non-waiver provision in which ground?	BLC	FTPR
3. A LL must demonstrate strict compliance with lease provisions re procedure for termination in which ground?	BLC	FTPR
4. Tender is a complete defense for which ground?	BLC	FTPR
5. Rent of \$800 is due on the first and was not paid. You hear it on the 15 th . The amount of your judgment is costs + _____.	\$800	\$400
6. Rent of \$800 is due on the first and was not paid. You hear it on the 15 th . The amount the tenant must tender is costs + _____.	\$800	\$400

3

Holding Over

Ground #3

4

There are two kinds of leases, _____ and _____.

A _____ has a definite ending date.

A _____ repeats until someone ends it.

If the lease states how it must be ended, _____.

If the lease is silent on how it may be ended, _____.

G.S. 42-14 establishes notice periods when you have to fill in the blank.

Term of Lease	Notice Required

5

Holding Over

Has the lease ended? Two possibilities:

- On its own terms
 - Waiver/mutual agreement to continue
- Notice by one party
 - Must comply with lease requirements in form and timing
 - No lease requirements? Statutory notice: 30/7/2/60
 - ALWAYS effective as of end of rental period

Mutual agreement to early termination = surrender.

6

Holding Over

- Group 1 Begin with Problem 1
- Group 2 Begin with Problem 2
- Group 3 Begin with Problem 3
- Group 4 Begin with Problem 4
- Group 5 Begin with Problem 5

Small Group Work

When you finish your first problem, go on to the next.
See how many you can answer correctly.
You have 10 minutes.

7

T holds over & LL accepts rent

When a lease for a fixed term of a year, or more, expires, a tenant holds over, and "the lessor elects to treat him as a tenant, a new tenancy relationship is created as of the end of the former term." *Kearney v. Hare*, 265 N.C. 570, 573, 144 S.E.2d 636, 638 (1965). "This is, by presumption of law, a tenancy from year to year, the terms of which are the same as those of the former lease in so far as they are applicable...." *Id.*

Cogdill v. Sylva Supply Co., Inc., 265 N.C. App. 129, 134, 828 S.E.2d 512, 515 (2019), *aff'd*, 373 N.C. 326, 837 S.E.2d 871 (2020)

8

Criminal Activity

Group 4

9

Criminal Activity

Two possibilities:

- GS Ch. 42, Art. 7
- BLC

10

Art. 7: Expedited Eviction of Drug Traffickers & Other Criminals

- What?
 - Drug violation (except simple possession) or conspiracy
 - Other criminal activity that threatens health, safety, right of peaceful enjoyment of other residents/employees
- Where?
 - Within rental premises
 - In or on entire premises
- By whom?
 - Tenant
 - Residents (i.e., household members)
 - Guests (present with permission of authorized occupant)

11

Complete Eviction/Essential Elements

- Criminal activity within rental unit
- Criminal activity on or in immediate vicinity of entire premises
- Rental unit used in furtherance of criminal activity

- Consenting to return of banned person to property
- Failure to notify LL/LEO of banned person's return

12

Defenses to complete eviction*

T proves that T was not involved and neither knew nor had reason to know

OR

T proves T did everything reasonably expected under circumstances to avoid it.

OR

T proves by clear & convincing evidence that immediate eviction would be serious injustice.

* Second time is harder.

13

Not defenses

- Waiver not available.
- Isolated incident/wrongdoer no longer a resident/guest.

14

Other defenses that might apply

- Watch out for criminal acts when T is victim!
- Fair Housing Act requirement of accommodations for tenants with disabilities may sometimes be relevant.

15

Partial Eviction is Available Remedy

- Note that person evicted must be named defendant for this to be available.
- Service of process requirements very unclear (to me, at least).
- Additional unanswered questions related to barred tenants.

16

Conditional Eviction

- Directed at T: don't allow barred person to return or fail to report if they do so.
- Note signature requirement.
- Enforceable by motion in original case or by filing new case

17

Final notes

- This civil action is independent of criminal charges. Neither conviction nor charges are required for plaintiff to proceed.
- Be aware of potential evidentiary concerns about police reports.
- Potentially complex interaction with breach of a lease condition when forfeiture clause triggered by criminal activity. (What does "not contrary to this Article" mean?)
- Additional complexity when rental property is government-subsidized.

18

Criminal Activity

Summary Ejection/Criminal Activity Case Study
Read through the facts and identify your group's answer to the questions. For question 1, analyze specifically (1) Is this criminal activity under statute? (2) Does statute apply to behavior by this person? And (3) Does statute apply to location where activity took place?

Small Group Work

*Note typo at end of line 3: ~~Mr. Galway~~ should be Bill.

You have 15 minutes.
