


The 10-Minute Guide to Summary Ejectment




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**first things first**

Show me the lease.  
No lease?  
Tell me about your rental agreement.

A landlord-tenant relationship is required for an action for summary ejectment.

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3 Doors to Possession

Lewandowski/SO  
G 2009

<b>Failure to Pay Rent</b>	<b>Holding Over</b>	<b>Breach of a Lease Condition</b>
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**Breach of a Lease Condition**

Lease contains a forfeiture clause. Lewandowski/SO

**1** "If tenant violates any material provision of this lease, the landlord has the right to declare it forfeit and to retake possession of the rental property."

Forfeiture clause applies to particular breach committed by Tenant.

**2** No \$\$\$ this month

**3** "In the event that the landlord decides to terminate this lease, the landlord will deliver written notice of termination at least 7 days prior to termination."

Landlord strictly followed lease procedure for forfeiture.

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**Is this a forfeiture clause?**

'In case Landlord should bring suit for the possession of the premises, for the recovery of any sum due hereunder, or because of the breach of any covenant herein, or for any other relief against Tenant, declaratory or otherwise, or should Tenant bring any action for any relief against Landlord, declaratory or otherwise, arising out of this lease, and Landlord should prevail in any such suit, Tenant shall pay Landlord a reasonable attorney's fee which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.'

Morris v. Austraw, 269 N.C. 218, 222, 152 S.E.2d 155, 158 (1967)

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**3 Doors to Possession** Lewandowski/SO G 2009

<p><b>Failure to Pay Rent</b></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p><b>Holding Over</b></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<p><b>Breach of a Lease Condition</b></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
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1. Forfeiture clause  
2. Triggered by T  
3. Lease procedure for termination strictly followed

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### Defenses to Breach of a Lease Condition

LL didn't follow correct procedure

Waiver

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### Defenses to Breach of a Lease Condition

LL didn't follow lease procedure

When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents.  
  
Stanley v. Harvey, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988)



Subsidized housing?  
Be especially careful!

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### Defenses to Breach of a Lease Condition

After learning of tenant's breach, "plaintiff had two choices: 1) it could commence proceedings to remove defendant from the premises, or 2) it could continue to accept rent from defendant and permit the lease to remain in force. Plaintiff could not do both.  
  
Cnty. Hous. Alternatives, Inc. v. Latta, 87 N.C. App. 616, 618, 362 S.E.2d 1, 2 (1987)

Waiver

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### New law!

"In an action for ejectment based upon G.S. 42-26(a)(2), the lease may provide that the landlord's acceptance of partial rent or partial housing subsidy payment does not waive the tenant's breach for which the right of reentry was reserved, and the landlord's exercise of such a provision does not constitute a violation of Chapter 75 of the General Statutes."

S.L. 2012-17, effective 10/1/2012

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**Failure To Pay Rent**


No forfeiture clause in lease.



T failed to pay rent when due.



LL demanded the rent and waited 10 days before filing complaint.




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### 3 Doors to Possession

Lewandowski/SO  
G 2009

<div style="background-color: #4a7ebb; color: white; padding: 10px; margin-bottom: 10px;"><b>Failure to Pay Rent</b></div> <ol style="list-style-type: none"> <li>1. T failed to pay rent.</li> <li>2. LL made clear demand for rent.</li> <li>3. T failed to pay within 10 days.</li> </ol>	<div style="background-color: #4a7ebb; color: white; padding: 10px; margin-bottom: 10px;"><b>Holding Over</b></div>	<div style="background-color: #4a7ebb; color: white; padding: 10px; margin-bottom: 10px;"><b>Breach of a Lease Condition</b></div> <ol style="list-style-type: none"> <li>1. Forfeiture clause</li> <li>2. Triggered by T</li> <li>3. Lease procedure for termination strictly followed</li> </ol>
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### Common Defenses to Failure to Pay Rent

- Lease has forfeiture clause.
- Failure to make separate demand.
- LL didn't wait long enough before filing complaint.
- Tender

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### Common Defenses to Failure to Pay Rent

**Tender**

When? Any time prior to judgment.

What? "the rent due and the costs of the action."

How? Cold hard cash.

Tender is an absolute defense.

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**Holding Over**

"The lease is over, and T's still there!"

A lease ends when it says it ends.

If the lease specifies what the LL must do to end the lease, that's what the LL must do.

If the lease doesn't say when or how, the law controls the notice that must be given.

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### Frequent Defense to Holding Over

Lease wasn't terminated.

Extension of lease implied by conduct. (This is sometimes analyzed as waiver.)

Failure to follow required procedure for termination.

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### 3 Doors to Possession

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A landlord-tenant relationship is always an essential element.

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SE is just no use at all to reach which of the following objectives?



A guest who's outstayed her welcome.

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SE is just no use at all to reach which of the following objectives?



A ~~guest~~ adult son who's outstayed his welcome.

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SE is just no use at all to reach which of the following objectives?



A ~~guest~~ ~~adult son~~ roommate/lover who's outstayed his welcome.

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### SE is also useless when it comes to ...

Removing your sister from the property daddy left you



Forcing the live-in nanny to stop living in after you fire her.

Moving out the former homeowner so that you can move in to the foreclosed property.



Helping you sell a home on the installment plan, again . . . and again . . . and again . . . and again.



Making the paying customer leave your hotel, residential treatment center, or group home.

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