

Special Rules of Procedure in Summary Ejectment Cases

Basic School

1

Special rule for who can appear on behalf of LL

plaintiff is entitled to immediate possession.

5. The defendant owes the plaintiff the following:

Description Of Any Property Damage

Amount Of Damage (if known) \$	Amount Of Rent Past Due \$	Total Amount Due \$
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6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs.

Date	Name Of Plaintiff/Attorney/Agent (type or print)	Signature Of Plaintiff/Attorney/Agent
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CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF

I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint.

Date	Name Of Agent (type or print)	Signature Of Agent
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(Over)

2



**Not a special rule –
but a frequent error!**

Person entitled to possession (usually owner of property) is real party in interest and must be named as plaintiff.

3

Mandatory minimum notice period for service of process in SE cases is 2 calendar days.

4

Special rule for money damages (including costs of court) when service is by posting

<input type="checkbox"/> 7. costs of this action are taxed to the <input type="checkbox"/> plaintiff. <input type="checkbox"/> defendant(s).			
Rate Of Rent (Tenant's Share) \$	<input type="checkbox"/> Mo. per <input type="checkbox"/> Wk.	Amt. Of Rent In Arrears (Owed To Date) \$	<input type="checkbox"/> Judgment Announced And Signed In Open Court
Amount Of Other Damages \$		Date	Signature Of Magistrate
TOTAL AMOUNT ▶ \$		Name Of Party Announcing Appeal In Open Court	
CERTIFICATION			
<small>(NOTE: To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.) I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.</small>			
Date	Signature Of Magistrate		

5

Severance of Claims

- *GS 7A-223(b1): In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not prejudice the claims or defenses of any party in the severed claim for monetary damages.*
- Applying the rule, what do you do?

6

Judgement on the Pleadings

- *GS 42-30: [If the summons has been served] and . . . the defendant fails to appear on the day of court, and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading, the magistrate shall give judgment [for possession]; and if any rent or damages . . . be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be.*

7

7

Note special rules for (1) continuances, and (2) reserving judgment.

Contoso
Suites

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8

This action was tried before the undersigned on the cause stated in the complaint. Except as may be indicated below, the record shows that the defendant(s) was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

- 1. a. Defendant 1 was was not present, and was served personally (Rule 4) by posting. was not served.
- b. Defendant 2 was was not present, and was served personally (Rule 4) by posting. was not served.
- 2. a. the plaintiff has proved the case by the greater weight of the evidence.
- b. the plaintiff has failed to prove the case by the greater weight of the evidence.
- c. the plaintiff requested and was entitled to a judgment for possession based on the pleading.
- 3. a. there is no dispute as to the amount of rent in arrears, and the amount is \$ _____.
- b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is \$ _____, and this amount is the undisputed amount of rent in arrears.
- 4. other: _____

ORDER

It is ORDERED that:

- 1. the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint.
- 2. this action be dismissed with prejudice.
- 3. this action be dismissed with prejudice because the defendant(s) tendered the rent due and the court costs of this action.
- 4. the plaintiff recover rent of the defendant(s) in the amount and at the rate listed below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date until the judgment is paid.
- 5. at the request of the plaintiff, the claim for money damages is severed from the claim for possession and is not determined by this Judgment.
- 6. other: (specify)

Entering judgment