

SUMMARY EJECTMENT--DEFENSE OF WAIVER OF BREACH BY ACCEPTANCE OF RENT.

This issue reads:

"Did the landlord waive the tenant's breach of the lease (state provision in lease that is contested, e.g. prohibiting tenant from keeping pets; requiring tenant to pay the rent by the first of the month)?" You will answer this issue only if you find in favor of the landlord in the (state number) issue concerning the tenant's breach of the lease.

On this issue the burden of proof is on the tenant. This means that the tenant must prove, by the greater weight of the evidence, that the landlord accepted from the tenant rent coming due after the breach of the lease with the knowledge that the breach had occurred.¹

The law provides that if a landlord accepts rent that comes due after a breach by a tenant, while knowing of such a breach, the breach is waived and a landlord may not remove the tenant from the premises.

Finally, as to this issue on which the tenant has the burden of proof, if you find by the greater weight of the evidence that the landlord waived the tenant's breach of the lease, then it

¹Winder v. Martin, ___ N.C. 111 S.E. 708, 709 (1922). See also, Fairchild Realty Co. v. Speigel, Inc., 246 N.C. 458, 98 S.E.2d 871 (1957); Community Housing Alternatives, Inc. v. Latta, 87 N.C. App. 616, 362 S.E.2d 1 (1987); Office Enterprises, Inc. v. Pappas, 19 N.C. App. 725, 200 S.E.2d 205 (1973).

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would be your duty to answer this issue "Yes" in favor of the tenant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the landlord.