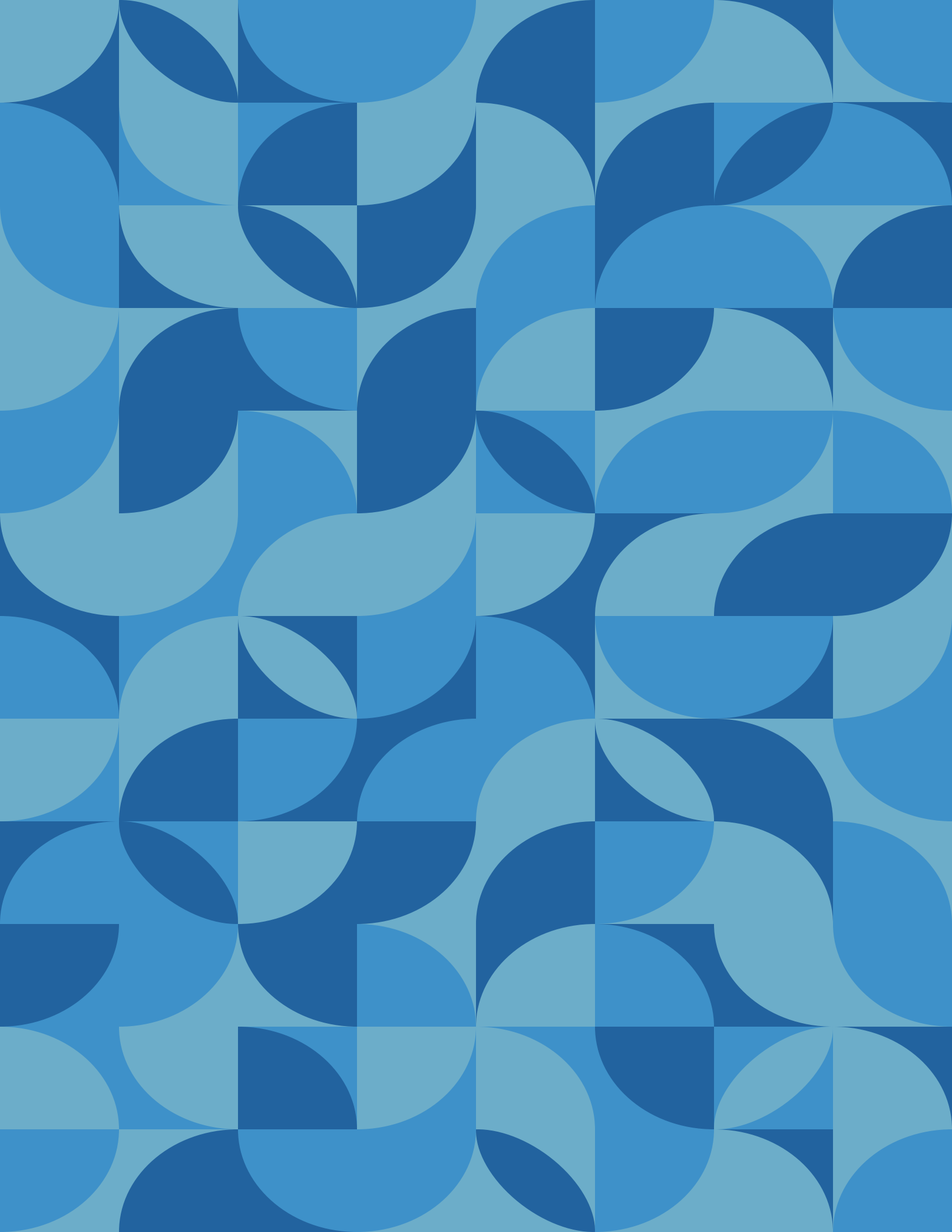




LEGAL AID
OF NORTH CAROLINA

UPDATED NOVEMBER 2022

Eviction Defense Manual



EVICTIION DEFENSE MANUAL

Legal Aid of NC

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Section 1: Introduction

This manual was made to help tenants understand their legal rights and get ready for eviction court. It will teach tenants about the eviction process, the four types of legal claims a landlord can bring for eviction, common defenses, how to appeal an eviction order, tips for court, and other information to help tenants avoid homelessness.

If you are reading this manual, you may be a tenant facing eviction. If that is the case, please know we made this manual to try to help you win. We understand that eviction can be scary and stressful. We are on your side.

Please understand this manual has a lot of helpful information in it, but it cannot give you specific legal advice about your case. Every case is different, and we do not know the specifics about your case. Even though there are rules, there are sometimes exceptions to the rules. Only a lawyer can give you specific advice about your case, and you should speak to a lawyer about what you should do or not do.

Tenants in North Carolina who want legal advice and representation may call toll-free at 1-866-219-5262 to speak with a Legal Aid attorney. The call is free, and legal services are free for tenants who qualify.

While reading this manual, you may see different types of words. Most of the words in this manual will be in regular type and will explain things about evictions.

Sometimes you will also see **bold** words. The bold words will name different laws that back up the things the regular words say. Some of the laws are statutes (the written law), and some are cases (cases are where courts have made decisions based on laws that other courts are required to follow). Statutes will have "N.C. Gen. Stat." (North Carolina General Statutes), followed by numbers. Cases will have two names, followed by letters and numbers (the letters and numbers tell people which books to find the cases in and where). If you end up in eviction court trying to explain to a judge why you are right about a certain thing, you may use the laws in bold words to help you. At the end of this manual will be instructions on how to get copies of the laws for court.

You may also see words in italics. These words have tips to make things easier for you. At the end of this manual, you will also find forms that we talk about in the manual. We hope that all these things together will be useful to you.

Let's try it out. I'm going to tell you something, name the law supporting what I tell you in **bold**, and then give you a practical tip in *italics*.

Did you know that, generally, evictions are frowned on by North Carolina courts?

According to **Stanley v. Harvey, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988)**, "Our courts do not look with favor on lease forfeitures [evictions]."

Tip: *Judges in eviction court are supposed to follow the rules, although the rules are sometimes hard to understand. If a judge is not sure whether the landlord or the tenant is right about something, it may be helpful to talk about Stanley v. Harvey so the judge understands lease forfeitures (evictions) are generally bad. If the judge does not know what to do, that may help them make their choice.*

I hope that demonstration was helpful to you. Now I would like to start by talking about how a landlord can legally evict a tenant in North Carolina.

Section 2: The Eviction Process

There is Only One Legal Way to Evict a Tenant

It is important to know how a landlord can legally evict a tenant. In North Carolina, the legal term for eviction is “summary ejectment.” A landlord must start a court case to evict a tenant. The landlord must then get a court order against the tenant and ask the sheriff to schedule the lockout. Going to court and getting an eviction order is the only legal way for a landlord to evict a tenant.

N.C. Gen. Stat. 42-25.6 says that it is illegal for a landlord to evict a tenant other than through the eviction court process.

It is illegal for a landlord to try to evict a tenant without first going to court. This is called a “self-help eviction.” A landlord who evicts a tenant without a court order is breaking the law.

For example, a landlord cannot change the locks without a court order, cut off the water or power, put the tenant’s belongings on the curb, refuse to make repairs, take off the outside doors, or use other illegal means to evict the tenant.

Tip: *If a landlord illegally evicts a tenant by some way other than going through the court process, the tenant may have a legal claim against the landlord for whatever money the tenant has to spend because of the illegal eviction. The tenant may also be entitled to an emergency court order (called a “temporary restraining order”) to force the landlord to let the tenant back into the home. To get the emergency order, the tenant would need to file a motion for a temporary restraining order. Tenants who have been illegally evicted may want to call Legal Aid at 1-866-219-LANC (5262) for help.*

Take Away: *A tenant facing eviction is entitled to a day in court before they can be evicted.*

So now that we know that an eviction court case is the only legal way to evict a tenant, let’s talk about what that looks like.



Small Claims Court

Most eviction cases take place in small claims court. There is no jury in small claims court. There is a magistrate who acts as the judge. The magistrate makes the final choice about who wins the case in small claims court.

Some evictions for criminal activity start in district court instead of small claims court-- but we'll talk more about that later.

A tenant is allowed to bring a lawyer with them to court, but the court will not give the tenant a lawyer for free. Unfortunately, tenants do not have a legal right to a lawyer like people who have been charged with a crime do. Most landlords have a lawyer because they can afford to pay for one.

Tip: *Even though tenants in North Carolina do not have the legal right to a lawyer, Legal Aid is a non-profit law firm that provides free lawyers to tenants who qualify. Tenants can call Legal Aid at 1-866-219-5262 to see if they qualify.*

Eviction court is part of the civil court—it is not a criminal process. If a tenant does not show up for eviction court, the magistrate will not put out a warrant to arrest the tenant. If the tenant does not come to court, however, the landlord can still move forward with the case and get an eviction order against the tenant.

Now that we've talked about where eviction cases start, you may be curious about what the court papers look like.

The Court Paperwork

An eviction case is started when a landlord files a paper with the court called a "Complaint in Summary Ejectment." It is also called an eviction complaint. In the eviction complaint, the landlord asks the judge to order the tenant to move out. Often, the landlord also asks the judge to order the tenant to pay past due rent, late fees, or other costs.

When a landlord files an eviction case against the tenant, the landlord is called the "Plaintiff" in the lawsuit. The tenant is called the "Defendant." Remember these terms because you will see them on the court documents we will be looking at.

Below you can see a picture of the summary ejectment complaint. Some parts of it are empty but would be filled in a real court case:

| STATE OF NORTH CAROLINA | | |
|---|---|--|
| County | | |
| In The General Court Of Justice District Court Division-Small Claims | | |
| COMPLAINT IN SUMMARY EJECTMENT | | |
| G.S. 7A-216, 7A-232, OR 42, Art. 3 and 7 | | |
| Name And Address Of Plaintiff | 1. The defendant is a resident of the county named above. | |
| County | 2. The defendant entered into a lease with the plaintiff for the use and possession of the premises described below. | |
| Telephone No. | Description Of Premises (Give names, street, block and legal address) | |
| VERSUS | | |
| Name And Address Of Defendant 1 | 3. <input type="checkbox"/> The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint. | |
| County | <input type="checkbox"/> The lease period ended on the above date and the defendant is holding over after the end of the lease period. | |
| Telephone No. | <input type="checkbox"/> The defendant breached the condition of the lease described below for which re-entry is specified. | |
| Name And Address Of Defendant 2 | <input type="checkbox"/> Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below. | |
| County | 4. The plaintiff has demanded possession of the premises from the defendant, who has refused to surrender it, and the plaintiff is entitled to immediate possession. | |
| Telephone No. | 5. The defendant owes the plaintiff the following: | |
| Name And Address Of Plaintiff Attorney Or Agent | Description Of Any Property Damage | |
| County | Amount Of Damage (If Known) \$ | |
| Telephone No. | Amount Of Rent Paid Due \$ | |
| Name And Address Of Plaintiff Attorney Or Agent | Total Amount Due \$ | |
| County | 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. | |
| Telephone No. | Date Name Of Plaintiff/Attorney/Agent Signature Of Plaintiff/Attorney/Agent | |
| Name And Address Of Plaintiff Attorney Or Agent | CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF | |
| County | I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint. | |
| Telephone No. | Date Name Of Agent (Type Of Print) Signature Of Agent | |
| Name And Address Of Plaintiff Attorney Or Agent | | |
| County | | |
| Telephone No. | | |
| Name And Address Of Plaintiff Attorney Or Agent | | |
| County | | |
| Telephone No. | | |

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(Over)

A link to the complaint can also be found at the following web address:

<https://www.nccourts.gov/documents/forms/complaint-in-summary-ejectment>

You may be wondering why we circled part of the complaint. The reason we did is because that part of the complaint is where the landlord must explain why they think they have the legal right to evict the tenant.

There are four boxes the landlord can check. Each box is for one of the legal reasons a landlord may evict a tenant. A landlord filing an eviction case against the tenant should check one or more of these boxes. We will talk more about the four reasons later, but for now here they are:

- I. Nonpayment of rent for verbal (non-written) leases or written leases that do not have a “forfeiture clause” (we will explain what that means later).
- II. Holdover. This means the term of the lease (either the original term or the renewal) has ended, and the tenant is still in the home.
- III. Breach of lease. This is where the landlord has a written lease with a forfeiture clause that allows the landlord to end the lease if the tenant breaks a rule in the lease (including not paying rent on time). This is by far the most common type of eviction case.
- IV. Criminal activity. No matter what the lease says, the landlord can evict for certain types of criminal activity that pose a threat to other people in the community’s health, safety, or peace.

Tip: *It is important for a tenant who is being evicted to read the complaint and pay special attention to which box the landlord checked. That way the tenant will know why the landlord thinks they have the legal right to evict the tenant. The tenant needs to read the complaint to know what they are up against.*

The Complaint in Summary Ejectment must be served on the tenant along with a paper called a Summons.

A Summons is a notice that states the date, time, and place of the eviction hearing. This is what the Summons looks like:

| | | |
|---|--|---|
| STATE OF NORTH CAROLINA | | File No. _____ |
| _____ County | | In The General Court Of Justice District Court Division - Small Claims |
| Plaintiff _____ | | MAGISTRATE SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE) G.S. 1A-1, Rule 4, 7A-217, -222 |
| VERSUS | | |
| Defendant 1 _____ | | Date Original Summons Issued _____ |
| Defendant 2 _____ | | Date Subsequent Summons Issued _____ |
| TO | | TO |
| Name And Address Of Defendant 1 _____ _____ | | Name And Address Of Defendant 2 _____ _____ |
| Telephone No. Of Defendant 1 _____ | | Telephone No. Of Defendant 2 _____ |
| A Small Claim Action Has Been Commenced Against You! | | |
| You are notified to appear before the magistrate at the specified date, time, and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint. | | |
| You may file a written answer, or a response to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate. | | |
| If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you. | | |
| Case Of This _____ | Type Of Trial <input type="checkbox"/> All <input type="checkbox"/> Part | Location Of Court _____ |
| Name And Address Of Plaintiff Or Plaintiff's Attorney _____ _____ | | Date Issued _____ |
| | | Signature _____ |
| | | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |
| (Over) | | |
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A link to the Summons form can also be found at the following web address:

https://www.nccourts.gov/assets/documents/forms/cvm205-en.pdf?rwVsOIVnk78_a26gLPU8uf.mFZrxbvy3

We circled part of the Summons. That part is important because it shows the date and time of the trial, the location of the courthouse, and the courtroom number.

Tip: *It is important for people to know when their court date is. The summons should have the date, time, and courtroom number on it. If a tenant has any questions about their court date, they may want to call their local courthouse to confirm.*

Now that we know what the court papers look like, let's talk about how the landlord must serve them.

How the Eviction Papers are Served

Once the landlord files the Complaint and Summons, the sheriff will serve them on the tenant. Usually, the sheriff will go to the tenant's home and knock on the door. If an adult living at the home answers the door, the sheriff can serve the papers by handing them to the adult. If an adult does not answer the door, the sheriff can serve the papers by something called "posting." Posting means the sheriff will tape a copy of the papers to the door and send a copy by regular mail.

Tip: *The copy of the court papers taped to the door sometimes will fall off, and the tenant will not see it. It is important for tenants who think their landlord may file an eviction case against them to check their mail every day. The notice in the mail may be the only copy of the court papers the tenant gets.*

If a tenant does not discover that they had a case filed against them until after the court date has already happened, the tenant may still be able to appeal. There is more information about the appeal process later in this manual.

If a tenant thinks they may have been served with eviction court papers, they may want to know how long they will have before their trial.

Court Timeline

The hearing for the eviction usually happens within a week of when the landlord files the court papers! As a result, tenants may only have a few days between when they are served and their court date. If the tenant is not served with the papers more than two days before the hearing, the magistrate should reschedule the hearing.

According to **N.C. Gen. Stat. 42-29**, the sheriff should serve the eviction court papers on the tenant at least two days before the eviction hearing.

We'll talk about some common defenses to eviction cases and how to prepare for court later, but for now you may be curious to know the process for what happens if you lose your eviction case. The good news is that there is an appeal process.

The Lockout

A tenant who loses in court has the right to appeal the case and pay a bond to stop the eviction from moving forward. Otherwise, the landlord can file a paper called a "writ of possession." A writ of possession is an order that tells the sheriff to remove a tenant from the property so the landlord can change the locks.

If a tenant files an appeal and posts a rent bond on time, the landlord will not be able to move forward with the lockout unless (a) the tenant misses a rent bond payment later or (b) the landlord wins the case on appeal. We are going to talk a lot about the appeal and bond process later, but for right now let us talk about what happens if the tenant does not appeal or pay the bond on time.

If a tenant fails to file an appeal or pay the bond on time, the landlord can move forward with the lockout by filing the writ of possession. Once the writ of possession is filed, the lockout usually happens within a week.

Before the sheriff comes to remove the tenant from the property, the sheriff should deliver or mail a notice to the tenant of when the lockout will happen. Sometimes this notice comes only a day or two before the lockout.

When the sheriff arrives at the property, the sheriff will usually only give the tenant a few minutes to get out. At that point the sheriff will stay while the landlord changes the locks at the property.

Tip: *It is a good idea for a tenant to prepare for the lockout before the sheriff gets to the home. Since the sheriff will not give the tenant much time to get out, the tenant may want to pack a bag with all their important papers, IDs, and medications. The tenant may also want to pack toiletries, a change of clothes, and other important items. Although the tenant has the right to return to the property to get the rest of their things within a certain amount of time (discussed below), it may take a few days for the tenant to make arrangements with the landlord.*

Time to remove belongings after lockout

After the sheriff evicts the tenant and the landlord changes the locks, the landlord will usually leave the tenant's personal belongings in the property. The tenant is allowed into the property during regular business hours to retrieve any belongings within 7 days from the lockout. The law that says that is **N.C. Gen. Stat. 42-36.2**. If the tenant's belongings are worth less than \$500, the tenant gets 5 days to collect their belongings (**N.C. Gen. Stat. 42-29.5(h)**). If the last day the tenant has to get their belongings out is on a weekend or holiday, the tenant should get until the next business day to get their property.

If the tenant asks the landlord to let them into the property during the time they have to remove their belongings, the landlord should allow the tenant to get their property out between the hours of 9 AM and 5 PM. The landlord is not allowed to charge the tenant money for access to the property. The landlord and tenant may agree to meet at a time outside of regular business hours. If the tenant does not set a time with the landlord to get their personal belongings out in the time they are given under the law (either 5 or 7 days), then the landlord may throw their belongings away after the time has ended.

*Sometimes, unfortunately, landlords may refuse to let tenants back into the property to get their things during the 5- or 7-day period. Other times, landlords may try to force the tenant to pay the landlord to get their property out. It is illegal for a landlord to do these things, and tenants in that situation may have a legal claim against the landlord. Tenants can call Legal Aid at **1-866-219-5262** for help if they find themselves in that situation.*

Section 3: The Appeal Process

A lot of tenants are not able to make it to their court date because the first court date happens so fast. Sometimes tenants are not able to get time off work or get childcare. That is why the appeal process is so important.

Take away: If a tenant misses their court date, they may still have a chance to win. To get a new trial and stay in their home in the meantime, the tenant must file an appeal on time and pay a bond to the court.

Who Can File an Appeal

An appeal is when the person who lost the case asks for a new trial.

If a tenant loses the eviction case in small claims court, they can appeal the eviction order. A tenant who misses their court date can also appeal the eviction order. Tenants who file an appeal will get a new trial in district court in front of a different judge.

Grounds for Filing an Appeal

Either the landlord or the tenant can file an appeal if they lose their case in small claims court.

Any tenant who loses in small claims court has the right to appeal. A tenant does not need to have a specific legal basis for the appeal. A landlord can also appeal if the tenant wins.

Timeline for Filing Appeal

If a tenant misses the hearing or loses in court, the tenant has 10 calendar days to file an appeal. The 10 days include weekends and holidays. If the 10th day falls on a weekend or holiday, however, the deadline to file an appeal will be on the next business day.

The rules about how to count weekends and holidays are in Rule 6 of the North Carolina Rules of Civil Procedure. Generally, if the last day you have to do something falls on a weekend or holiday, you get until the next business day to do it. You can find the rule at **N.C. Gen. Stat. 1A-1, Rule 6**. The following examples help show how it works.

Example 1: *Mary is a tenant who loses her hearing and has an eviction order entered against her on Monday, October 11. Ten days from October 11 is October 21, which is a Thursday (and not a holiday). Mary's last day to file her appeal is Thursday, October 21.*

Example 2: *Holly is a tenant who loses her hearing and has an eviction order entered against her on Wednesday, October 13. Ten days from October 13 is October 23, which is a Saturday. Holly's deadline to file her appeal is Monday, October 25, which is the first business day after Saturday, October 23.*

Sometimes the magistrate needs some time to think about a case before deciding who wins. If that happens, the magistrate can take up to 5 days after the hearing to decide and enter the judgment. The court must then mail the judgment to the landlord and the tenant. If the magistrate mails the eviction order to the tenant instead of announcing it on the day of court, the tenant will have 13 days from when the eviction order was filed by the magistrate to file their appeal.

If the tenant does not file their appeal by the deadline, the tenant loses the right to appeal the eviction order.

Cost of Filing Appeal

Usually there is a \$150 fee to file an appeal. A tenant may not have to pay these costs if they receive food stamps, Supplemental Security Income (SSI), are represented by Legal Aid, or cannot otherwise afford the fee. The tenant must fill out a form called a "Petition to Proceed as Indigent" to waive the fee (see below).

Documents for Filing Appeal

There are 3 important forms for a tenant who is filing an appeal. These documents are the Notice of Appeal, the Bond to Stay Execution, and the Petition to Proceed as Indigent. These forms can be found on the North Carolina Court's website. The forms can be found at this web address:

<https://www.nccourts.gov/documents/forms>

Legal Aid of North Carolina's website provides a video step-by-step tutorial on how to fill out these forms. It can be found at the following web address:

<https://www.legalaidnc.org/get-help/self-help-library/housing/eviction-appeals>

There is also a tool that the North Carolina Administrative Office of the Courts (NCAOC) created to help people fill out court paperwork, including the Notice of Appeal. It is called "Guide and File." Guide and File can be found at www.nccourts.gov. Click on the link for "Services," and then select "Guide and File."

We also included the three forms at the end of this manual. Let us talk about each of the appeal forms.

I. Notice of Appeal

The "Notice of Appeal" form lets the court and the landlord know that the tenant is appealing the eviction order. The tenant must mail or hand-deliver a copy of the Notice of Appeal to the landlord the day the appeal is filed and sign a certificate of service on the back of the Notice of Appeal promising that they served the Notice of Appeal on the landlord.

On the Notice of Appeal, the tenant may choose to ask for a jury trial or a judge trial. In a jury trial, a group of people will make the choice about who wins the case. In a judge trial, the judge will make the decision. Generally, judge trials are faster and easier to do if you do not have an attorney. There are often extra requirements for a jury trial (like filing a pre-trial memo), and the jury selection process can also be complicated.

II. Bond to Stay Execution

The “Bond to Stay Execution” is the form a tenant fills out to stop the landlord from scheduling a lockout while the tenant is waiting on the appeal court date. A tenant who files the bond form, pays the bond, and keeps it current can stay in the home until the new court date. There is more information on the bond (called the “rent bond”) later in this manual.

III. Petition to Proceed as Indigent

The “Petition to Proceed as Indigent” form is a fee waiver form. It allows a tenant to file an appeal without paying the \$150 dollar appeal fee. The court will usually allow a fee waiver if

- the tenant receives Supplemental Security Income (SSI) payments, Temporary Assistance for Needy Families (TANF), or food stamps;
- if the tenant is represented by a nonprofit legal services organization; or
- if the tenant swears under oath that he or she is otherwise unable to afford the court costs of the appeal.

Tip: Sometimes clerks may require proof that the tenant cannot pay the court costs. This could be a copy of the tenant’s EBT card, for example, or an award letter from the Social Security office. Tenants who are planning on filing a Petition to Proceed as Indigent may want to call their local clerk of court ahead of time to ask if any extra documentation will be required.

Bond Required to Stay in Home while Appeal Pending

To stay in the home during an appeal, a tenant may have to pay up to 3 different types of rent bonds. Sometimes the tenant may have to only pay 1 or 2 of the types of bonds. The 3 types are 1) the undisputed back rent; 2) a prorated amount of rent that goes from the day the judgment was entered to the end of the month (as explained in paragraph II in this subsection); and 3) the tenant's rent each month during the appeal as it comes due. The law that talks about the bond requirements is found in **N.C. Gen. Stat. 42-34**.

I. Monthly Rent as it Becomes Due

All tenants paying a bond to stay in their home must pay their monthly rent within 5 business days of when it becomes due each month during the appeal to stop the eviction process while they are waiting on their appeal court date. For tenants whose rent is subsidized (for example Section 8 housing or public housing), the tenant should only have to pay their individual portion of the rent as a bond.

Example 1: *Holly rents her home through the Section 8 Housing Choice Voucher Program. Under that program, Holly pays \$188 per month as her portion of the rent. Her local housing authority pays the remaining \$912 a month as a rental subsidy (\$1,100 per month total). Although the total rent for Holly's home each month is \$1,100, Holly's monthly rent bond is only \$188 per month because that is how much she must pay under the program.*

Example 2: *Joseph does not have a rental subsidy. His rent is \$1,000 per month. Since he does not have any help from a subsidy program, his monthly rent bond is \$1,000 per month.*

Tip: *Sometimes landlords in subsidized housing programs do not tell the court that their tenant's rent is subsidized. If a tenant's rent bond is set at the wrong amount because the tenant's portion of the rent is lower than what the court sets the bond at, the tenant may need to file a paper with the court to ask for a hearing to lower the bond amount. There is more information about that at the end of this section.*

II. Prorated Rent

Tenants who are being evicted for nonpayment of rent must pay a prorated amount of rent from the day the judgment was entered against them to the end of the month. The prorated rent is a payment based on how many days are left in the month after the eviction order is entered until rent is next due.

One important thing to know is that this prorated bond should only be charged in cases where the landlord is evicting for nonpayment of rent. **N.C. Gen. Stat. 42-34(c)**.

***Tip:** Unfortunately, some court clerks do not understand that this bond requirement is only for nonpayment cases. If a clerk tries to charge a tenant the prorated bond for a case that is not for nonpayment (e.g. a case for holdover, criminal activity, or a breach of lease other than nonpayment), then the tenant may need to speak with a supervisor and explain that the prorated rent bond does not apply to them.*

III. Undisputed Rent in Arrears

Generally, a tenant must also pay any undisputed rent in arrears (back rent) as a bond to stop the eviction while the tenant is waiting on their appeal trial. Sometimes, however, they do not. Earlier we talked about the fee waiver form (the Petition to Proceed as Indigent) that a tenant may use to waive the filing cost for an appeal. If the court approves the fee waiver form, then the tenant does not have to pay the back rent as a bond. The law that says this is **N.C. Gen. Stat. 42-34(c1)**.

Motion to Modify the Rent Bond

There may be a situation where the court sets the rent bond for the wrong amount. This could happen because the landlord listed the wrong rate of rent in the court papers. Or it could happen if the tenant's rent is subsidized and is less than the amount the landlord claims it is in the court papers (as explained above). In that situation, the tenant may need to file a Motion to Modify the Rent Bond. A tenant is allowed to do this under **N.C. Gen. Stat. 42-34(b)**. The motion should be heard by the clerk of court or a district court judge within 10 days of when the tenant files the motion. A landlord is not allowed to proceed with the eviction while the court is waiting to hear the motion.

***Tip:** We will include a sample motion to modify the rent bond with this manual. Tenants who need help arguing a motion may call Legal Aid at 1-866-219-5262 for assistance.*

Landlord's Motion to Dismiss an Appeal

Finally, there are some situations where a landlord can dismiss a tenant's appeal.

N.C. Gen. Stat. 7A-228(d) says a landlord can dismiss an appeal if a tenant has done ALL of these things: 1) failed to raise defense verbally during the small claims trial, 2) failed to file an answer, motion, or counterclaims, and 3) failed to pay any bond requirements the court requires.

A landlord must satisfy ALL THREE requirements to win the motion to dismiss. A tenant has 10 days after being served with the motion to dismiss to respond. If the tenant pays the bond or files an answer, motion, or counterclaim within the 10 days, then the court should not allow the motion to dismiss.

What Happens if the Tenant Files an Appeal but Does Not Pay the Rent bond?

The landlord may be able to evict the tenant even before the appeal is heard if the tenant fails to pay the rent bond. However, that does not necessarily make the appeal go away.

A tenant may want to go forward with the appeal even if they are not still living in the home. The tenant may want to do that because they do not want an eviction judgment on their credit, they do not agree with the amount of a money judgment entered against them, or they want to try to get back into the home. If a tenant who has been locked out goes on to win the appeal, the court can order the landlord to let the tenant back into the home. **N.C. Gen. Stat. 42-35**. The tenant who wins the appeal can also file a claim for expenses from being locked out. **N.C. Gen. Stat. 42-36**.

RECAP: *So far, we have talked about the eviction process, the eviction court papers, and the appeal process. Next, we are going to talk about the four types of eviction claims.*

Section 4: The Four Types of Eviction Claims

There are four types of claims for a landlord to evict a tenant. As we talked about earlier, a landlord must give the basis for the eviction by checking one of four possible boxes on the complaint. Here they are again:

- 1 The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.
- 2 The lease period ended on the above date and the defendant is holding over after the end of the lease period.
- 3 The defendant breached the condition of the lease described below for which re-entry is specified.
- 4 Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below.

1 Nonpayment of Rent for Verbal Leases and Leases Without a "Forfeiture Clause" (First Box)

The first basis for eviction is a special claim for nonpayment of rent.

There are two ways for a landlord to bring a nonpayment of rent eviction case. Which one the landlord must use depends on the type of lease. The first one we are going to talk about has to do with verbal leases or written leases without a forfeiture clause. A forfeiture clause is a part of the lease that says the landlord can terminate the lease or reenter the property if the tenant breaks a rule in the lease.

Here is an example of what a forfeiture clause in a lease may look like:

DEFAULT/FORFEITURE. In the event that Tenant fails to pay rent by the first day of the month or breaks any of the other rules in this lease, Landlord has the right to immediately terminate the lease and reenter the property.

The authority for this eviction claim comes from **N.C. Gen. Stat. 42-3**.

There are a couple of special rules for this type of claim. First, for a landlord to win the landlord must make a demand for the rent due and then wait 10 days before filing the lawsuit. If the landlord fails to prove to the court that they did that, then the tenant can ask the court to dismiss the case.

Second, if the tenant can “tender” (try to pay) the past due rent and court costs to the landlord before a final judgment is entered, the eviction case should be dismissed. The law that says this is **N.C. Gen. Stat. 42-33**. Court costs are usually \$126 but can be more if there is more than one tenant in the lawsuit.

***Tip:** If a tenant has this type of claim filed against them and wants to tender the past due rent and court costs to the landlord to get the case dismissed, the tenant may consider bringing the money to court and trying to offer it to the landlord in front of the judge. That way the judge will have no question that the tenant has tendered the rent and court costs. Remember, however, that this defense only works for this special type of nonpayment claim.*

Another thing that happens sometimes is that a landlord will file this type of claim when they should have filed a breach of the lease (Third Box) claim instead. If a landlord files this claim even though they do have a written lease with a forfeiture clause, then the landlord has filed the wrong claim. The tenant may ask the court to dismiss the landlord’s case in that situation. There is a case which says the court should not allow the landlord to use this claim where the landlord does have a written lease with a forfeiture clause. That case is **Charlotte Office Tower Assocs. v. Carolina SNS Corp., 89 N.C. App. 697, 366 S.E.2d 905 (1988)**

2 Holdover (Second Box)

The second claim for eviction is a “holdover” claim. A holdover claim is a claim that the tenant has stayed in the home or “held over” after the end of the lease.

If the lease is for a certain period of time (like a year), then the landlord does not usually have to give a notice to end the lease once the period of time is over. One exception to this is if the lease has a clause that automatically renews the lease or changes the lease

to a month-to-month lease (or some other “periodic lease”) once the original period of the lease is over.

What is a periodic lease? It is a lease that does not have a set amount of time but renews on a regular basis. This could be a month-to-month lease (which is most common), a week-to-week lease, or a year-to-year lease. A periodic lease keeps renewing until either the landlord or tenant ends it by giving the right amount of notice.

Tip: *One of the most common leases in North Carolina has a provision that automatically changes the lease to a month-to-month lease after the original period of the lease is over unless the landlord or tenant gives a 60-day notice before the end of the lease. Read your lease carefully to see what happens when the original period ends.*

Where a lease automatically renews or changes to a periodic lease after the original period is over, the landlord may have to give a certain amount of notice before ending the lease. The minimum amount of notice for ending a periodic lease is found in **N.C. Gen. Stat. 42-14**.

Here is the minimum amount of notice required for each type of periodic lease:

- Year-to-year lease: 30 days.
- Month-to-month lease: 7 days.
- Week-to-week lease: 2 days.

For the lease of a mobile home lot (where the tenant owns the mobile home but is just renting the land), the landlord must give 60 days’ notice.

Please remember that these are the minimum amounts of notice required to end a periodic lease. If the lease says the landlord must give the tenant more notice, then the landlord has to go with what the lease says.

Tip: *There is a common lease a lot of landlords use in North Carolina that makes them give 30 days’ notice to end a month-to-month lease. Read your lease carefully.*

Besides giving a certain amount of notice, the law also says the landlord must make the notice end the lease at the end of the “periodic term.” For a month-to-month lease where rent is due on the first day of the month, this means the notice must end the lease at the end of the month. For a week-to-week lease that goes from every Sunday to every Saturday, the notice would have to end the lease on a Saturday. If the landlord’s notice tries to end the lease in the middle of the monthly term or the middle of the weekly term, then the notice should not work, and the eviction case should be dismissed. The case that says this is **Simmons v. Jarman, 122 N.C. 195, 198 (1898)**.

Example 1: *Holly rents from Larry. Holly’s lease lasted for a year, after which it automatically changed to a month-to-month lease because the lease said it would. Under Holly’s lease, the rent is due the 1st of every month. The lease requires Larry to give Holly a 30-day notice to end the month-to-month lease. Larry gives Holly a notice on January 15 that Holly’s lease will end on February 20. Even though Larry gave Holly at least 30 days’ notice, the notice was not proper because it tried to end the lease in the middle of the month.*

Example 2: *Holly rents from Larry on a week-to-week lease. Rent is due every Sunday, which means that the lease goes from Sunday to Saturday each week. Larry gives Holly a 2-day notice on Thursday that the lease will end that Saturday. Since the notice is at least 2 days, which is the minimum amount of notice under the law, and since the notice ends the lease at the end of the weekly term (Sunday-Saturday), Larry’s notice is proper.*

Another thing a landlord must prove to win a holdover claim is that the landlord made a demand for surrender of possession of the home. The law that says this is **N.C. Gen. Stat. 42-26(a)**. This means that the landlord must demand that the tenant leave the property before filing the eviction court papers. A demand for surrender of possession is different from a notice of lease termination. Even if the landlord gives a notice of lease termination, the landlord should not win the claim if the landlord does not prove that they demanded that the tenant leave the property. There is an old case that talks about this requirement. The name of the case is **Warren v. Breedlove, 219 N.C. 383, 387 (1941)**.

Take away: *If the tenant has a month-to-month lease or some other periodic lease with the landlord, the landlord must give a correct notice before filing the holdover claim. The landlord also must demand that the tenant leave the property before filing the court papers. If the landlord does not give the correct amount of notice, if the landlord tries to terminate the lease in the middle of the lease term, or if the landlord fails to prove they demanded the tenant leave the property, then the tenant may ask the court to dismiss the case.*

3 Breach of the Lease (Third Box)

The third claim for eviction is a breach of the lease. A breach happens when a tenant breaks one of the rules stated in a lease, and the lease says the landlord can end the lease if the tenant has broken the rule. This can include a tenant failing to pay the rent on time.

Tip: *Some of the most common breach of lease claims are based on the following things:*

- *Nonpayment of rent*
- *Having an unauthorized occupant (someone living there who is not on the lease)*
- *Having a pet when one is not allowed*
- *Loud noises or disturbances*

Please remember that these are just some examples, and there are many other rules where, if the tenant breaks them, the landlord could file a breach of lease claim.

For the landlord to win a breach of lease claim, the landlord must have a written lease with a forfeiture clause in it. The following case talks about that requirement: **Morris v. Austraw, 269 N.C. 218, 223, 152 S.E.2d 155 (1967)**. As a reminder, a forfeiture clause is a paragraph in the lease that says the landlord can terminate the lease or reenter the property if the tenant breaks a rule in the lease.

There is an example of a forfeiture clause in Section 4(a) of this manual.

If the landlord brings a breach of lease claim against the tenant but the lease does not have a forfeiture clause in it, the landlord should lose.

The landlord also must show that whatever rule the landlord is saying the tenant broke is actually a rule in the lease. If a landlord tries to bring a breach of lease claim against a tenant for having a pet in the property, for example, but the lease does not actually say the tenant is not allowed to have pets, then the landlord should lose.

Next, the landlord must prove that the tenant actually broke the rule.

Also, like holdover claims, a landlord must prove they made a demand for surrender of possession of the home to win a breach of lease claim. This law is found in **N.C. Gen. Stat. 42-26(a)**. This means that the landlord must demand that the tenant leave the property before filing the eviction court papers. A demand for surrender of possession is different from a notice of lease termination. Even if the landlord gives a notice of lease termination, the landlord should not win the claim if the landlord does not prove that they demanded that the tenant leave the property. There is a case that talks about this requirement, which is **Warren v. Breedlove, 219 N.C. 383, 387 (1941)**.

Take away: *To succeed on a breach of lease claim, the landlord needs to have a written lease with a forfeiture clause in it. The landlord also must show that the rule the tenant is accused of breaking is actually a rule in the lease. Then the landlord must prove the tenant broke the rule. The landlord also needs to make a demand that the tenant leave the property before the landlord files the court papers. If a landlord fails to prove these things, the eviction claim should fail.*

4 Criminal Activity (Fourth Box)

The fourth claim for eviction is where a tenant has done certain types of criminal activity.

Under Article 7 of Chapter 42, which starts at **N.C. Gen. Stat. 42-59**, landlords can file eviction actions against tenants who have done certain crimes.

Criminal activity under this claim has a special definition. It does not mean all types of criminal activity. It is defined broadly as any criminal activity that “threatens the health, safety, or right to peaceful enjoyment of the entire premises by other residents or employees of the landlord.” **N.C. Gen. Stat. 42-59**. This usually means violent or drug-related criminal activity. However, there are some exceptions. Simple possession of a drug for personal use, for example, is not a crime that a landlord can evict a tenant for

under this claim. Selling, manufacturing, or distributing drugs, on the other hand, are all crimes that a tenant may be evicted for under this claim. Another example of a crime that may not fit the definition of "criminal activity" under this claim would be tax fraud. Although tax fraud is illegal, it probably does not threaten the health, safety, or peaceful enjoyment of other residents or employees of the landlord.

Tip: *Although this claim defines "criminal activity" in a certain way and there are some types of crimes that do not fit the definition, the lease itself may ban all types of criminal activity or have a broader definition of "criminal activity." In that case, even though a certain crime may not count as "criminal activity" under this claim, it may still be a breach of the lease (in which case the landlord may still be able to evict the tenant under a breach of lease claim).*

When evicting for criminal activity, the landlord can start the eviction court case in either small claims court or district court. The landlord can sue the tenant or other members of the tenant's household for eviction or sue a tenant's guests to ban them from the property.

Grounds for complete eviction include:

- Criminal activity has occurred on or within an individual rental unit leased to a tenant;
- An individual rental unit leased to tenant was used in any way to further or promote criminal activity;
- A tenant, member of tenant's household, or any guest has engaged in criminal activity on or in the immediate vicinity of any portion of the entire premises;
- A tenant has given permission to or invited a person to return or re-enter any part of the entire premises knowing that such person has been removed and barred from the entire premises; and
- A tenant has failed to notify law enforcement or the landlord immediately upon learning that person who has been removed and barred from the tenant's individual rental unit has returned or reentered that individual rental unit.

These claims are rare, and there are several special things to consider if your landlord has filed one of these claims against you. Here are some things to think about:

I. Open Court

Eviction court is open to the public. Although small claims court is not usually recorded, district court is (remember the landlord can file this claim in small claims court or directly in district court). Even if small claims court is not recorded, there will still be people in the courtroom who might remember what the tenant says. If the tenant testifies in court, whatever statements the tenant makes could be used against them in a criminal proceeding.

Tip: *If a tenant is trying to decide whether to testify in eviction court about criminal activity they or someone close to them has been accused of, it is a good idea to talk to a lawyer first. Sometimes if a tenant has been accused of criminal activity in eviction court, they may also have a separate criminal case going on at the same time. In that case, the tenant may have a public defender for the criminal case. The tenant should talk to their public defender about whether it is a good idea to testify in eviction court.*

II. Right to Remain Silent

The 5th Amendment of the United States Constitution says that no persons accused of a crime can be forced to testify against themselves in a criminal proceeding. In eviction court a tenant who has been accused of a crime may choose to “plead the 5th” (refuse to testify) about the criminal activity they have been accused of. In eviction court, like all civil cases, however, the judge is allowed to decide the reason why the tenant is refusing to answer is because they are guilty of the crime.

III. Standard of Proof

In a criminal case, the jury must find that the person accused of the crime is “guilty beyond a reasonable doubt” for the person to be convicted. In eviction court, the standard is lower. For a tenant to be evicted for criminal activity, the judge only needs to find that the landlord has proved their case “by a preponderance of the evidence.” That means simply that it is more likely than not that the tenant, their guest, or their household member did the criminal activity.

IV. Effect of a Conviction or Guilty Plea

If the tenant is convicted or pleads guilty in criminal court to the same crime the landlord is trying to use to evict the tenant, all the landlord must do in eviction court to prove the tenant did the crime is show the court a copy of the guilty plea or conviction. The law that says this is **N.C. Gen. Stat. 42-69(b)**. This usually means that if a tenant pleads

guilty or is convicted in criminal court, they will lose their case in eviction court. Tenants should think about this and talk to their public defender when thinking about whether to take a plea deal in the criminal case.

V. Decisions the Court Can Make

There are several different things a judge or magistrate can do in one of these cases. They could order an eviction of the whole household. However, if they believe that the tenant was not personally involved in the criminal activity and either 1) did not know and should not have known that the criminal activity would happen or 2) did everything they could to prevent the criminal activity from happening, they have some other options. In those cases, they could order a partial eviction or a conditional eviction. The law that says this is **N.C. Gen. Stat. 42-63 and -64**.

A partial eviction means that the judge could choose to evict the member of the household who committed the crime but let the rest of the household stay in the home. A conditional eviction means that the judge could ban a person who is not part of the household and who committed the crime from the home. The household members get to stay in the home on the condition that they will not let the banned person come back. If they ever let the person who was banned back onto the property, then the landlord can file a motion to evict the whole household.

Example 1: *Joseph lives in his home with his 15-year-old daughter and his 21-year-old son. His son is accused of assaulting a neighbor, and Joseph's landlord files an eviction claim against him based on criminal activity under the criminal eviction statute. Joseph and his daughter were not home at the time the assault happened, and they had no reason to know that the crime was going to take place. At the trial, Joseph testifies to these facts and asks the magistrate to enter a partial eviction order against his son. The magistrate agrees and evicts the son while allowing Joseph and his daughter to stay.*

Example 2: April lives in her home with her three minor children. April's friend Sarah comes over to visit her. As Sarah is leaving, she gets in an argument with a neighbor in the parking lot and threatens to shoot her. April's landlord files an eviction claim against her based on criminal activity under the criminal activity statute. April had no reason to know that Sarah would threaten her neighbor, and April and her children were not involved in the incident. At the trial, April testifies to these facts and asks the magistrate to enter a conditional eviction order. The magistrate agrees and bans Sarah from the property. The magistrate allows April and her children to stay in the home on the condition that they do not allow Sarah to come back over. If they allow Sarah to come back over, April's landlord could file a motion with the court to evict April's entire family.

Tip: In some situations, a landlord may agree that only the person who was responsible for the crime should be evicted or banned from the property. A tenant with a household member or guest who has been accused of committing a crime at the property may consider trying to talk with their landlord ahead of time. Sometimes the landlord will agree to ban a guilty guest or remove a guilty household member from the lease instead of moving forward with an eviction against the whole family.

VI. Answer Required in District Court

If the landlord files one of these criminal eviction cases in small claims court, then the tenant does not have to file any court papers in response before the small claims trial. If the landlord files the case directly in district court or the case is appealed from small claims court to district court, however, the tenant must file a response (called an Answer) within a certain amount of time. If the tenant fails to file the Answer in time, then the landlord can get something called an entry of default against the tenant. That will allow the landlord to get an automatic eviction order against the tenant without a trial. The time for the tenant to file the Answer is 20 days after the tenant is served with the court papers (if the case is filed directly in district court) or 20 days after the Notice of Appeal is served (if the case is appealed from small claims to district court).

When a tenant must file an Answer in one of these cases, the tenant must include in the Answer any defenses the tenant may have. If the tenant wants to ask for a partial eviction or a conditional eviction because of the reasons discussed above, those are defenses that the tenant would need to include in the Answer.

A sample Answer for a criminal activity case is included at the end of this manual.

Tip: It is best not to wait until the last minute to file an Answer. There is no cost for filing an Answer, but it must be filed in time. If the tenant misses the deadline for filing the Answer, the court will still accept the Answer if the tenant files it before the landlord files for the entry of default.

RECAP: So far, we have talked about the eviction process, the eviction court papers, the appeal process, and the four different types of eviction claims. Now we are going to talk about some common legal defenses to evictions.

Section 5: Common Defenses to Eviction Claims

In General

With most lawsuits, the person who is suing (the plaintiff) files a complaint. Then the person being sued (the defendant) must file an “Answer” that either admits or denies each allegation in the complaint. The defendant is also supposed to list each legal defense they have in their Answer. Eviction cases are different. Legal defenses may be raised verbally by the tenant at trial, and no written Answer is required (one exception is for eviction cases for criminal activity, described above; in those cases, an Answer is required).

Most evictions are for nonpayment of rent. There are many sympathetic reasons why a tenant may be behind on the rent. Generally, however, financial hardship (losing a job, having a car break down, etc.) is not a legal defense.

We have discussed some legal defenses so far that are specific to certain types of eviction claims. Those defenses are included in Section 4 above. If you are a tenant who has been served with court papers, you should read Section 4 first to learn more about the type of claim your landlord filed against you. Then, read the section below. You will find some other general defenses that may apply to your case.

Waiver

Waiver is a defense against eviction when the landlord accepts rent from the tenant that comes due after the tenant breaks a rule in the lease. Waiver is a defense to breach of lease claims (Third Box). For the waiver defense to work, the landlord has to accept the rent with knowledge of the lease violation. The idea behind waiver is that by accepting the rent while knowing that the tenant breached the lease, the landlord “waives,” or loses, the right to evict the tenant for the lease violation. One case that talks about the waiver defense is **Winder v. Martin, 183 N.C. 410, 412 (1922)**.

Example 1: Tom rents an apartment from Larry. Tom has a loud party in July of 2021, and his neighbors complain to Larry. Tom pays his rent for August on August 1, and Larry accepts it. By accepting the rent for August, Larry has waived his right to evict Tom for the noise complaints.

Example 2: Bill rents an apartment from Sarah. Bill starts keeping a dog in his apartment on July 1, 2021, even though the lease says he is not allowed to have pets. Bill pays his rent for August on August 1, and Sarah accepts it. Later in August, Sarah finds out about the dog and files an eviction case against Bill for breach of lease. Sarah has not waived her right to evict Bill for the lease violation because she did not know about the dog at the time she accepted the rent for August.

There are some important exceptions to the waiver defense. Let us talk about each one below.

I. Anti-Waiver Clauses

Landlords may get around the waiver defense by putting a clause in the lease that says they can accept rent from a tenant without waiving their right to terminate the lease for a lease violation. If you see a clause like this, read it carefully. Some clauses are labeled as “Anti-Waiver,” but do not actually deal with accepting rent. For example, some leases have a clause that says just because a landlord does not terminate a lease for a lease violation one time does not mean that the landlord cannot terminate the lease if the same lease violation happens again.

II. Criminal Activity

Waiver does not work for evictions for criminal activity under the criminal activity eviction statute (Section 4(d) above). The statute that says this in **N.C. Gen. Stat. 42-73**.

III. Public Housing

Waiver does not work for tenants in public housing unless the public housing authority agrees to waive the lease violation or goes 120 days after learning about the violation without taking any action to evict the tenant. The statute that says this is **N.C. Gen. Stat. 157-29(d)**.

Notice

In some situations, a landlord must give the tenant a notice of lease termination (an eviction notice) before filing eviction court papers against the tenant.

For holdover claims (Second Box), the landlord must give a notice before ending a month-to-month lease or other periodic lease (see Section 4(b) above).

For other types of eviction cases, whether a landlord has to give a lease termination notice usually depends on the lease. Some leases waive notice, but other leases require it. For most tenants in subsidized housing (like public housing or project-based Section 8 housing), lease termination notices are required.

If a landlord is required to give a lease termination notice, the notice must “strictly comply” with the lease. That means that the notice has to say exactly what the lease says it has to say and be given exactly for the amount of time the lease requires. If the lease requires the notice to be given a certain way (like through certified mail), the landlord must do so. One case that talks about strict compliance for notices is **Stanley v. Harvey, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988)**.

Demand for Surrender of Possession

For breach of lease claims (First Box) and holdover claims (Second Box), the landlord must demand that the tenant leave the property before filing their claim. Please read Sections 4(b) and 4(c) above for more information on this defense.

Novation

If a landlord renews the lease or signs a new lease with the tenant after whatever event happened that gave rise to the eviction lawsuit, the tenant may claim novation as a

defense. The idea behind novation is that a landlord cannot evict the tenant under a new lease for something that happened under the old lease. One case that talks about novation is **Wilson v. McClenny, 262 N.C. 121, 129-30 (1964)**.

Right to Repairs

A landlord has an obligation to keep the home up to the local housing code and in a fit and habitable condition. The law that says this is **N.C. Gen. Stat. 42-42**. The legal term for this law is the “Implied Warranty of Habitability.”

If a tenant complains about repairs to a landlord, the landlord is responsible for making those repairs in a reasonable amount of time. Some examples of repair issues are leaky pipes, unsafe electrical wiring, broken locks on doors or windows, pest infestation, plumbing that does not work, and having no heat during the winter months. There are many other repair issues than the ones we just listed.

A tenant cannot waive their right to repairs. Even if the tenant agrees to be responsible for repairs themselves or the lease says the landlord does not have to make repairs, the landlord is still responsible for making repairs. The law that says this is **N.C. Gen. Stat. 42-42(b)**.

If a landlord fails to make repairs, the tenant may be entitled to something called “rent abatement.” That means the tenant may be entitled to get some of the rent they paid to the landlord back from the landlord. This could be used as a defense to a nonpayment of rent claim or sometimes a counterclaim. We will talk about counterclaims and how to file them below.

If the amount the landlord owes the tenant in rent abatement is more than the rent the tenant owes the landlord, the court may dismiss the landlord’s eviction claim for nonpayment of rent. .

To make a defense or a counterclaim based on rent abatement, the tenant would need to prove the following things:

- I. The bad condition existed on the property;
- II. The tenant notified the landlord of the problem;
- III. The landlord failed to repair the problem within a reasonable amount of time;
- IV. The tenant's use and enjoyment of the property was made worse by the landlord's failure to make the repair; and
- V. What damages the tenant suffered.

Let's talk about each of these requirements one by one.

I. Proving the Condition Existed

There are many ways a tenant can prove a bad condition existed on the property. One of the most common ways to do it is to use photographs. Tenants can take photos of bad conditions and take notes on what the conditions are and when the photos were taken. Tenants can use these photos as proof in court by testifying about taking a photo of each condition, describing the condition, and testifying when they took the photo. They will need to testify that the photo accurately shows what the condition was like the day they took the photo. Then they can ask the magistrate to accept the photo as evidence. Another way to prove a condition existed is by using a local housing code enforcement office. Many cities and counties have local housing code inspectors who will inspect the property for free and make a report of any violations. Tenants may subpoena the inspector to come to court to talk about their report and offer the report to the magistrate as evidence. Tenants may also bring other witnesses who have seen the conditions to court to testify about what they saw.

II. Notifying the Landlord

The tenant will also need to prove that they notified the landlord about the bad conditions. Although a tenant is not usually required to notify the landlord in writing, it is best to do so. It does not have to be a letter--it could be an email or even a text message. That way if the landlord does not admit they knew about the bad conditions, the tenant can use the letter, email, or text as evidence in court. The tenant will need to testify when the landlord was notified and offer the letter, email, or text to the court as evidence.

III. The Landlord Did Not Fix the Condition in a Reasonable Amount of Time

How much time is “reasonable” depends on how bad the condition is. For some things, the amount of time that is reasonable could be very short. A magistrate or judge may decide, for example, that only 48 hours is reasonable to fix a broken heater during the wintertime (because that condition is very dangerous). Judges rely on their common sense in making these determinations. When testifying, it is important for the tenant to be very clear about how long the bad condition lasted before it was fixed.

IV. The tenant’s use and enjoyment of the property was made worse

This is the tenant’s opportunity to explain to the judge how the conditions affected them. They may testify that they had to constantly dump water out of a bucket when the roof would leak, for example, or that they were too embarrassed to have company over because the cockroach infestation was so bad.

***Tip:** This is one of the most important parts of the tenant’s testimony in a case dealing with repair issues. It is a good idea to be detailed and take time to explain how the bad conditions made the tenant’s life at the property worse. How badly the judge or magistrate thinks the tenant was affected will play into how much rent abatement the judge thinks the tenant is entitled to.*

Let us say you have convinced the magistrate or judge that you are entitled to money from your landlord because your landlord failed to make repairs. How much money are we talking about?

V. Damages

Rent abatement damages are based on two numbers. First, the court will look at what a fair rental value would be for the property if everything was in good condition. Next, the court will decide how much the property was actually worth with all of the bad conditions on it.

Please note: A tenant can ask for credit towards the rent owed under this law as a defense against a nonpayment case. For the tenant to get a money judgment against a landlord, however, the tenant would need to have filed a counterclaim. More information on counterclaims is in Section 6 of this manual. .

Tenants are allowed to give their opinion on what the fair rental value of the property was with all the repair problems compared to how much it would have been worth if everything was fixed. You do not have to be a real estate expert to testify about what your opinion is of the value of the property. If you are a tenant who has been living in bad conditions, you can testify about how much you think the property is worth based on your experience living in the property. There is a case that says this, and it is **Miller v. C.W. Myers Trading Post, 85 N.C. App. 362, 370 (1987)**. If the court agrees with your opinion, the court can make the landlord pay back the difference between the higher number and the low number--that's what rent abatement is. In addition to that, tenants can ask the court to award them damages for any out-of-pocket expenses due to the bad conditions.

Example: Johnny rents an apartment from Brandon. In November 2021, Johnny notices a mouse infestation. Johnny sends an email to Brandon complaining about the mice, but Brandon does nothing to fix the problem. In February 2022, Johnny files an eviction case against Brandon for nonpayment of rent. Brandon files counterclaims based on the mouse infestation. He shows the magistrate a copy of the email and pictures of the mice. He testifies that the problem has been going on for almost 4 months and that it has affected him because he is constantly having to clean up mouse droppings, has had to throw away food that the mice got into, and has had to buy traps to try to take care of the problem himself. He shows the magistrate a receipt for the mouse traps. He also testifies that his children fear the mice.

Johnny testifies that, in his opinion, without the mouse infestation, the property would have been worth what he agreed to pay for it (\$800 a month). He then gives his opinion that the place was actually only worth \$600 a month because of the mouse infestation. The magistrate agrees and orders Brandon to pay back Johnny \$800 in rent abatement (\$200 a month for each of the 4 months Johnny had to deal with the problem). The magistrate also orders Brandon to pay Johnny back \$25 for the mouse traps that Johnny bought.

Retaliatory Eviction

Certain things that tenants do are protected activities under the law. A landlord is not allowed to file an eviction case against a tenant in response to the tenant doing one of these protected activities. The law that says this is **N.C. Gen. Stat. 42-37.1**. The

activities that are protected under the law include but are not limited to the following things:

- I. A good faith complaint to the landlord about needed repairs;
- II. A good faith complaint to a government agency (like housing code enforcement) about any health or safety laws (like housing code violations);
- III. A good faith attempt to participate in a tenants' union or other organization promoting tenants' rights; and
- IV. A good faith attempt to enforce any rights under the lease or under State or federal law.

If a tenant can convince the magistrate that the landlord filed the eviction case in response to one of these protected activities, then the magistrate should dismiss the case.

Tip: *It is unusual for a landlord to admit that they are evicting a tenant in response to the tenant doing one of these protected activities. Tenants often must use the facts around the eviction to try to prove the eviction is retaliatory. The timing of the eviction is one fact that is very important. The following example helps show how a tenant can use this defense:*

Example: *Liz has rented a home from Danny for the last three years on a month-to-month lease. In September 2020 Liz complained to Danny about leaky pipes. When Danny did not fix them, Liz called the city's housing code enforcement office on October 15, 2020. Liz then received a notice from Danny on October 20, 2020, stating that Danny was ending her month-to-month lease on October 31, 2020. The notice did not give a reason.*

Liz does not leave, and Danny files an eviction case against her for holdover in November 2020. At the hearing, Liz testifies that she has been renting from Danny for three years and that he never tried to end her lease until she called code enforcement. She shows the magistrate a copy of the code report and points out that Danny's eviction letter came only five days after she called code enforcement. The magistrate decides that the eviction is retaliatory since Danny's eviction letter came so close in time to when Liz called code enforcement. The magistrate dismisses Danny's case.

Please be aware that there are some exceptions to the retaliatory eviction defense. The most common one is where the tenant has broken some rule in the lease, and the tenant breaking the rule is the reason for the eviction. Even if the tenant has broken a rule in the lease, however, the magistrate can still find the eviction to be retaliatory if the magistrate believes the tenant's protected activity (and not the broken rule) is the actual reason for the eviction.

Unfair and Deceptive Acts and Practices

Unfair or deceptive acts or practices that affect commerce (including unfair or deceptive things a landlord does when renting a home) are illegal in North Carolina. The law that says that is **N.C. Gen. Stat. 75-1.1**. A landlord breaks this law if they do things that are deceptive or unfair to the tenant. The most common things that count are a landlord refusing to make repairs while still asking the tenant for rent or evicting the tenant in an illegal way (like shutting off the tenant's power or changing the locks without a court order).

A landlord engaging in unfair trade practices could be a defense and a counterclaim for the tenant.

The most common way to use this law is to pair it with a counterclaim for the landlord's failure to make repairs (the landlord's failure to make repairs is called a breach of the implied warranty of habitability [see Section 5(f) above]). There are cases that say that a landlord's refusal to make repairs while still asking for rent is an unfair trade practice. One of those cases is **Allen v. Simmons, 99 N.C. App. 636, 643 (1990)**. The reason why a tenant would want to pair the unfair trade practices law with a counterclaim about the landlord's refusal to make repairs is because the unfair trade practices law gives the tenant more leverage—it allows the tenant to ask the court for "treble" (triple) the amount of their actual damages against the landlord. To get a money judgment against a landlord, a tenant would need to file a counterclaim. Please read Section 6 below for more information on counterclaims.

Unfair Debt Collection Practices

A tenant may have a defense or counterclaim against eviction if the landlord engages in unfair debt collection practices while collecting rent.

The most common way a landlord breaks this law is by charging tenants for fees that are illegal. **N.C. Gen. Stat. 75-55(2)** is a law that makes it illegal for a landlord to try to collect a fee that they are not legally allowed to collect. The following illegal fees are some of the most common ones landlords will try to collect:

- I. Illegal late fees. Under **N.C. Gen. Stat. 42-46**, there are limits on how much a landlord can charge for a late fee. The landlord can charge either 5% of the monthly rent or \$15 (whichever one is more). If the tenant's rent is subsidized (like through the Section 8 program of public housing), then the landlord must base the 5% off of the tenant's portion of the rent rather than the whole rent. Also, the landlord may not charge a late fee unless the lease says they can and the rent is more than five days late.
- II. Fees that the tenant never agreed to pay. If the landlord is charging for services that the tenant never agreed to pay in the lease or a lease addendum, then the tenant should not be charged for those fees.
- III. Landlords can sometimes charge complaint-filing fees and court-appearance fees if the lease allows for it, but there are limitations to those too. For example, the complaint-filing fee cannot be more than 5% of the monthly rent or \$15 (whichever is more), and the landlord may not charge it unless the landlord filed the court papers, the tenant paid the rent owed, and the landlord dismissed the case before a judgment was entered. A court appearance fee cannot be more than 10% of the monthly rent, and the landlord is only allowed to collect it if they win the eviction trial in small claims court. If the tenant appeals and wins the appeal, the landlord must remove the fee. These fees are also discussed in **N.C. Gen. Stat. 42-46**.

Where a landlord has charged the tenant an illegal fee, the tenant may make a defense that the illegal fees should be taken away from the amount the landlord says the tenant owes. The tenant may also file a counterclaim against the landlord for unfair debt collection practices. If the tenant files a counterclaim against the landlord for illegal fees, the court may award the tenant a civil penalty against the landlord in an amount not less than \$500 nor more than \$4,000 for each time the landlord collected or attempted to collect the illegal fee from the tenant. The law that says this is **N.C. Gen. Stat. 75-56**. More information on how to file counterclaims is in Section 6 below.

Plaintiff in the Lawsuit Does Not Own the Property

There is a case in North Carolina that says that even though a property manager or other employee of the owner of the property may sign the court papers for the owner, the lawsuit still needs to be brought in the owner of the property's name. If a property manager or owner's employee files the lawsuit but does not sue in the name of the owner, a tenant may try to argue that the owner must be part of the lawsuit or else the case should be dismissed. The case that talks about this rule is **Choate Rental Co. v. Justice, 211 N.C. 54 (1936)**.

If a tenant brings up this issue in court, the magistrate may ask the property manager whether they want to change or "amend" the court papers on the spot to add the owner of the property to the lawsuit. If that happens, the tenant may say they do not agree that the property manager should be able to amend the court papers on the spot. Even if that does not end up getting the case dismissed, the magistrate may make the property manager amend the court papers outside of court, which could result in the case being continued.

Victims of Domestic Violence

North Carolina law says that a landlord is not allowed to evict a tenant, refuse to rent to someone, refuse to renew a tenant's lease, or retaliate against a tenant because the tenant is a victim of domestic violence. The law that says this is **N.C. Gen. Stat. 42-42.2**. A tenant may prove their status as a victim of domestic violence by giving the landlord police, court, or federal agency records or files, paperwork from a domestic violence or sexual assault program, or paperwork from a religious, medical, or other professional.

Tip: *One of the most common situations where a landlord may try to evict a tenant who is also the victim of domestic violence is where the victim's abuser has assaulted the victim or damaged property at the victim's home. If a tenant is being evicted because they were attacked by their abuser at home or their abuser punched a hole in the wall, broke a window, or otherwise damaged the home, the tenant may assert this defense. Tenants who are the victims of domestic violence also have other legal rights under the law.*

I. Right to Change the Locks (Abuser is Not a Tenant)

First, if the abuser is not also a tenant (meaning the abuser did not sign the lease), the tenant may tell the landlord they are a victim of domestic violence and ask the landlord to change the locks. The tenant does not have to give the landlord anything to prove they are a victim. Once the tenant asks the landlord to do this, the landlord must either change the locks or give the tenant permission to change the locks within 48 hours of the tenant's request. The law that says this is **N.C. Gen. Stat. 42-42.3**.

II. Right to Change the Locks (Abuser is Tenant)

Next, if the abuser is also a tenant (meaning both the victim and the abuser signed the lease), the tenant can still ask the landlord to change the locks and not give the abuser the new key. In that situation, however, the tenant must provide the landlord with a domestic violence court order that orders the abuser to stay away from the home. If the tenant provides the landlord with that paperwork, the landlord must change the locks or give the tenant permission to change the locks within 72 hours. The law that says this is also **N.C. Gen. Stat. 42-42.3**.

III. Right to Break the Lease Early

Finally, in some cases tenants who are victims of domestic violence have the right to end their lease early without the landlord charging them a penalty. The tenant must follow several steps. They must give the landlord a 30-day notice. They must also give the landlord documentation to prove they are the victim of domestic violence (this could be a permanent domestic violence protective order against the abuser, a criminal court order that orders the abuser to stay away from the tenant, or a valid Address Confidentiality Card issued to the tenant or a minor in the tenant's household). The tenant also must give the landlord a copy of a safety plan dated during the period of the lease from a valid domestic violence or sexual assault program that recommends that the tenant needs to be relocated. The law that says this is **N.C. Gen. Stat. 42-45.1**.

A tenant who wants to end their lease early under this law may want to contact Legal Aid at 1-866-219-5262 first to make sure they are following the right steps. For a tenant who follows the right steps, the landlord may charge them rent through the end of the 30-day notice period but is not supposed to charge them rent after that period ends.

Fair Housing Act

The Fair Housing Act says it is illegal in North Carolina for a landlord to discriminate against a tenant, their household members, or the basis of race, color, religion, sex, national origin, physical or mental disability, or familial status (having children). Illegal discrimination could include refusing to rent to them, refusing to renew their lease, or evicting them because they belong to one of these protected groups. North Carolina's Fair Housing Act is found in **N.C. Gen. Stat., Chapter 41A**.

One of the most common ways the Fair Housing Act comes up in eviction cases is where the tenant, their household member, or guest has a physical or mental disability that is related to the reason why the landlord is evicting the tenant. If there is a connection (called a "nexus") between the person's disability and the reason for the eviction, the tenant may ask the landlord for something called a "reasonable accommodation" to stop the eviction. If the accommodation the tenant is asking for is not unreasonable under the circumstances, the landlord should allow it. This is true even if the accommodation requires the landlord to change their normal rules or policies. The best way for a tenant to ask for the accommodation is through writing (email, a letter, or a text message). The following are a couple of examples of reasonable accommodations:

Example 1: Bobby rents an apartment from Tonia. Tonia has a strict rule that says no pets are allowed. Bobby is seeing-impaired and needs a seeing-eye dog. Tonia finds out Bobby has a dog in the apartment and sends him an eviction notice. Bobby writes a reasonable accommodation letter to Tonia asking Tonia to allow him to keep his dog and call off the eviction because he needs it for his disability. He also gives her paperwork about his disability. Tonia should accommodate Bobby by calling off the eviction and allowing him to keep the dog.

Example 2: *Isaac rents a house from Justin. Isaac lives there with his son, Frank, who has schizoaffective disorder. Frank's disability causes him to suffer delusions and mood disorders. Frank is not responding well to his medication, and Frank's doctor changes his dosage. Frank does not react well to the new dosage and has delusions that people are trying to hurt him. This causes him to shout at a neighbor because his disability makes him think the neighbor is trying to hurt him. Justin sends Isaac an eviction notice because of Frank's behavior. Isaac writes a reasonable accommodation letter to Justin with medical paperwork of Frank's disability. In the letter, Isaac explains that Frank's outburst was related to his disability. He outlines Frank's treatment plan with his doctor. He asks Justin to call off the eviction and allow Frank to finish his treatment plan so he can get his medications right. Justin should accommodate Isaac and Frank by calling off the eviction and giving Frank an opportunity to get his symptoms under control.*

If a landlord refuses a reasonable accommodation or otherwise discriminates against a tenant in violation of the Fair Housing Act, that may give the tenant a defense or claim against the landlord.

Legal Aid has a Fair Housing Project that helps tenants who are facing housing discrimination. The number for that project is 1-855-797-FAIR (3247). They may help tenants file complaints against landlords or raise defenses in court if the landlord is breaking the law.

RECAP: *So far, we have talked about the eviction process, the eviction court papers, the appeal process, the four different types of eviction claims, and common legal defenses to eviction claims. Next, we are going to talk about counterclaims.*

Section 6: How to Make Counterclaims

What is a Counterclaim?


A Counterclaim is a legal claim a tenant files against the landlord in the eviction lawsuit. If a tenant files a Counterclaim against the landlord, it means the tenant is suing the landlord back. Usually, a tenant's Counterclaim asks the court to make the landlord give the tenant money because the landlord has broken the law. In many cases, the reason for the Counterclaim is also a defense to the eviction.

How to File and Serve a Counterclaim

If a tenant is going to file a Counterclaim, they need to combine it with an Answer to the landlord's Complaint against the tenant (the Complaint in Summary Ejectment is the court paper a landlord files that makes allegations against the tenant and explains why the landlord thinks they have the right to evict the tenant). When a tenant puts the Answer together with the Counterclaim in the same document, we call it the tenant's Answer and Counterclaim (or Answer and Counterclaims if there are multiple counterclaims).

Tip: Remember that tenants do not usually have to write and file an Answer in response to the Landlord's Complaint because tenants are usually allowed to bring up any defenses they have verbally in court. One exception to this is when a tenant is being evicted for criminal activity (see Section 3(d) above). When a tenant files a Counterclaim, however, the tenant needs to file the Answer with the Counterclaim.

In the Answer part of the Answer and Counterclaim, the tenant must admit or deny each numbered paragraph in the landlord's Complaint that makes allegations against the tenant. For example, Paragraph #1 in the landlord's Complaint will usually allege that the tenant is a resident of the county the lawsuit is filed in. If the tenant is a resident of that county, the tenant would write "Admits" in Paragraph #1 of the Answer section of their Answer and Counterclaim. If the tenant is not a resident of that county, they would write "Denies." The tenant will do the same thing in response to each of the paragraphs with allegations in the landlord's Complaint.



If the landlord's Complaint has a paragraph that makes more than one allegation, the tenant may agree with some of the allegations in the paragraph but disagree with other ones. In that case, the tenant can admit some of the allegations in the corresponding part of their Answer and deny the parts they disagree with. For example, Paragraph #2 of the landlord's Complaint will usually make a lot of different allegations—it will allege the tenant rents the property at a certain address from the landlord, that the lease is either written or verbal, the date the lease ended, and other things. If the tenant agrees with everything in Paragraph #2 of the landlord's Complaint except for the allegation that the lease has ended, for example, the tenant may put in Paragraph #2 of their Answer and Counterclaims that they deny that the lease has ended but admit the rest of the allegations in Paragraph #2 of the landlord's Complaint.

The tenant should also put any legal defenses they have to the eviction in the Answer section of the Answer and Counterclaim.

After the Answer section of the Answer and Counterclaim, the tenant may allege whatever counterclaim (or counterclaims) they have against the landlord.

Once the Answer and Counterclaim is finished, the tenant must sign it and date it. Then they must file it with the Clerk of Court. Finally, they must serve it on the landlord. The easiest way to serve it is through regular U.S. mail. The tenant must also sign and date something called a "Certificate of Service," which is a piece of paper that states that the tenant served the Answer and Counterclaim on the landlord, how it was served, and when it was served. The tenant should attach the Certificate of Service with the Answer and Counterclaim when they file it and serve it on the landlord with the Answer and Counterclaim.

Writing an Answer and Counterclaim can be difficult for a tenant who has never done it before. There are a couple of resources that can help. There is a sample Answer and Counterclaims at the end of this manual. Tenants may also call Legal Aid for help at 1-866-219-5262. Finally, there is also a tool that the North Carolina Administrative Office of the Courts (NCAOC) created to help people fill out court paperwork, including

an Answer and Counterclaim. It is called "Guide and File." Guide and File can be found at www.nccourts.gov. Click on the link for "Services," and then select "Guide and File."

How much counterclaims cost

Normally, there is a fee for filing a counterclaim. In small claims court, the fee is \$96. It is \$150 in district court. If a tenant qualifies as indigent (unable to afford the filing cost), the court will waive the filing fee. The form a tenant needs to file to ask the court to waive the filing fee is called the "Petition to Proceed as Indigent." This is the same form a tenant can file to waive the filing fee for an appeal. More information about this form is found in Section 3(e)(III) of this manual.

When it Needs to Be Filed

If a tenant wants to have their counterclaim heard by the court, they must file and serve their counterclaim before their court date. Otherwise, the court will not listen to the counterclaim (although the tenant can still argue whatever legal defenses they may have). Tenants should not wait too long to file their counterclaims. If the counterclaim is filed shortly before the court date, the magistrate or judge may allow the landlord to continue the case to have time to respond or refuse to hear the counterclaim.

Examples of Counterclaims

The three most common examples of counterclaims filed by tenants are claims for breach of the implied warranty of habitability (landlord refused to make repairs), unfair and deceptive acts and practices, and unfair debt collection practices. These things are often also raised as defenses to eviction claims for nonpayment of rent. Descriptions and more information about these defenses and claims are found in Section 5 of this manual. There are also examples of these counterclaims at the end of this manual.

RECAP: *We have almost reached the end of this manual. You have learned about the eviction process, how to file an appeal if you lose the first trial, the four different legal claims for eviction, common defenses to the eviction claims, and how to make counterclaims. Next, we will talk about how the court trials play out and tips for success in court.*

Section 7: Tips for Success in Court

How Trials Work

Whether you are getting ready for a trial in small claims court or an appeal trial in district court, trials basically work the same way. If you are a tenant in an eviction trial, your landlord is the plaintiff. That means they filed the lawsuit against you. You are the defendant.

I. Opening Statements

If you have ever watched movies about court, you may be used to seeing lawyers make “opening statements.” Opening statements are where lawyers talk at the beginning of the trial about what evidence they are going to show the court.

In most eviction trials, the landlord and the tenant do not make opening statements. If one of them asks to make one, the court may allow it, but it is not usually expected.

II. The Landlord’s Case—the Landlord Has the Burden of Proof

Most of the time, neither the landlord nor the tenant makes an opening statement. The landlord usually just jumps right in to try to prove their case. The landlord (also called the “plaintiff”) goes first at trial. They can testify, call other witnesses to testify, and try to give documents as evidence to the court. The landlord has the “burden of proof” in the trial, meaning that it is the landlord’s job to prove their case to the court.

In Section 4 of this manual, we talked about the different things the landlord must prove to win their case. What things they must prove depends on which one of the four claims for eviction the landlord filed. The landlord must prove “by a preponderance of the evidence” that they have proven each thing they need to win their claim.

“Preponderance of the evidence” is a legal term. To prove something by a preponderance of the evidence means that the landlord has made the court believe that it is more likely than not that each thing they need to prove is true.

The following is an example of a landlord trying to prove their case by a preponderance of the evidence:

Joseph files a breach of lease eviction case against Tony because Tony did not pay his rent on time. To win his case, Joseph (the landlord) must prove each of the following things by a preponderance of the evidence (meaning that for each thing, Joseph must convince the court that it is more likely than not that each of the following things is true):

- *Joseph has a lease with Tony where Tony agreed to pay his rent by the first day of every month.*
- *The lease says that if Tony does not pay the rent on time or breaks any other rule in the lease, Joseph may terminate the lease and take the property back. The part of the lease that says this is called the "default clause" or "forfeiture clause."*
- *Tony failed to pay his rent on time.*
- *Joseph made a demand that Tony leave the property and give it back to him before filing the eviction case (to win a breach of lease claim, Joseph must prove that he made a demand for surrender of possession of the property—see Section 4(c) of this manual).*

Let us say that at the trial, Joseph gives the magistrate a copy of the lease agreement. The lease says that Tony must pay his rent by the first day of every month and that Joseph may terminate the lease and take the property back if Tony does not pay the rent on time. Joseph shows a rent ledger that proves Tony failed to pay his rent on time. Joseph testifies that he demanded that Tony leave the property, but he does not have any proof of that other than his testimony.

Tony disagrees—he testifies that Joseph never told him to leave the property. Tony also shows the court all the text messages and emails between Joseph and himself, and none of the messages from Joseph to Tony tell Tony that he has to leave the property.

After thinking about it, the magistrate decides that even though Joseph proved most of the things he needed to prove, the magistrate is not convinced that Joseph proved that it is more likely than not that he made a demand for Tony to leave the property. Since Joseph did not prove that part of his case by a preponderance of the evidence, the magistrate decides that Tony should win the case.

III. Objections

While the landlord or the landlord's witness is testifying, the tenant should listen carefully. Sometimes, the things the landlord or the landlord's witness try to talk about can be objected to. If a tenant makes a legal objection to something that is being said, the magistrate or judge may decide to not allow the landlord or the landlord's witness to talk about it.

Tip: When making an objection during a witness' testimony, the tenant should stand up and calmly say "Objection, Your Honor." Then the tenant should explain why they made the objection. The magistrate (or judge) will then do one of two things. If the magistrate "sustains" the objection, that means the witness' testimony should not be heard, and the tenant should then ask the court to "strike" the testimony from the record. If the magistrate overrules the objection, then the testimony will be allowed in.

Here are the most common legal objections a tenant can make while the landlord (or the landlord's witness) is testifying:

- **Hearsay** Hearsay is when someone testifies about something that someone else said outside of court to try to prove something in court. If someone is trying to testify about what someone else told them, and that someone else is not in court, then the tenant can object to hearsay. Hearsay is generally not allowed because of **N.C. Gen. Stat. 8C-1, Rule 802**.

Example: Larry is trying to evict Torri for having a pet, which is against the rules of the lease. During the trial, Larry tries to testify about what a neighbor told him, and Torri objects. Here is what happens:

Larry: I know Torri has a cat on the property because her neighbor Stacy told me that she saw a cat in Torri's apartment...

Torri: Objection, Your Honor. Stacy is not here in court, and what Stacy told Larry outside of court is hearsay.

Magistrate: The objection is sustained. Mr. Larry, you cannot testify about what other people told you if they are not here in court.

Torri: Your Honor, I am asking the court to strike that testimony.

Magistrate: The court is going to strike the testimony about what Stacy said from the record.

- **Lack of personal knowledge.** Landlords (and their witnesses) should not be able to testify about things of which they do not have personal knowledge. To have personal knowledge about something means you saw it, heard it, or otherwise observed it yourself. The rule that says this is **N.C. Gen. Stat. 8C-1, Rule 602.**

***Example:** Howard is trying to evict Sam for smoking weed in his apartment. At trial, Howard tries to testify about Sam smoking weed in his apartment, but Sam knows that Howard never saw him do that. Here is what happens:*

Howard: Last Friday, Sam was smoking weed inside the apartment.

Sam: Objection, Your Honor. Howard has not shown the court that he has personal knowledge about what he is talking about.

Magistrate: Mr. Howard, were you in Mr. Sam's apartment last Friday, and did you personally see him smoking weed?

Howard: No.

Magistrate: Then the objection is sustained. You may not testify about things about which you do not have personal knowledge.

Sam: Your Honor, I would like the court to strike that testimony.

Magistrate: The testimony is stricken from the record.

- **Relevance.** Remember that when a landlord files an eviction case against a tenant, the landlord must check one of the four boxes on the Complaint in Summary Ejectment. Each box stands for one of the reasons for eviction in North Carolina. The Complaint is supposed to put the tenant on notice of what the landlord is going to try to prove in court.

If a landlord (or their witness) tries to testify about something that they did not write on the Complaint, then the tenant may object to relevance. Anything not written on the Complaint is not relevant to the lawsuit because the landlord only made the tenant aware of the things the landlord wrote on the Complaint. The law that says testimony must be relevant is **N.C. Gen. Stat. 8C-1, Rule 402.**

Example: Susan is evicting Jasper for breaching the lease by not paying rent on time. On Susan's Complaint, she checks the third box for "breach of lease" and writes "nonpayment of rent" as the rule that Jasper broke. During the trial,

Susan starts trying to talk about a time Jasper had a loud party at the home. Here is what happens:

Susan: Besides not paying his rent on time, Jasper had a really loud party last Thursday at 2:00 AM in the morning . . .

Jasper: Objection, Your Honor. This testimony is not relevant to the lawsuit Susan filed. The only thing Susan wrote on her Complaint was nonpayment of rent. She did not write anything about a loud party, and so I was not put on notice that this issue would be part of this lawsuit.

Magistrate: The objection is sustained. Ms. Susan, please stick to what you wrote on your Complaint.

Jasper: Your Honor, I would like the court to strike that testimony. Magistrate: The testimony about the party is stricken from the record.

- **Best Evidence Rule.** In general, landlords (and their witnesses) should not be able to testify about what a letter, text, email, video, voicemail, or other record says without showing a copy of the record itself to the court. The record itself is the “best evidence,” not what someone remembers about it. The rule that says this is **N.C. Gen. Stat. 8C-1, Rule 1002.**

Example: Curtis is trying to evict Violet for assaulting her neighbor. During the trial, Curtis tries to testify that he watched a security tape that showed Violet beating up the neighbor. Curtis does not actually show the court a copy of the tape. Here is what happens:

Curtis: I know she did it, because I watched a tape my security camera recorded that showed Violet beating her up . . .

Violet: Objection, Your Honor. The best evidence rule says that he should have to actually show a copy of the tape instead of trying to testify about what he saw on the tape.

Magistrate: Mr. Curtis, do you have a copy of the tape with you?

Curtis: No, I left it at home.

Magistrate: The objection is sustained.

Violet: Your Honor, please strike that testimony from the record.

Magistrate: So stricken.

After the landlord and the landlord's witnesses (if any) testify, the tenant will have a chance to ask the landlord (and their witnesses) questions.

IV. Cross Examination

After the landlord testifies (or has another witness testify), the tenant has the right to ask the landlord or their witness questions. This is called "Cross Examination." This is not a time for the tenant to tell their own story—the tenant may only ask the landlord or their witness questions. If the tenant does not have any questions to ask the landlord or their witness, the tenant may decide not to do a cross examination. In that case, the tenant will still have the chance to testify and give their own side of the story.

After the landlord has finished calling all their witnesses and giving all their own evidence, the landlord will rest their case. After that, it is the tenant's turn to make their case.

V. The Tenant's Turn—Tenants Can Testify About Their Case

The tenant is allowed to testify about things they have personal knowledge of to try to make their case. Be aware that the landlord (or the landlord's attorney) has the right to cross examine the tenant just like the tenant has the right to cross examine the landlord and their witnesses.

- **Bring at Least Three Paper Copies of Each Document**

If tenants have documents they want to show the court (like text messages, emails, pictures, letters, or other things), they will need to print paper copies of them. Most magistrates and judges will not allow them to show things on their phones.

When tenants print out documents, they should make three copies of everything. When they want to show a document to the court, they will need to give one copy to the landlord, one copy to the magistrate or judge, and keep one copy for themselves.

- **Bring Other Witnesses to Testify**

If tenants have other witnesses they want to testify, they may bring them to court. The tenant can call them as witnesses and ask them questions. It is best to speak with them before court to understand what they will say. The landlord

(or the landlord's attorney) may cross-examine any witness that testifies for the tenant.

If a tenant needs a witness to testify but they are not willing to do so, the tenant may get the court to issue a subpoena. The tenant must talk with the clerk of court and ask the clerk to issue the subpoena. The sheriff's office can serve the subpoena on the witness. There normally is a fee for that, but in many cases the clerk will waive the service fee if the tenant has filed a petition to proceed as an indigent (see Section 3(e)(III) of this manual).

VI. End Your Testimony By Telling the Court What You Want

After each side has made their case, called all their witnesses, and shown the court all their evidence, each side will be allowed to make a "closing statement." When it is your turn to make a closing statement, tell the court what you want it to do. If you think your landlord's eviction case should be dismissed, ask the court to dismiss it. If you think the landlord should be ordered to pay you money on the counterclaim you filed, say that (and say how much money they should owe you and why). Explain the reasons for what you are asking for. Be respectful but clear about what you are asking the court to do.

Other Tips—Be On Time

It's really important to be on time for court. Eviction courts can get really crowded, and the magistrates usually start right on time. Tenants usually must find parking and go through security (including a metal detector) before they enter the courthouse. If the tenant is late, it is possible that the court may rule against them before they get there. Tenants should try to get to court 30 minutes early to make sure they are on time.

Dress appropriately

There are rules for how people should dress in court. If you do not dress appropriately, you may lose the court's respect (and that could hurt your case). Here are some guidelines to help you figure out what to wear:

- Men should wear a shirt with a collar and long pants;
- Women should wear a dress or a blouse with a skirt or long pants;
- Everyone should wear closed-toe shoes in the courtroom (sandals are not acceptable);
- Shorts, T-shirts, and revealing clothing are not acceptable (anything that shows the midriff or underclothing); and
- Hats, head coverings, and caps should be taken off while in the courtroom (unless you are wearing it for a religious purpose).

Turn Off Cell Phone

Tenants must turn off their cell phones before going into the courtroom. If a tenant's cell phone makes noise during court, the magistrate, judge, or sheriff may take it. If that happens, the tenant also may lose respect with the court.

Stand When Addressing the Court, and Be Respectful

You should stand when the magistrate or judge first enters the courtroom. You should also stand whenever you are speaking with the magistrate or judge. It is ok to stay sitting when you are testifying or asking a witness a question.

If you need to walk up to the magistrate, the judge, or a witness to show them a document, you need to ask for permission first. If you need to walk up to the magistrate or judge, you should say, "Your Honor, permission to approach the bench." If you need to walk up to a witness, say, "Your Honor, permission to approach the witness."

Never interrupt or try to talk over a magistrate or judge. Do not leave the courtroom until the magistrate or judge has said it is okay for you to leave. If you are not sure if it is okay for you to leave, then ask the magistrate or judge..

Section 8: Conclusion

Congratulations! At this point, you have learned a lot.

You have learned how the eviction process works, how to appeal an eviction judgment, the four different types of eviction claims, common defenses to those claims, how to make counterclaims, and tips for success in court. Remember that tenants are always welcome to call Legal Aid of North Carolina at 1-866-219-5262 to ask for free legal advice and assistance.

The last part of this manual contains an Appendix that will give you several forms that were mentioned in this manual, as well as instructions on how to look up and print out different laws. There is also a list of Resources mentioned in this manual. We hope this manual was helpful and wish you the best of luck in the future.

Appendix

This appendix contains the forms that were talked about in the manual.

Disclaimer: *Please know the information and forms in this manual and appendix are not, and are not intended to be, legal advice. Instead, all information and forms are for general informational purposes only. The information and forms in this manual and appendix may not have the most up-to-date legal or other information. Readers of this manual and appendix should contact an attorney to obtain advice about any particular legal matter. No reader should act or refrain from acting on the basis of the information and forms in this manual and appendix without first seeking legal advice from an attorney. Only your individual attorney can make sure that the information and forms contained in this manual and appendix is applicable or appropriate to your particular situation.*

Instructions on how to find the laws mentioned in the manual:

Several laws are talked about in the manual. They are written in **bold** text. Some of the laws start with "N.C. Gen. Stat." That stands for "North Carolina General Statutes." These laws are available online at <https://www.ncleg.gov/Laws/GeneralStatutes>. You may also be able to find copies of these laws by typing in the number of the law (for example, "**N.C. Gen. Stat. 42-3**") into a web browser.

Other laws talked about in the manual are not statutes but are cases. Cases always have two names and several numbers and letters after them (called the "case cite"). Cases are harder to find online than statutes. There are many paid services that allow for people to search for cases, but sometimes you can find them online for free. You can try to do that by typing in the name of the case and the case cite into a search engine. If that does not work, you can try searching online for a law library that is close to you. Some law schools allow the public to use their law libraries for free. If you find a law library, the librarian may be able to help you. If you cannot find a copy of a case you want to use, the next best thing you can do is give the magistrate or judge the case cite. They may already be familiar with the case or may be able to look it up using the case cite.

FORMS IN APPENDIX

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STATE OF NORTH CAROLINA

File No.

Judgment Abstract No.

_____ County

In The General Court Of Justice
District Court Division - Small Claims

Name Of Plaintiff

VERSUS

Name Of First Defendant

Name Of Second Defendant

**NOTICE OF APPEAL
TO DISTRICT COURT**

G.S. 7A-228, 7A-230

TO THE CLERK OF SUPERIOR COURT:

As the plaintiff defendant in the above-captioned action, I hereby give written Notice of Appeal on the judgment entered. This Notice is given within ten (10) days after the date the judgment in this action was entered.

I certify that today I have served copies of this Notice to all parties involved in this action.

I understand that I must pay to the Clerk of Superior Court the court costs for appeal within twenty (20) days after the magistrate rendered judgment (ten (10) days in summary ejection cases), unless I am authorized to appeal as an indigent, or my appeal will be dismissed. If I am the defendant, I also understand that in certain cases if I wish to stay execution of the judgment, I may be required to sign a bond and that the plaintiff may have an execution issued after ten (10) days if I have not signed the required bond.

Also, I demand that this Appeal be tried before a judge. jury.

| | | | |
|---------------------------|--------------------------------|---|--|
| Date Of Entry Of Judgment | Date Of Appeal | Date Costs Paid | Amount Of Court Costs Paid \$ |
| Name Of Appealing Party 1 | Signature Of Appealing Party 1 | Name Of Appealing Party 2 (if applicable) | Signature Of Appealing Party 2 (if applicable) |

NOTICE TO THE APPEALING PARTY

NOTICE OF APPEAL

If you did not give Notice of Appeal to the magistrate in open court at the time the judgment was rendered, you may file this written Notice of Appeal with the clerk within ten (10) days after the judgment is entered. You have a right to request a trial by jury. If you do not ask for a jury trial, you will be given a trial by a judge without a jury. You must mail or deliver copies of this form to all of the other parties. If you mail them before filing this form with the Clerk, check the block in the body of the form indicating you have served the parties and fill out the back of the original of this form. If you mail copies after filing this form with the Clerk, you must file a separate certification of service with the Clerk. You must file an answer to the allegation if the complaint is a violation of G.S. 42-63 (criminal activity). G.S. 42-68(3).

MANDATORY ARBITRATION

Many counties have mandatory arbitration programs in which appeals from small claims court are heard by an arbitrator before they go to a district court trial. You will be notified if your case is assigned for mandatory arbitration and, if so, what you must do.

COURT COSTS

Within ten (10) days after the magistrate's judgment is entered in a summary ejection case, and within twenty (20) days in all other cases, you MUST PAY to the clerk in cash the court costs for appealing the case, or your appeal will be dismissed. If you cannot afford to pay the appeal costs, you may ask the clerk for the form to appeal as an indigent (AOC-G-106). You must file the form to appeal as an indigent within ten (10) days after the judgment was entered. If the appealing party petitions to qualify as an indigent, and the petition is denied, that party has an additional five (5) days to perfect the appeal by paying the court costs.

STOPPING ENFORCEMENT OF JUDGMENT

Summary ejection:

If you are a tenant appealing from a summary ejection judgment entered against you and you wish to stay on the premises until the appeal is heard, you must SIGN A BOND that you will pay your rent as it becomes due into the Clerk's office; you must PAY IN CASH the amount of rent in arrears as determined by the magistrate; and if the judgment was entered more than five (5) days before the next rental payment is due, you may also have to PAY IN CASH the prorated amount of rent due from the date the judgment was entered until the next rental payment is due. Ask the clerk for the bond form (AOC-CVM-304) to allow you to stay on the premises. If you have not signed this bond and paid the prorated amount of cash within ten (10) days after the judgment was entered, the landlord can ask to have the sheriff remove you from the premises even though the case is being appealed.

Possession of personal property:

If the magistrate's judgment ordered you to return specific personal property to the other party and you wish to continue to hold that property until the appeal is heard, you must sign a bond, signed by at least one surety, that you and the surety will pay any costs and damages if you do not comply with the judgment of the district court. Ask the clerk for the bond form (AOC-CVM-906M). If you have not signed this bond within ten (10) days after the judgment was entered, the other party can ask to have the sheriff take the property from you even though the case is being appealed.

Money judgment:

If a money judgment has been entered against you, you do not need to sign a bond to stop enforcement. The judgment is automatically stayed until the appeal is heard.

(Over)

NOTICE TO PARTY NOT APPEALING

If the appealing party has not asked for a jury trial and you wish to have a jury rather than a judge without a jury try your case, you must file a written request for a trial by jury with the clerk within ten (10) days after receiving this Notice and, within the same amount of time, you must mail copies of your written request to the other parties. See section on Mandatory Arbitration on Side One of this form.

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was served by

- depositing a copy enclosed in a postpaid, properly-addressed envelope in a post office or official depository under the exclusive care and custody of the U.S. Postal Service directed to the
 - defendant. defendant's attorney.
 - plaintiff. plaintiff's attorney.
- delivering a copy personally to the
 - defendant. defendant's attorney.
 - plaintiff. plaintiff's attorney.
- leaving a copy at the
 - defendant's attorney's office with a partner or employee.
 - plaintiff's attorney's office with a partner or employee.
- Other:

Date Mailed/Delivered

Signature Of Person Serving Notice Of Appeal

Name And Address Of Person To Whom Mailed/Delivered

Name Of Person Serving Notice Of Appeal (type or print)

Title

Name And Mailing Address Of Appealing Party 1

Name And Mailing Address Of Appealing Party 2 (if applicable)

File No.

STATE OF NORTH CAROLINAIn The General Court Of Justice
District Court Division

_____ County

Name And Address Of Plaintiff

**BOND TO STAY EXECUTION
ON APPEAL OF
SUMMARY EJECTMENT JUDGMENT**

G.S. 42-34

VERSUS

Name And Address Of Defendant

BOND

Judgment for summary ejectment was entered by the magistrate against the defendant and in favor of the plaintiff on the date listed below. The defendant has given notice of appeal to district court.

Under the terms of the lease between the plaintiff and defendant, the defendant is obligated to pay rent in the amount and at the times specified below.

| | | | |
|------------------|----------------------|---|----------------------------|
| Date Of Judgment | Amount Of Rent \$ | <input type="checkbox"/> Per Month <input type="checkbox"/> Per Week | Day Of Month/Week Rent Due |
|------------------|----------------------|---|----------------------------|

I, the undersigned defendant, agree to pay into the office of the Clerk of Superior Court the amount of the rent when due as specified above and request the Court to stay execution of the judgment for summary ejectment until this matter is disposed of by the district court. I understand that if I fail to make the payments required by this bond within five (5) business days after due, the stay of execution will dissolve and the sheriff may remove me from the premises.

| | |
|------|------------------------|
| Date | Signature Of Defendant |
|------|------------------------|

ADDITIONAL CASH BOND

I, the undersigned defendant, in addition to the bond signed above, now deposit in cash with the Clerk the amount listed below, which is the amount of rent in arrears as determined by the magistrate in the judgment (or, if different, the undisputed amount of arrears as determined by the magistrate in the judgment) and, if the judgment was entered more than five (5) business days before the next rental payment is due, the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease.

| | | |
|---|----|------------------------|
| Amount Of Undisputed Rent In Arrears | \$ | Date Of Deposit |
| Amount Of Prorated Rent | \$ | Signature Of Defendant |
| Total Amount Of Undisputed Rent And Prorated Rent Deposited With Clerk | \$ | |

ORDER

Upon execution of the above bond(s), execution on the judgment entered in this action is stayed until the action is disposed of on appeal in the district court; or, if the defendant fails to make any rental payment to the Clerk's office within five (5) business days of the due date, the stay of execution dissolves.

| | | | |
|------|-----------|---|--|
| Date | Signature | <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Magistrate | <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Judge |
|------|-----------|---|--|

NOTE: There are three requirements to stay execution of a summary ejectment judgment. First, all defendants who appeal summary ejectments to district court must sign the bond set out in this form if they wish to remain on the premises. That bond is a promise to pay to the Clerk's office future rent as it becomes due. Second, defendants must post in cash with the Clerk of Superior Court the amount of rent in arrears as determined by the magistrate. If the amount of rent in arrears is disputed, the defendant must post only the undisputed amount of rent in arrears as determined by the magistrate. And third, if the landlord's action was based on nonpayment of rent and the magistrate's judgment was entered more than five (5) business days before the date the next rental payment is due, the defendant must post in cash with the Clerk of Superior Court the prorated amount of rent for the days between the day the judgment was entered and the next day when the rent will be due under the lease. A defendant who appeals as an indigent does not have to post in cash the amount of undisputed rent in arrears as determined by the magistrate, but must post in cash the prorated amount of rent for the days between the day the judgment was entered and the next day rent will be due under the lease and must sign the bond to pay to the Clerk's office future rent as it becomes due.

If a defendant who is required to sign the bond and deposit cash for the additional bond fails to do both, the execution of the magistrate's judgment is not stayed while the case is being appealed to a district court judge. If the defendant signs the bond and posts the cash bond due, but then fails to pay the rent within five (5) business days after it becomes due, the stay of execution dissolves; if the landlord requests execution and pays the proper fees, the Clerk must issue a Writ Of Possession Real Property (AOC-CV-401) to remove the tenant from the premises.

File No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
 District Superior Court Division

| |
|-------------------|
| Name Of Plaintiff |
| VERSUS |
| Name Of Defendant |

**PETITION TO PROCEED
AS AN INDIGENT**

G.S. 1-110; 7A-228

AFFIDAVIT

(check one of the four boxes below)

- Petition To Assert Claims** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of the claims I have asserted. Therefore, I now petition the Court for an order allowing me to assert my claims as an indigent.
 - I am an inmate in the custody of the Division of Adult Correction and Juvenile Justice.
 (NOTE TO CLERK: If this block is checked, this Petition must be submitted to a Superior Court Judge for disposition provided on the reverse.)
- Petition To File Motions** - As a party in the above entitled action, I affirm that I am financially unable to advance the required costs to file a notice of hearing on a motion. Therefore, I now petition the Court for an order allowing me to file my motion as an indigent.
- Petition To Appeal** - As the individual appellant in the above entitled small claims action, I affirm that I am financially unable to pay the cost for the appeal of this action from small claims to district court. Therefore, I now petition the Court for an order allowing me to appeal this action to district court as an indigent.
- Petition To File Expunction Petition** - As the petitioner in the above entitled action, I affirm that I am financially unable to advance the required costs to file an expunction petition. Therefore, I now petition the Court for an order allowing me to file my expunction petition as an indigent.

(check one or more of the boxes below as applicable)

- I am presently a recipient of
 - Supplemental Nutrition Assistance Program (SNAP/food stamps). Temporary Assistance for Needy Families (TANF).
 - Supplemental Security Income (SSI).
- I am represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons, or I am represented by private counsel working on behalf of such a legal services organization. *(Attach a letter from your legal services attorney or have your attorney sign the certificate below.)*
- Although I am not a recipient of SNAP/food stamps, TANF, or SSI, nor am I represented by legal services, I am financially unable to advance the costs of filing this action or appeal.

| | | |
|---|-------------------------|--|
| SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME | | Date |
| Date | Signature | Signature Of Petitioner |
| Title Of Person Authorized To Administer Oaths | | Name And Address Of Petitioner (type or print) |
| SEAL | Date Commission Expires | |

CERTIFICATE OF LEGAL SERVICES/PRO BONO REPRESENTATION

I certify that the above named petitioner is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons or is represented by private counsel working on behalf of or under the auspices of such legal services organization.

| | |
|----------------------------------|-----------|
| Date | Signature |
| Name And Address (type or print) | |

ORDER

Based on the Affidavit appearing above, it is ORDERED that:

- the petitioner is authorized to assert claims, to appeal, or file notices of hearing or petitions in this action as an indigent.
- the petition is denied.

| | | | |
|------|-----------|--|---|
| Date | Signature | <input type="checkbox"/> Assistant CSC | <input type="checkbox"/> Clerk Of Superior Court |
| | | <input type="checkbox"/> Judge | <input type="checkbox"/> Magistrate (for appeal only) |

NOTE TO CLERK: If the petitioner is NOT a recipient of SNAP/food stamps, TANF, SSI or is NOT represented by legal services or a private attorney on behalf of legal services, you may ask for additional financial information to determine whether the petitioner is unable to pay the costs.

(Over)

ORDER - DACJJ INMATES

The undersigned superior court judge of this district finds that the petitioner is an inmate in the custody of the Division of Adult Correction and Juvenile Justice and that the complaint

- is not frivolous.
- is frivolous.

It is ORDERED that

- the petitioner is authorized to sue in this action as an indigent.
- the petitioner is not authorized to sue as an indigent.
- the action is dismissed.

| | | |
|------|--|-----------------------------------|
| Date | Name Of Superior Court Judge (type or print) | Signature Of Superior Court Judge |
|------|--|-----------------------------------|

CERTIFICATION

I certify that this Petition has been served on the 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.

| | | |
|------|-----------|---|
| Date | Signature | <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court |
|------|-----------|---|

NOTE: G.S. 1-110(b) provides: "The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate."

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
CASE NUMBER:

(PLAINTIFF'S NAME) _____

-VS-

**MOTION FOR MODIFICATION OF
RENT BOND**

(Motion is to be set within 10 days of filing)

(DEFENDANT'S NAME) _____

Now comes the (check one) Defendant or Plaintiff in the above action who moves for modification of rent bond. I request this motion be heard by (check one) the Clerk of Superior Court or a District Court Judge. In support of this motion I show the following:

Fill in the current rent bond amount: \$ _____ per month or \$ _____ per week.

1. State the reasons why you do not believe the current rent bond amount accurately reflects the rent that the tenant is contractually obligated to pay in the lease. Or, if the apartment (housing) is subsidized, state the reasons why the current rent bond amount does not accurately reflect the portion of the rent that the tenant is obligated to pay:

2. State what you allege the rent bond amount should be modified to by filling in the appropriate blank: Tenant should pay \$ _____ per month OR \$ _____ per week (only applicable to week-to-week leases where the lease provides for weekly payments).

Date:

Moving party's signature

(_____) _____ - _____
Moving party's phone number

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
CASE NUMBER

(PLAINTIFF'S NAME)

**NOTICE OF MOTION FOR MODIFICATION OF
RENT BOND**

-VS-

(Motion is to be set within 10 days of filing)

(DEFENDANT'S NAME)

PLEASE TAKE NOTICE: (check one) Plaintiff's OR Defendant's motion for Modification of Rent Bond will be heard before (check one):

The Clerk of Superior Court on _____, 20____, in Room _____ of the _____ County court house at _____ A.M. or P.M. or as soon thereafter as the Clerk can hear it.

A District Court Judge on _____, 20____, in Courtroom _____ of the _____ County court house at _____ A.M. or P.M. or as soon thereafter as the Clerk can hear it.

This the _____ day of _____, 20 ____ .

Moving party (Plaintiff or Defendant)

CERTIFICATE OF SERVICE

This is to certify that the above notice was sent to the person identified below by Depositing in official US Mail Depository, First Class, Postage Prepaid this date: _____, 20

_____.

Name:

Address:

Phone Number:

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
CASE NUMBER _____

(PLAINTIFF'S NAME)

ORDER 0 GRANTING 0 DENYING

MOTION FOR MODIFICATION OF RENT BOND

-VS-

(Motion is to be set within 10 days of filing)

(DEFENDANT'S NAME)

This matter came on Plaintiff's OR Defendant's motion for modification of rent bond. After hearing the Clerk of Superior Court or the District Court Judge makes the following conclusions of law and final order:

FINDINGS OF FACT

CONCLUSIONS OF LAW

ORDER

1. The request to modify rent bond is hereby GRANTED and the Defendant's monthly rent is now set at

\$ _____ . This amount must be paid by _____ . To continue to stay the writ of possession this rent must be paid to the Clerk of Superior Court by the fifth working day of the month until further orders of this court.

The request to modify the rent bond is DENIED.

Other

Date: _____, **Time:** _____

 Clerk of Superior Court or District Court Judge

STATE OF NORTH CAROLINA

**In the General Court of Justice
District Court Division**

_____ County

File No. _____

| |
|--------------------------------------|
| Plaintiff(s) Name(s): |
| vs. |
| Defendant(s) Name(s): |

ANSWER

If there is more than one defendant, "I" or "me" means all defendants.

ANSWER

1. I live in _____ County, North Carolina.

2. I rent from: _____ [name of owner].

My address is: _____ [address].

3. I admit these parts of paragraph 2 of the Complaint: _____

I deny the rest of paragraph 2 of the Complaint.

4. I deny paragraphs 3, 4, 5 and 6 of the Complaint.

5. Other: _____

**DEFENSE: Affirmative Defenses Pursuant to N.C.G.S. §42-64
(Check applicable boxes below)**

6. Criminal activity in violation of §42-63 has not occurred because:
- The activity alleged in the complaint does not constitute criminal activity as defined in the statute.
- The activity alleged in the complaint did not occur.
- No family member or guest of mine has engaged in criminal activity in or near my home.
7. I was not involved in the activity alleged in the complaint and:
- I did not know that criminal activity was occurring or was likely to occur at my home or that any member of my household or guest was engaging in criminal activity.
- I did everything that could reasonably have been expected to prevent any criminal activity from occurring.

I ASK THE COURT TO:

1. Dismiss the complaint with prejudice;
- Or: Dismiss the complaint against me but evict or remove any person who engaged in any criminal activity at the premises;
2. Charge the costs of this case to Plaintiff.
 3. Give me anything else the law may allow.

Date: _____
First Defendant
Second Defendant (if applicable)

CERTIFICATE OF SERVICE

I certify that I served Plaintiff with a copy of this Answer and Counterclaims in the following way: [check applicable box]

by first class mail, postage prepaid, addressed to Plaintiff, to the following address:

by hand-delivering a copy to Plaintiff or Plaintiff's agent at the following address:

Name and title of person to whom I hand-delivered a copy: _____

Date: _____

Defendant

STATE OF NORTH CAROLINA

In the General Court of Justice

District Court Division

_____ **County**

File No._____

Plaintiff(s) name(s):)

)

)

)

v.)

ANSWER AND COUNTERCLAIMS

)

Defendant(s) names(s):)

)

)

)

If there is more than one defendant, "I" or "me" means all defendants.

ANSWER

1. I live in _____ County, North Carolina.

2. As to paragraph 2 of the complaint, I admit the following:

I deny the rest of paragraph 2 of the Complaint.

3. [Check Box 3 if it applies.]

The plaintiff listed on this Complaint is not the owner of the home I rent, so the Complaint was not brought in the name of the Real Party in Interest, and the owner(s) must be added as a

plaintiff or the complaint should be dismissed, under N.C.G.S. §1-57 and North Carolina Rules of Civil Procedure, Rule 17.

- Upon information and belief, the owner is: _____.
- 4. I deny paragraphs 3, 4, and 5 of the Complaint.
- 5. Other: _____.

DEFENSE: My Lease Has Not Ended

(Check box if applicable:)

- 6. My lease has not ended, because [check all applicable boxes].
 - Plaintiff did not terminate my lease according to the terms of the lease.
 - Plaintiff did not give proper notice of lease termination effective at the end of the lease term as required by the lease or N.C.G.S. § 42-14.
 - My lease runs [check all that apply]:
 - week to week. My rent is due on _____ [day of week]
 - month to month. My rent is due on: _____ [day of month]
 - year to year. My lease started on: _____ [date] and ends: _____ [date].
 - mobile home lot
 - other:
 - I did not breach the lease.
 - I did not breach a part of the lease for which termination is allowed under the lease.
 - Other: _____.

DEFENSE: Landlord's Claim for Damage to Property

(Check box if applicable:)

- 7. I deny paragraph 4 of the Complaint. I do not owe Plaintiff for the alleged damage to my home [check applicable boxes]:
 - I did not purposely or carelessly cause the alleged damage.
 - Plaintiff did not give me a written notice under N.C.G.S. § 42-43.

- The amount charged for the damage is too high, because:
- Other: _____.

DEFENSE: Retaliatory Eviction (N.C.G.S. § 42-37.1)
(Check box if applicable:)

8. Within the past 12 months, I have done the following things that are protected by law:

9. I believe that Plaintiff filed this Complaint because of one or more of the protected actions listed above. This Complaint is a Retaliatory Eviction.

DEFENSE: WAIVER
(Check box if applicable:)

10. Plaintiff has waived the right to terminate my lease for the actions stated in the Complaint for the following reason(s):

Plaintiff has accepted my rent after knowing about the actions which allegedly violate my lease;

I have signed a new lease with Plaintiff after Plaintiff knew about the actions which allegedly violate my lease.

DEFENSE: RES JUDICATA
(Check box if applicable:)

11. I repeat the paragraphs above.

12. A complaint for summary ejectment was filed by Plaintiff against Defendant(s) on or about _____, 20__ . This complaint was based upon a claim of _____

13. At the trial on _____, 20__,

- the complaint was dismissed with prejudice by the magistrate.
- a judgment in favor of Plaintiff was entered by the magistrate.

Upon information and belief, that dismissal or judgment has not been appealed.

14. Plaintiff is therefore barred from raising in a subsequent lawsuit any claim against Defendant which existed on the date of the prior hearing, and the present complaint must be dismissed.

DEFENSE: Lack of Demand for Payment (N.C.G.S. § 42-3)

(Check box if applicable:)

15. Plaintiff failed to demand all of the rent owed and wait 10 days before filing his complaint as required by N.C.G.S § 42-3.

DEFENSE: Lack of Demand for Surrender of Possession (N.C.G.S. § 42-26(a))

(Check box if applicable:)

16. Plaintiff failed to demand that I leave the premises and surrender possession as required by N.C.G.S. § 42-26(a)

DEFENSE: Tender of Rent

(Check box if applicable:)

17. Pursuant to N.C. Gen. Stat. § 42-33, I am entitled to tender (give) any rent and court costs due to Plaintiff prior to judgment to stop the eviction. I have either already tendered the past due rent and court costs to Plaintiff or am prepared to tender any amount owed to Plaintiff as determined by this Court.

DEFENSE: Repair Issues

(Check box if applicable:)

18. I do not owe the rent Plaintiff claims I owe because Plaintiff breached the implied warranty of habitability (repair issues), and I suffered damages that are more than the rent Plaintiff claims.

DEFENSE: Unfair Trade Acts or Practices

(Check box if applicable:)

19. I do not owe the rent Plaintiff claims I owe because Plaintiff committed unfair or deceptive trade acts or practices, and I suffered damages that are more than the rent Plaintiff claims.

DEFENSE: Unfair Debt Collection Practices

(Check box if applicable:)

20. I do not owe the rent Plaintiff claims I owe because Plaintiff committed unfair debt collection practices, and the damages I suffered and penalties I am entitled to are more than the rent Plaintiff claims.

COUNTERCLAIM: Breach of Implied Warranty of Habitability

(Check box if applicable:)

21. I repeat the paragraphs above.

22. Plaintiff and/or the owner is my landlord under the Residential Rental Agreements Act, N.C.G.S. §§ 42-38 to 42-44. The landlord must keep my home in safe and fit condition.

23. My home is covered by the Housing Code for _____ [name of city or county], North Carolina. Under the Residential Rental Agreements Act, Plaintiff also must keep my home up to the standards in the Housing Code.

24. Plaintiff has not properly made repairs needed in my home. I have listed the repair problems in my home on Exhibit A, which is made a part of this Answer and Counterclaim.

25. Plaintiff knew or should have known about the repairs needed in my home because:

All or some of the repairs were needed at the time I moved in.

Plaintiff or his agents came to my house and saw the things needed repairs.

Plaintiff was told about the need for repairs by: _____.

Plaintiff received an inspection report listing the things to be repaired.

Other: _____

_____.

26. Because Plaintiff did not make the repairs needed in my home, he has violated the Residential Rental Agreements Act.

27. I have been harmed by living in my home with these defects. I should receive compensation from Plaintiff for the violations of the Residential Rental Agreements Act.

COUNTERCLAIM:
Unfair or Deceptive Trade Practice (N.C.G.S. 75-1.1)
(Check box if applicable:)

28. I repeat the statements above.

29. The plaintiff has violated the following public policies of the State of North Carolina:

- The law requiring landlords to provide fit premises, N.C.G.S. §4242.

Plaintiff did this: _____

- The law against self-help eviction, trespass, and conversion of property.

The landlord did this: _____

- The law against Retaliatory Evictions, N.C.G.S. § 4237.1.

- The law against charging late fees which are too high, N.C.G.S. §4246.

Plaintiff did this: _____

- The law against charging illegal fees, N.C.G.S. §§ 42-46, 75-54, 55, and 56.

Plaintiff did this: _____

- Other:

Plaintiff did this: _____

30. Plaintiff has been in the business of renting homes to one or more consumers in _____ County, North Carolina. The things Plaintiff did which are listed above were unfair or deceptive trade practices or acts, in violation of N.C.G.S. § 7511.1, et seq., and I was harmed as stated above. I should get triple my damages.

COUNTERCLAIM:
Prohibited Acts by Debt Collectors (N.C.G.S. 75-50 et seq.)
(Check box if applicable:)

31. I repeat the statements above.

32. I am a “consumer” as defined by N.C. Gen Stat. § 75-50(1).

33. Plaintiff collected or attempted to collect the following illegal fees from me:

- Late fees that were more than %5 of my monthly rent and more than \$15.
 Fees that I did not agree to in my lease. [Describe:] _____

Other: _____

34. The fees that Plaintiff collected or attempted to collect from me were a “debt” as defined by N.C. Gen. Stat. § 75-50(2).

35. Plaintiff is a “debt collector” as defined by N.C. Gen. Stat. §75-50(3).

36. Plaintiff violated Article 2 of Chapter 75 of the North Carolina General Statutes by collecting or attempting to collect illegal fees from me, as described above. In total, Plaintiff tried to collect illegal fees from me _____ [number of times] different times.

37. The total amount of the illegal fees I paid to Plaintiff is \$_____ [total amount of illegal fees paid].

38. Pursuant to N.C. Gen. Stat. § 75-56(b), Plaintiff is liable to me for a civil penalty in an amount of at least \$500 but not more than \$4,000 for each violation of Article 2 of Chapter 75, as well as the total amount of any illegal fees I actually paid.

I ASK THE COURT TO [check all applicable boxes]:

1. Dismiss the Complaint with prejudice;

- 2. Give me damages for my counterclaim(s); give me triple the amount of my actual damages for any Unfair or Deceptive Trade Practices; and give me a civil penalty of at least \$500 but not more than \$4,000 for each of Plaintiff's violations of Article 2 of Chapter 75.
 - in small claims court, I limit my total claim for damages to that court's maximum allowable amount;
- 3. Make Plaintiff add the real party(ies) in interest as plaintiff(s), or dismiss the Complaint;
- 4. Reduce my rent until Plaintiff makes all repairs required by law;
- 5. Charge the costs of this case to the landlord;
- 6. Give me anything else the law may allow.

Date: _____

First Defendant

Second Defendant [if applicable]

CERTIFICATE OF SERVICE

I certify that I served Plaintiff with a copy of this Answer and Counterclaims in the following way: [check applicable box]

- by first class mail, postage prepaid, addressed to Plaintiff, to the following address:

- by hand-delivering a copy to Plaintiff or Plaintiff's agent at the following address:

_____.

Name and title of person to whom I hand-delivered a copy: _____

Date: _____

Defendant



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