

A Judgment for Possession Is Only Step 1 in Summary Ejectment Cases

Most small claims actions in North Carolina are for summary ejectment: an action by a landlord asking the court to terminate the lease of a breaching tenant and award possession to the landlord. In residential leases, landlords are prohibited by law from “self-help” evictions – i.e., forcibly removing a tenant and his property, padlocking the premises, or rendering the premises uninhabitable by cutting off electricity or water. [GS 42-25.6](#). The magistrate’s role in summary ejectment ends when the magistrate makes a decision (*enters judgment*). But for the landlord, a favorable judgment is simply the first step in a lengthier and more complicated process.

Consider the following scenario: Laura Landlord wins her summary ejectment action against Tommy Tenant. The magistrate announces a decision in Laura’s favor and completes a written judgment form. With a copy of the written judgment in hand, Laura might understandably assume that Tommy must immediately vacate the property, but that is not the case. That written judgment is not the piece of paper she needs to oust Tommy. The value of the judgment is that it entitles Laura to ask the clerk to issue a [writ of possession](#) directing the sheriff to remove Tommy. But that’s not going to happen tonight – or tomorrow. First, we must wait to see whether Tommy appeals the magistrate’s judgment.

In district or superior court, the losing party has thirty days to decide whether to appeal the court’s decision. That time period is much shorter – only ten days -- for small claims judgments. The rule for all these courts is that no action to enforce the judgment is permitted until the time period for appealing has expired. [GS 1A-1, Rule 62\(a\)](#). Laura must wait ten days before taking the next step toward regaining possession of her rental property. [GS 7A-228\(a\)](#).

For this blog post, assume there is no appeal. Ten days after judgment is entered, Laura can go to the clerk’s office and request a writ of possession. The clerk will collect \$25 for the execution fee, [GS 7A-308\(a\)\(5\)](#). In addition, the sheriff’s fee for serving the writ of possession is \$30. [GS 7A-311](#). These fees will be added to the costs Tommy is responsible for.

Sometimes landlords are surprised by the additional costs involved in taking this next step toward obtaining possession and, in seeking to avoid them, make a mistake. Reasoning that their right to the property has been settled by the small claims judgment, they enter the rental property without first obtaining a writ of possession. This is somewhat analogous to having a winning lottery ticket and deciding to steal the jackpot: the ticket entitles the holder to complete the procedure for claiming the money, but only that. Skip the procedure? Legal problems are likely to follow.

After the writ is issued, the sheriff has five days to execute it, and the first step is to notify Tommy of the approximate time of eviction. [GS 42-36.2\(a\)](#). This notice must comply with detailed requirements set out in the statute related to when and how it must be served and what information

it must contain. [GS 42-36.2\(d\)](#). At the scheduled time, the sheriff removes Tommy and all his belongings from the rental premises.

What if Tommy is not prepared to take possession of his property? The sheriff will deliver the property to a storage facility, after requiring Laura to advance the costs of removal and one month's storage. Like the execution fees, the money advanced by Laura will be added to the costs for which Tommy is responsible. Once Tommy and his property have been removed and the landlord has regained possession of the premises, the sheriff will fill out the paperwork (called a *return of service*), which will become part of the file in the clerk's office. The summary ejection action is complete.

Let's change the scenario a little. Imagine Tommy is not prepared today to take possession of his property, but he'll have access to his brother's truck on Thursday, two days from now. Laura is not enthusiastic about advancing the costs of removal and storage, having some skepticism about whether she'll ever see that money again. The statute allows Laura to elect an alternative: she can sign a written statement authorizing the sheriff to simply lock the premises, leaving the tenant's property in place. By providing this statement to the sheriff, Laura can avoid paying the costs associated with removal and storage, *but she assumes the burden of disposing of Tommy's property in compliance with the law*.

Unless Laura is familiar with the law, she may be in some jeopardy at this point. She may incorrectly believe that she can refuse to return Tommy's property until Tommy pays the rent he owes her. In a residential tenancy, that action is legally prohibited, even if the written lease specifically says otherwise. Or Laura may tell Tommy that if the property isn't gone by Thursday, she'll take it all to the dump on Friday. Again, such an action is not legally permissible. [GS 42-25.7](#). It's important for Laura to understand that there are very specific legal rules governing her treatment of Tommy's property. Failing to follow those rules may result in her being held liable for conversion of the property (the fair market value of the property) as well as an unfair trade practice (which entitles Tommy to treble damages and attorney fees). [Love v. Pressley](#), 34 NC App 503 (1977), disc. rev. denied 241 SE2d 843 (1978).

So, what does the law say about what Laura can do with Tommy's property? The statutes are too complex to fully set out in this post — and the details are important. The bare bones outline, minus procedural details, is as follows:

- Tommy is entitled to recover his property upon request during the next seven days, during regular business hours or at a mutually agreed upon time. Laura may move the property for storage purposes but may not otherwise dispose of it during this period. [GS 42-36.2\(b\)](#).
- If Laura offers to release the property during regular business hours but Tommy fails to retrieve it within seven days, Laura can throw the property away, give the property away, or sell it.
- If Laura decides to sell the property, [GS 42-25.9\(g\)](#) sets out detailed requirements

governing the conduct of sale, including required notice to the tenant and allocation of proceeds. The tenant is entitled to retrieve his property upon request at any time prior to the day of sale.

- If the total value of the property left behind is less than \$500, the tenant has only five days to retrieve his property. [GS 42-25.9\(h\)](#).
- Different rules apply when the property left behind is a mobile home with a value in excess of \$500. See GS 42-36.2, 42-25.9, and [44A-2\(e2\)](#).
- There is a statutory procedure allowing a landlord to donate tenant's property to certain types of non-profit organizations, but this procedure is rarely used. [GS 42-25.9\(d\)-\(f\)](#).

Magistrates receive many inquiries from landlords about post-judgment procedures in eviction cases. The purpose of this post is to provide magistrates with a simple summary of these procedures as well as statutory citations to which landlords seeking legal information may be referred. In a future post, I'll look at a related topic: what happens if Tommy appeals?