

A lease is a contract, but.....

In [my last post](#), I emphasized the contractual nature of a rental agreement. My main point was that the agreement between the landlord and tenant, whether oral or written, is where a small claims magistrate begins in a summary ejectment lawsuit. Often parties wrongly assume that some aspect of their mutual commitments “goes without saying.” In fact, a summary ejectment action is at its heart a breach of contract lawsuit, and the specific terms of the contract are the starting point in determining any dispute.

While the lease is always the beginning point, the magistrate’s analysis must often go further than just the parties’ agreement. As I’ve previously discussed, landlord-tenant law is replete with special rules, some (mostly procedural) tending to favor the landlord and some (mostly substantive) tending to favor the tenant. The US Supreme Court has pointed out that these procedural advantages and consumer protections, viewed together, work to balance the legal scales related to this unique legal relationship. [Lindsey v. Normet](#), 405 U.S. 56, 72, 92 S. Ct. 862, 873, 31 L. Ed. 2d 36 (1972). This post highlights some of the many ways consumer protection legislation affects the residential contractual agreements between landlords and tenants. The discussion that follows is limited to that sort of agreement. Consumer legislation in landlord-tenant law is scattered across a number of statutes, and some additional protective principles – usually equitable in nature – have been recognized at common law. These rules vary in their impact on a lease agreement: they may delete a lease provision by deeming it void and unenforceable, insert a provision as “implied by law,” or authorize certain provisions only if they comply with statutory restrictions. Sometimes the statutes establish the consumer’s right to sue the landlord for violations, while others authorize tenants to raise violations in defense of a summary ejectment action by the landlord. Violations of some of these rules have been held to constitute an unfair or deceptive practice under GS 75-1.1, resulting in awards of triple damages and attorney fees. A comprehensive list of these provisions is beyond the scope of this post, but a loosely-organized summary appears below:

Specialized Protections for Certain Kinds of Tenants:

- Victims of domestic violence, sexual assault, or stalking
 - [GS 42-42.2](#) Prohibits discrimination in rental practices
 - [GS 42-45.1](#) Allows early termination of rental agreement
 - [GS 42-42.3](#) Allows change of locks on rental premises
- Persons serving in the military
 - [GS 42-45](#) Allows early termination of rental agreement
 - [50 USC 3955](#) (Federal) Allows early termination of rental agreement [50 USC 3951](#) (Federal) Restricts evictions/seizure of personal property
- Tenants of foreclosed property
 - [GS 45-21.17](#) Requires certain tenants to receive advance notice of foreclosure sale
 - [GS 45-21.16A](#) Allows early termination of lease by tenants in anticipation of

- foreclosure
- [§ 42-45.2](#) [GS 45-21.33A](#) Allows lease to survive foreclosure
- Tenants in subsidized housing
 - Numerous federal statutes & regulations as well as NC case law (see citations & discussion in Brannon, [NC Small Claims Law](#), pp. 184-186, 211) require strict compliance with procedural requirements and showing of good cause for termination of tenancy.
 - [GS Ch. 42, Art. 7](#) Allows use of partial and conditional eviction in “innocent tenant” situation
- Owners of mobile home communities containing five or more lots are required to give mobile home owners who are renting spaces minimum notice of 180 days before converting land to another use which requires mobile homes to be removed from [GS 42-14.3](#).

Protections Applicable to All Residential Tenants

- No self-help [GS 42-25.6](#)
- LL prohibited from withholding tenant’s property to coerce payment of rent or other debt. [GS 42-25.7](#)
- LL prohibited from immediate disposal of tenant’s property, but must first obtain writ of possession and then follow detailed statutory procedure making property available to tenant and disposing of property if tenant does not take [GS 42-25.7](#); [42-25.9](#); [42-36.2](#).
- Retaliatory eviction is [GS Ch. 42, Art. 4A](#).
- LL is required to provide fit and habitable premises, including compliance with detailed list of requirements set out in [GS 42-42](#).
- Late fee provision in written lease for rent at least five days overdue is enforceable only if it complies with limitations on maximum amounts and rules about allocation of [GS 42-46](#).
- Nonrefundable pet fee must be reasonable in [GS 42-53](#)
- Landlord must comply with detailed legal requirements related to security [GS Ch. 42, Art. 6](#).
- Landlords are debt collectors under [GS 75, Art. 2](#), and are subject to the provisions of the Debt Collection Act.
- Landlords are prohibited from engaging in housing practices which discriminate against tenants based on “race, color, religion, sex, national origin, handicapping condition, or familial status” by the North Carolina Fair Housing [GS Ch. 41A](#).
- The federal Fair Housing Act prohibits housing practices which discriminate against tenants based on “race, color, religion, sex or national origin” and provides significant protection to tenants with disabilities. [42S.C. 3601-3619](#).

Statutory Provisions Related to Summary Ejection Actions

- Provision in written lease authorizing fee if landlord files lawsuit for breach enforceable only if it complies with limitations on maximum amounts, allocation of payments, and other

- statutory [GS 42-46](#).
- Provision in written lease authorizing collection of attorney fees subject to statutory requirements that tenant receive advance notice of right to avoid such fees by full payment of outstanding [GS 6-21.2\(5\)](#).
 - Tenants are entitled to remain in rental housing while an appeal is pending upon satisfying the statutory requirements for a [GS 42-34](#)
 - Tenants who are evicted pursuant to a small claims judgment and later prevail on appeal to district court are entitled to recover possession and damages incurred because of their removal. [GS 42-35](#) and [-36](#).
 - A landlord seeking to enforce a judgment for possession more than 30 days after judgment was entered must sign an affidavit attesting that the parties have not entered into a new lease agreement and that the landlord has not accepted payment from the tenant for any period after judgment was entered. [GS 42-36.1A](#)