

Don't Try This at Home: Self-Help Evictions

A magistrate once told me that the advice given to members of the public by many law enforcement officers and courthouse personnel may be summarized as *ATM: Ask the Magistrate*. The locations of magistrates' offices, unlike those of judges, are known to the public, and their doors are -- if not actually open -- at least accessible. Their telephone numbers are publicized, and when the public calls, that call will be answered by a magistrate. So it's not surprising that magistrates spend a significant amount of time interacting with citizens seeking legal assistance, walking that fine line between helpfully providing legal information and carefully refraining from giving legal advice. While the questions a magistrate may be asked on any given day are likely to vary over a truly amazing range of topics, there are a few subjects that come up all the time. One of them -- the subject of this post -- has to do with whether and under what circumstances a landlord may lawfully force a tenant to vacate rental premises—a practice commonly referred to as *self-help eviction*. The first distinction that must be observed in answering this question is between residential and commercial tenancies. A commercial landlord is not prohibited from using self-help eviction, provided that the tenant's ouster does not cause a breach of the peace. The most common method of accomplishing this is by padlocking the door of the rental premises. Despite the availability of this alternative, many commercial landlords elect to file a summary ejectment action instead. While slower and more expensive, eviction by way of the court system allows a landlord to avoid exposure to tort liability for wrongful eviction. If, despite best efforts and good intentions, self-help eviction results in a breach of the peace, or the landlord is mistaken in believing there are legal grounds for eviction, a landlord may come to regret attempting self-help eviction in commercial situations.

Self-help eviction in residential leases has been prohibited by law since 1981. [GS 42-25.6](#). The law states that a tenant may be "evicted, dispossessed or otherwise constructively or actually removed" only by the summary ejectment procedures set out in GS Ch. 42. The 1981 legislation also prohibited residential landlords from seizing and holding tenant's property for the purpose of enforcing the tenant's obligation to pay rent (called *distress* and *distraint* in the statute). [GS 42-25.7](#).

FAQ's about Self-Help Eviction

- May a residential landlord use self-help eviction if the tenant specifically waives her legal rights and gives written permission in the lease for the landlord to do so?

No. The rule against self-help eviction is based not on an individual tenant's contractual rights, but rather on North Carolina's public policy interest in maintaining public peace. [GS 42-25.6 & -25.8](#).

- Other than padlocking, what actions by a landlord might be considered unlawful self-help eviction?

Constructive eviction occurs when the tenant's use and enjoyment of the rental premises are interfered with to such a degree as to effectively deprive the tenant of the benefits of possession. Common examples are turning off electricity or water for the rental premises, but any action by the landlord rendering the premises uninhabitable would fall in to this category.

It is likely that landlords "who mislead tenants into believing that they are being subjected to judicial or legal process" would be found to have engaged in unlawful self-help eviction as well, although there are as yet no North Carolina cases on this point. See Webster, [Real Estate Law in North Carolina](#) Sec. 6.07, fn. 124.

- What remedies are available to a residential tenant in the event of self-help eviction?

[GS 42-25.9\(a\)](#) provides that a landlord's removal or attempted removal of a tenant in violation of the statute permits the tenant to elect either to recover possession of the rental premises or terminate the lease, and also to recover actual damages caused by the landlord's actions. For example, a tenant who returns home to find the door to his home padlocked will be entitled to collect (1) the cost of emergency alternative lodging – such as the cost of a hotel – for the time necessary to arrange comparable alternative housing, (2) the costs reasonably associated with locating a new place to live, including moving costs, and (3) any increased rent required for comparable new lodging for the remainder of the rental period. Additional damages may be awarded for deprivation of or injury to the tenant's property caused by the landlord's actions. A tenant who is padlocked might seek the fair market value of the property under a conversion theory of recovery, or instead seek the return of the property along with damages associated with loss of use and the need for repair or replacement. The type and degree of damages related to tenant's property will of course vary widely depending on the particular facts.

While the law specifically authorizes these damages to be awarded in response to self-help eviction, a tenant in such a case is not limited to actual damages. The North Carolina Supreme Court in [Stanley v. Moore](#), 339 NC 717 (1995) held that a tenant who demonstrates that the landlord committed an unfair or deceptive practice in violation of GS 75-1.1 is also entitled to relief under that statute, which provides for treble damages and the recovery of attorney fees. So long as the trebled amount of damages and attorney fees do not exceed the magistrate's jurisdictional limit, a tenant might bring such a case in small claims court, using the AOC "Complaint for Money Owed" form.

- What does the Servicemembers Civil Relief Act ([50 U.S. Code Sec. 3951](#)) have to say about self-help evictions of servicemembers entitled to protection under that Act?

The SCRA provides that a person who knowingly attempts or does evict persons protected under that Act except by court order is guilty of a misdemeanor punishable by fine, imprisonment for up to one year, or both.

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