Marco Polo and Mobile Home Spaces

When I was a child, sharing the backseat of a station wagon with my brother and sister on long summer road trips, we used to play the *First Thing You Think Of* word association game. You know the one, where your sister says *Cold* and you say *Hot*, as fast as you can. *Salt* and *pepper*. *Marco*? *Polo*! The only thing that's really changed now that I'm grown up are the words. *Mobile home space*? If you thought *60 days*, this blog is for you.

The group of people plagued by this particular association may be small, but we sure do spend a whole lot of time trying to figure out this rule in landlord-tenant law. The source of the confusion is a statute, GS 42-14, which provides:

Notice to quit in certain tenancies. *A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days. Provided, however, where the tenancy involves only the rental of a space for a manufactured home as defined in G.S. 143-143.9(6), a notice to quit must be given at least 60 days before the end of the current rental period, regardless of the term of the tenancy.*

This law is almost 150 years old, but the part about rental of a mobile home space was added in 1985, and amended in 2005 to increase the required notice from 30 to 60 days. There have been no appellate cases construing this addition to the statute. Usually my experience has been that relatively minor changes in a relative minor statute which receive little or no attention in subsequent court opinions are easily overlooked, but not so in this instance. Something about the conjunction of *mobile homes* and *60 days* sparked a meld in the minds of folks interested in landlord-tenant law that has produced an entire mythology of rules. There were rumors (yes, this is what passes for interesting gossip in my life) that no writ of possession for a mobile home could issue until 60 days after judgment was entered, that service of process in a summary ejectment action on a mobile home lot must occur at least 60 days before the case could be heard, and – most commonly—that every tenant of a mobile home lot was entitled to least 60 days' notice before being evicted regardless of the ground for eviction. Tenants not paying rent, it was said, could do so for sixty days with impunity, and tenants engaged in criminal activity enjoyed similar leeway. None of these statements are true. So let's take a closer look at what the statute says, and think together about what it means.

Reviewing the Basics. In North Carolina, a landlord may evict a tenant only for one of four reasons:

- The tenant has breached the lease in a manner which—according to the lease itself—allows the landlord to terminate the lease. GS 42-26(a)(2).
- The tenant has failed to pay rent following the landlord's demand for rent, made at least ten days ago. GS 42-3.
- The tenant has engaged in criminal activity. GS Ch. 42, Art. 7.

- The lease has ended and the tenant continues to occupy the property (sometimes referred to as *holding over*). GS 42-26(a)(1).This post focuses on the last ground, *holding over*, because this ground alone might require reference to GS 42-14's 60-day notice requirement for mobile home space rentals
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Holding over is typically the simplest ground for eviction: the landlord need only prove (1) the lease is over, and (2) the tenant's still there. If the lease says "This lease will end on December 17, 2016," and the tenant is still there on December 18, nothing else appearing, that tenant is holding over.

When a legal question does arise, it's almost always about whether the lease is over. Many leases do not identify a specific ending date, but instead are for an indefinite duration: they go on until someone takes action to end them. Ideally, the parties have agreed in advance about what action is required. For example, a month-to-month lease might provide that either party may terminate the lease by giving written notice at least 30 days in advance. In such a case, a landlord who seeks summary ejectment based on holding over must prove that notice was given, in writing, and at least 30 days in advance. Evidence that the notice was oral, or given only 20 days in advance, requires a conclusion that the lease is NOT over, and the landlord loses the lawsuit.

But what if nothing in the lease addresses how to end it? In these instances GS 42-14 comes to the rescue, specifying how much notice is required to terminate the lease: two days for a week-to-week tenancy, seven days for a month-to-month tenancy, and one month for a year-to-year lease. Thus the statute "fills-in-the-blank" when the parties themselves have left open the length of notice required to bring the lease to an end. Cherry v. Whitehurst, 216 NC 340 (1939); East Carolina Farm Credit v. Salter, 113 NC App 394 (1994).

So, what about mobile home spaces? It is important to note that holding over is the only ground for eviction with a special rule for mobile home lots. When a landlord seeks eviction based on failure to pay rent, criminal behavior, or a breach triggering forfeiture, the nature of the rental property is irrelevant. The usual rules apply. When a landlord seeks to evict a tenant from a mobile home space based on holding over, however, GS 42-14 has potential application. If the parties have agreed neither to a definite ending date nor a specific procedure for ending the lease, GS 42-14 fills in the blank, requiring a 60-day notice to terminate.

There is one lurking question raised by this statute. What if the parties in the mobile home space situation have agreed that the lease will end on December 17, 2017? Or their month-to-month lease provides for termination by written notice given 30 days in advance? In other words, does the rule permitting the parties to agree to something other than the statutory notice apply to mobile home spaces as well, or does the statute establish a minimum 60-day notice period that applies regardless of their agreement to the contrary? My reading of the statutory language places considerable emphasis on the words "*provided that,*" and my opinion is that the latter part of the

statute should be read in conjunction with the other provisions, as a “fill-in-the-blank” rule. A reasonable argument to the contrary might be made, however, that the final portion of the statute should be read as a separate, independent provision: “where the tenancy involves only the rental of a [mobile home space] a notice to quit must be given at least 60 days before the end of the current rental period.” Until either the General Assembly or the appellate courts address the issue, it’s likely to continue being a lively topic of discussion for those of us living in Landlord-Tenant Land.