

Special Rules for Summary Ejectment Actions

In my [last post](#), I outlined the most significant procedural differences between general civil actions and actions brought in small claims court, which are governed in large part by [GS Ch. 7A, Art. 19](#). Overall, the procedure in small claims court is simpler, faster, and cheaper. The substantive rules and procedures for *summary ejectment*, the most common small claims action, are highly specialized and allow for even faster relief. Summary ejectment is a legal action brought by a landlord seeking to remove a breaching tenant from possession of rental property. North Carolina joins a large number of states in offering landlords this carefully crafted remedy, which may at first appear unusual in its provision of frank preferential treatment to a particular group of litigants seeking a particular remedy. The US Supreme Court approved such specialized treatment many years ago, however, pointing out that providing an expedited procedure for these cases makes sense in the larger context of laws prohibiting the common law practice of self-help eviction. “The objective of achieving rapid and peaceful settlement of possessory disputes between landlord and tenant has ample historical explanation and support. It is not beyond the State's power to implement that purpose by enacting special provisions applicable only to possessory disputes between landlord and tenant.” *Lindsey v. Normet*, 405 U.S. 56, 72, 92 S. Ct. 862, 873, 31 L. Ed. 2d 36 (1972). In this blog entry, I'll identify the most significant distinctions between the usual procedural rules applicable to small claims court and those applicable only to actions for summary ejectment.

A “simple” landlord-tenant relationship is required. It is perhaps not surprising that many litigants are drawn to the advantages of removing unwanted occupants from real property by way of an action for summary ejectment. From live-in lovers who have fallen out to sellers waving rent-to-own contracts, the range of litigants seeking summary ejectment is considerable. North Carolina courts have been steadfast, however, in refusing to extend this remedy to landowners other than landlords seeking to recover possession of real property: Only if the plaintiff and defendant are involved in a “simple landlord-tenant relationship,” does a small claims magistrate have jurisdiction to hear such a case. *Marantz Piano Inc. v. Kincaid*, 108 N.C. App. 693 (1993).

Property owner may appear by agent. A special rule governs *who* can file a summary ejectment action. According to [GS 7A-223\(a\)](#), an “agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint” may sign the complaint—and appear in small claims court to testify. The prohibition in GS 84-4 against the unauthorized practice of law has no application in these cases. (Note, however, that the owner of the property is the real party in interest, and must be named as plaintiff in the action.)

Expedited trial and special rules for service of process. A summary ejectment action must be calendared within seven business days after the complaint is filed. [GS 42-28](#). The sheriff is required to serve the summons within five days from the time the case is filed, and at least two days (excluding legal holidays) prior to the trial date. For summary ejectment cases only, service of process may be made by first class mail accompanied by posting the summons and complaint on

the rental premises. [GS 42-29](#). In this event, service is insufficient to support an award of money damages, but plaintiff can proceed with a claim for possession of the rental property.

Judgment on the pleadings. Default judgments are not permitted in small claims court and—with one exception—plaintiffs are required to demonstrate their right to recover by the greater weight of the evidence regardless of whether the defendant appears. The single exception to this rule arises in actions for summary ejectment. [GS 42-30](#) excuses the plaintiff from producing evidence in support of his claim provided that (1) the defendant has been served; (2) the defendant does not appear at trial or file an answer; (3) the complaint alleges as grounds breach of a lease condition for which reentry is specified; and (4) the plaintiff requests judgment on the pleadings in open court.

Continuances limited and prompt decisions required. In 2013 the General Assembly amended [GS 7A-223](#) to restrict the court's authority to grant continuances in actions for summary ejectment. The new law provides that a continuance may be granted only for good cause and limits the length of a continuance to five days or the next session of small claims court, whichever is greater, unless the parties consent to a longer period. The same legislation amended [GS 7A-222](#) to prevent magistrates from reserving judgment in summary ejectment actions without the agreement of the parties unless the case is “more complex.” In the latter event, the magistrate may reserve judgment for no more than five business days.

Appeal. In the event a party in a summary ejectment action wishes to appeal for trial de novo in district court, costs of appeal must be paid within 10 days from the time judgment is entered, subject to exception related to a claim of indigency in some circumstances. (Appellants in other small claims cases have 20 days to pay costs.) [GS 7A-228\(a\)](#). In 2013 the General Assembly enacted subsection (b) of this statute authorizing the district court to dismiss an appeal by a tenant in a summary ejectment action without further hearing if the court finds that the tenant has failed to participate in the case by taking any of a list of enumerated actions.

Enforcing the judgment. According to [GS 42-36.2\(a\)](#), a sheriff must execute a writ of possession within five days after the writ is issued.

The cumulative effect of these special rules is profound. It is perhaps best illustrated when one considers that in the usual civil action the defendant has 30 days after being served with the complaint in which to file an answer. By contrast, at the end of that same period of time the defendant in a summary ejectment action may find himself standing with his belongings on the sidewalk in front of his former home.