

## Subject Matter Jurisdiction in Actions for Summary Ejectment

For hundreds of years, the law has provided a procedure for landlords to obtain assistance from the justice system in ousting a tenant and taking back rental property. In North Carolina in the late 19<sup>th</sup> Century, just as today, “proceedings in ejectment” were one of the most common types of civil cases filed. I recently spent some time reading many older landlord-tenant cases in an effort to trace the development of the law pertaining to subject matter jurisdiction in summary ejectment cases. I began with some reservations about the continued relevance of these cases. After all, North Carolina’s entire court system was revised – and the Rules of Civil Procedure adopted-- after many of these cases were decided. Justices of the peace no longer hold court, and appeal from small claims court is to district—not superior—court today. What I found striking in doing this research was actually how little has changed. The questions in the late 1800s may have used different legal terminology, but would be familiar to any small claims magistrate. One of the most common issues, for example, was whether a seller/landlord could regain possession of property subject to a rent-to-own agreement by way of summary ejectment. Another was whether a buyer by way of foreclosure could use summary ejectment to oust the former owner. What I found is that the rules governing jurisdiction in ejectment cases have remained remarkably consistent in application, although the underlying rationale for the rules has, from the beginning, been considerably more variable. This post attempts to summarize those procedural rules where they are clear. In my next post, I’ll discuss some troublesome areas in which clarity is lacking.

### *Clear Rules*

- A landlord-tenant relationship is an essential element of a summary ejectment action, and the plaintiff must establish the existence of such a relationship in order to avail itself of the specialized procedure and remedy established by [GS 42-26](#). *Credle v. Gibbs*, 65 N. C., 192 (1871); *McCombs v. Wallace*, 66 N. C., 481 (1872); *Hughes v. Mason*, 84 N.C. 472, 474 (1881)
- An action seeking to recover possession of real property must fall within the more narrow confines of an action for summary ejectment to be eligible for assignment to small claims court. A magistrate has no jurisdiction to consider an action for possession based on any ground other than summary ejectment. [GS 7A-210](#); [GS 7A-211](#).
- If defendant files a written answer denying plaintiff’s title, assignment to small claims is withdrawn and the action is scheduled for trial before a district court judge. [GS 7A-223\(a\)](#).
- Assuming no answer is filed challenging title, a magistrate has authority to hear evidence and determine whether the action is in fact one for summary ejectment (i.e., whether there is a landlord-tenant relationship between the parties). *Foster v. Penry*, 77 N.C. 160, 162

(1877).

- If a magistrate finds insufficient evidence of a landlord-tenant relationship, the magistrate should make a finding that the court lacks subject matter jurisdiction and dismiss the action. *Hargrove v. Cox*, 180 N.C. 360, 104 S.E. 757, 759 (1920)
- In an appeal for trial de novo from a small claims judgment in a summary ejectment action, the district court should determine whether a landlord-tenant relationship exists between the parties and, if such a relationship is not established, the district court should dismiss the case for lack of subject matter jurisdiction. *Hayes v. Turner*, 98 N.C. App. 451, 454, 391 S.E.2d 513, 515 (1990)
- A landlord may file an action for ejectment in small claims court, district court, or superior court. *Carolina Farm Credit v. Salter*, 113 N.C. App. 394, 398, 439 S.E.2d 610, 612 (1994) [citing *Stonestreet v. Means*, 228 N.C. 113, 115, 44 S.E.2d 600, 601 (1947)].
- A trial court should consider its own authority to act even if neither party raises a question about subject matter jurisdiction and dismiss the case if subject matter jurisdiction is lacking. *Hayes*.
- No trial court has subject matter jurisdiction to determine a claim based on the purely statutory remedy of summary ejectment established by GS 42-26 in the absence of a simple landlord-tenant relationship. *Heights Credit Union v. Boyd*, 104 N.C. App. 494, 497, 409 S.E.2d 742, 743 (1991)

When the appellate courts have found that the district or superior court lacked subject matter jurisdiction in these landlord-tenant cases, it has been for two reasons. First, some cases have focused on the rule that a court is without jurisdiction to consider an appeal from a court that itself lacked jurisdiction (sometimes stated as “jurisdiction is derivative”). In other cases, however, the courts have ignored the procedural posture of the case and simply stated that a court has no jurisdiction in an action for summary ejectment in the absence of a landlord-tenant relationship.

Why does it matter?

In the small claims context, magistrates’ authority to award possession of real property is limited to summary ejectment actions, and the magistrate is entirely lacking authority to consider any other basis for awarding possession of real property to plaintiff. In the absence of a landlord-tenant relationship, these cases are not eligible for assignment to small claims court. In [previous posts](#) I’ve suggested that a magistrate return to the clerk cases not meeting the statutory requirements for assignment, so that the case may be heard in district court. Whether this procedure is appropriate in these circumstances depends on whether the district court has authority to consider the case. The answer to that question is unclear and will be the subject of my next post.