When the Nanny Won't Leave: NC Law on When Employees are Tenants

In 2014 the story of a California family and a live-in nanny who refused to leave after her employment ended made international news –- including Dr. Phil! According to media accounts, the parties agreed that the nanny would provide childcare and light housekeeping in exchange for room and board. An argument ensued as to whether the nanny was performing her duties as originally agreed, and her employment was terminated. When the nanny retired to her bedroom rather than vacating the property, the situation deteriorated further. Law enforcement refused to intervene, saying the dispute was "a civil matter." Eventually the nanny voluntarily moved out. One media account commented, "Even though the nanny is gone, [one of the family members] says she still casts a long dark shadow in her home, saying, 'As far as I see it, she's, in a way, like a vampire and she hasn't yet drained us.'"

Perhaps the California nanny case attracted attention because people empathized with the family's plight. In a society where fired employees are routinely directed to clean out their desk and then escorted off the premises, the notion of being required to share living quarters for the time it takes to secure a judgment for eviction was horrifying -- and surprising. Like many people, I assumed that the nanny's right to live in the home ended when her employment did. It made me wonder whether the result would be the same under North Carolina law.

The fundamental idea that a landlord-tenant relationship is subject to particular legal rules dates back at least several hundred years, and our law today continues to attach great significance to whether a particular agreement falls within that category. At its heart, the landlord-tenant relationship is about the right to possession. Our starting point is that a landlord-tenant relationship is created when a party legally entitled to possession (the landlord) transfers that right to another (the tenant) in exchange for something of value (usually, but not necessarily, rent). To be valid, their agreement must specify only (1) the duration of the transfer and (2) the specific value the landlord is entitled to receive. In other words, we must know how long the lease will last and what the tenant must pay.

The creation of this relationship transforms the legal rights of both parties. The landlord who enters the property without the tenant's permission may face civil liability and criminal prosecution for trespass. With few exceptions, it is the tenant, not the landlord, who determines who may visit the property. Perhaps most significantly, a residential tenant may be forcibly removed from the premises only through a summary ejectment proceeding.

In general, an agreement as described above is understood by everyone to create a landlord-tenant relationship. Questions arise, though, when a person who occupies the landlord's property is employed by the landlord. Clearly, that person is an employee. The legal issue is

whether that person is also a tenant. In other words, does the employee enjoy the benefits and suffer the burdens that accompany classification as a *tenant,* involved in a *landlord-tenant relationship?*

There are surprisingly few North Carolina appellate cases, and no statutes, addressing this determination, but we do have one thorough treatment of the issue. In Simons v. Lebrun, 219 N.C. 42 (1941), Mr. Lebrun had been hired by the plaintiff to act as manager and custodian of two adjoining rental properties. The agreement between the parties was detailed and addressed Lebrun's rights and responsibilities both as an employee and as an occupant of a portion of one of the properties. For example, in addition to the room he occupied free of rent, Lebrun was allowed to use the kitchen, provided it was not being used by one of the tenants. His responsibilities were typical of those commonly performed by property managers, but also included supervision of the properties to ensure that no improper use of the premises – such as cooking outside of designated areas—occurred. When the rental properties were fully occupied, Lebrun was entitled to share in the profits, and when they were unoccupied, Lebrun was personally responsible for some portion of the utilities. After only two months, the plaintiff gave notice of his desire to terminate "the entire agreement" in thirty days, directing Lebrun to "see to it that everyone, including yourself, have vacated the house" by that date. When Lebrun failed to vacate, plaintiff filed a summary ejectment action based on holding over. Lebrun defended by challenging the court's jurisdiction; because he was not a tenant, he argued, there was no landlord-tenant relationship upon which to ground an action for summary ejectment.

The Court began by noting the "general rule" that "a person who occupies the premises of his employer as part of his compensation is in possession as a servant, and not as a tenant." The rest of the opinion, however, shifts sharply away from this generalization to an examination of cases setting a relatively high standard for its application.

The trend of thought in text–books and in decisions of other jurisdictions is that in order to establish relationship of master and servant, or employer and employee, with respect to occupancy by the servant, the occupancy must be reasonably necessary for the better performance of the particular service, inseparable from it, or required by the master as essential to it.

Following a lengthy review of these authorities, the Court disposed of Lebrun's argument in two short sentences:

Applying these principles to the case in hand, the contract of employment does not require the defendant to occupy a room in either house, nor does it appear to be essential for it is self–evident that he could not actually occupy a room in both houses. It is, therefore, clear that the occupancy by defendant was as tenant of plaintiff.

The test established by Simons has never been applied by the NC appellate courts and so we have no additional information about its application to particular facts. It is interesting that the Court

makes no comment about whether Lebrun's presence on the premises was "reasonably necessary for … better performance," assuming that phrase means something different, and lesser, than "inseparable" or "essential." Also surprising was the Court's almost offhand dismissal of Lebrun's argument in pointing out that he could not occupy rooms in two houses. (Because the premises were adjacent, it seems likely that living in one building provided him with more ready access to the other than he would have enjoyed had he lived across town.) What we are left with, it seems, is a "general rule" that is the opposite of the one stated: absent evidence that occupancy is a condition of employment, employees dwelling in housing furnished by their employers are likely to be categorized as tenants.

There are two things I find particularly interesting about this case. First, the result seemingly differs from those reached by courts in many other states at the time it was decided, despite the Court's claim to be consistent with "the trend of thought." Language from other jurisdictions contain numerous references to whether the occupancy was "independent" of the employment or instead "subsidiary" to it – a test that I believe might have yielded a different result in Simons. Secondly, this case was decided at a time in history when this decision would have been favorable to landlords. Tenants at the time had fewer legal rights than employees in some situations. Today, categorization as a tenant triggers numerous consumer protection rules, including the prohibition against self-help eviction and the application of the implied warranty of habitability.

And what about the California live-in nanny? I believe even the Simons Court would have refused to classify her as a tenant, thereby rendering her a trespasser after her employment was terminated. Interestingly, California law has resolved this issue by statute, establishing a single summary procedure for removing various types of unauthorized occupants, including employees as well as tenants.