

Overview of the North Carolina Eviction Process

North Carolina Landlord Tenant and Eviction Laws are founded on Chapter 42 of the North Carolina General Statutes. The laws, passed by the North Carolina Legislature, spell out the duties and remedies in the Landlord/Tenant relationship. The following information is a basic outline of the eviction process. It is **NOT** a substitute for legal counsel and is provided only to give general information.

Eviction Notice

The first step in the North Carolina Eviction Process is giving the tenant an Eviction Notice. If the landlord is evicting the tenant for non-payment of rent (most common reason), then the notice must demand the rent, and give the tenant 10 days to pay it before a "Summary Ejectment" (Eviction) Complaint is filed. This notice is called a "10-Day Demand for Rent". If the basis for the eviction is a lease violation other than non-payment of rent, the notice is called a "10 Day Demand for Compliance or Possession".

If the tenant is being evicted because they are staying beyond their lease term (called a holdover), and the landlord gave written notice that the lease would expire and they would have to move, then the time period in the notice varies. So for a landlord to evict a tenant for a holdover, the notice period is as follows:

- 7 Days if the tenant paid rent monthly
- 1 Month if the tenant paid rent yearly
- 30 Days for Mobile Home lot rental

Summary Ejectment

After the landlord has given the tenant proper notice and has waited out the notice period, the landlord must go to court and file a "Summary Ejectment" case to evict the tenant if the tenant remains in possession of the property. It is illegal for a landlord to physically evict a tenant without going through court procedures. The landlord must go to the Small Claims court in the county where the property is located. The landlord should ask the court clerk for the Complaint form to file a Summary Ejectment case. There will be a filing fee. Once the landlord files the case and pays the filing fee, the court will issue a Summons.

Sheriff Serves the Summons and Complaint

Once the eviction case is filed, the court will give a Summons and a copy of the Complaint to the County Sheriff. It is the County Sheriff's job to deliver these documents to the tenant. These documents will tell the tenant when and where the eviction hearing will be. The Summons will require the tenant to appear not more than 7 days from the issuance of the Summons. The Sheriff may serve the Summons by mail or in person within 5 days of issuance of the Summons, but not less than 2 days before the scheduled hearing.

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Hearing in Front of Magistrate Judge

The landlord must be at the hearing in order to obtain the eviction. The tenant must attend if he/she wishes to contest the eviction. Each side will have an opportunity to tell their side of the story, and to present documents and witnesses as evidence. At the end of the hearing the Magistrate will make a decision. The Magistrate can order the tenant to move out, award money damages (for back rent or damage to the property), or both.

Judgment for Possession

If the landlord wins the eviction case, the magistrate judge will award the landlord a "Judgment for Possession." This is a court order stating the landlord is entitled to possession of the property and that the tenant has to vacate. The magistrate judge may also award a "money judgment" that says the tenant must pay the landlord a certain amount of money.

10 Days to Appeal

If the tenant loses the case, the tenant will have 10 days to appeal the verdict. If the tenant appeals the decision, he/she must give the landlord notice that they are appealing. An appeal would be heard in District Court.

Writ of Possession

If the tenant does not appeal the decision, or if the tenant loses the appeal, then the tenant has to vacate at the end of 10 days. If the tenant does not vacate, then the landlord can ask the Clerk of the Court to enforce the judgment by issuing a "Writ of Possession." Within 5 days of receipt, the Sheriff must execute the Writ of Possession. Within 7 days of execution of the Writ, the Sheriff will padlock the property. The tenant will then have 7 days to remove all personal property, or else the landlord may dispose of it.