

## Essential Elements and Common Defenses in Summary Ejectment Actions

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### Breach of a lease condition

Plaintiff/LL must prove:

- landlord-tenant relationship
- lease contains a forfeiture clause
- T breached lease condition for which forfeiture is specified
- LL followed procedure set out in lease for declaring a forfeiture and terminating the lease.

Common defenses:

- failure to follow lease procedure<sup>1</sup>
- T has not breached (often due to RRAA)
- waiver<sup>2</sup>

### Failure to pay rent

Plaintiff/LL must prove:

- landlord-tenant relationship;
- terms of the lease related to obligation to pay rent
- LL demanded that tenant pay rent on certain date<sup>3</sup>
- LL waited at least 10 days after demand to file this action
- T has not yet paid the full amount due.

Common defenses:

- T does not owe rent (often due to RRAA)
- lease contains forfeiture clause<sup>4</sup>
- failure to make proper demand
- filing too soon after demand
- tender<sup>5</sup>

### Holding over

Plaintiff/LL must prove:

- landlord-tenant relationship
- terms of lease related to duration and procedure for termination, if any
- LL has followed lease procedure or, if none, given statutory notice, to terminate<sup>6</sup>
- T has not vacated.

Most common defenses:

- waiver
- improper notice

## Criminal activity<sup>7</sup>

Plaintiff/LL must prove one of the following things:

- Criminal activity occurred within the rental unit
- The rental unit was used to further criminal activity
- T, household member, or guest engaged in criminal activity on premises or in immediate vicinity
- T gave permission for a barred person to return to property
- When person barred from unit re-entered unit, T failed to notify LL or LEO

Most common defenses:

- T did not know or have reason to know of first three grounds listed above
- T took all reasonable steps to prevent criminal activity
- Eviction would create serious injustice

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<sup>1</sup> Appellate courts have emphasized that LLs must “strictly comply” with procedural requirements in lease

<sup>2</sup> Unless lease contains provision that LL’s acceptance of partial rent does not waive LL’s right to SE.

<sup>3</sup> This demand for rent must be “clear and unequivocal.” *Snipes v. Snipes*, 55 NC App 408, aff’d 306 NC 373 (1982)

<sup>4</sup> When parties have agreed on grounds and procedure for forfeiture in lease, their contractual provision overrides  
*GS 42-3. Charlotte Office Tower Associates v. Carolina SNS Corp.*, 89 NC App. 697 (1988).

<sup>5</sup> Tender must be in cash, for total rent past-due & costs of court.

<sup>6</sup> *GS 42-14* establishes notice requirements for termination in the absence of a provision in the lease:

Year-to-year lease	30 days
Month-to-month	7 days
Week-to-week	2 days
MH space	60 days

<sup>7</sup> *GS Ch. 42, Art. 7*; see Brannon, *NC Small Claims Law* pp. 176-186