

Essential Elements and Common Defenses in Summary Ejectment Actions

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 procedure¹
- ☐ T has not breached (often due to RRAA)
- ☐ waiver²

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 date³
- ☐ 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 clause⁴
- ☐ failure to make proper demand
- ☐ filing too soon after demand
- ☐ tender⁵

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 terminate⁶
- ☐ T has not vacated.

Most common defenses:

- ☐ waiver
- ☐ improper notice

Criminal activity⁷

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

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

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

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

⁴ 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).

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

⁶ 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

⁷ GS Ch. 42, Art. 7; see Brannon, NC Small Claims Law pp. 176-186