



When can I get a writ of possession after a tenant appeals the eviction order?

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QUESTION: I run a property management company and we just won a summary ejectment case in front of our local magistrate. The tenant gave notice of appeal and I have received some information saying that I cannot get the tenant out until after the appeal is heard before a district court judge. How long will we have to wait and can't I at least get some money for my client while we wait?

ANSWER: Congratulations on representing your landlord client successfully in court! The documents you received in the mail, following the tenant perfecting the appeal, were probably a copy of the order granting summary ejectment, the notice of appeal to district court, and the bond to stay execution on appeal of summary ejectment, which you can view [here](#).

First, unlike the process in small claims court, an appeal to district court is a bit more formal. Generally, only attorneys or individuals appearing on their own behalf can appear in district court to argue the case. The district court will be more formal in receiving evidence by requiring the admission of documents and the formal examination of witnesses. Lastly, some counties do not automatically set the date for the appeal to be heard and an attorney or either the plaintiff or defendant will have to contact the trial court administrator and follow the local rules of court to request and set a date for hearing the appeal. While either party can request that the appeal be heard at the first session of court after the appeal is docketed, it can be quite some time before the court will have time to hear the matter.

In the meantime, if you read the fine print on the bond form you received, you will see that there are three requirements for a tenant to remain in possession pending the appeal. First, all defendants named in the summary ejectment action had to sign the bond and promise to pay rent to the clerk of court as it becomes due. Second, the defendants must pay the undisputed past-due rent to the clerk. Third, if there are more than five days left before the end of the rental period at the time the summary ejectment was ordered, the tenants will have to pay the prorated rent for the remainder of the month to the clerk.

Most importantly, the final paragraph on the bond form requires tenants to make payment of all future rents within the first five business days of each month. While the rent will be paid to the court, an attorney representing the landlord can make application for release of undisputed rents paid to the clerk pursuant to N.C.G.S. Section 42-34(e), found [here](#). If the tenant fails to pay the rent by the end of the fifth business day each month, the landlord may request the clerk to issue the Writ of Possession Real Property form, linked [here](#). If that writ is issued prior to the tenant making the monthly rental payment, the Sheriff can schedule the lockout. While the tenant will still have the right to argue the appeal, the issue of possession will no longer be pending, as the tenant failed to abide by the promises made under the bond.

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