



## **Appellate Decision Upholding Eviction of a Tenant Under an Oral Lease**

In the recent case of [\*Waters v. Pumphrey\*](#), the North Carolina Court of Appeals upheld a district court's decision to grant summary ejectment against a tenant with an oral lease. This article will provide a summary of the facts and law contained in the decision.

### *Facts of the Case*

In 2015, a landlord, Scott Waters, entered into an oral lease to rent a room to a tenant, William Pumphrey, for \$125 per week, payable each Friday. About two years later in the winter of 2017, Mr. Pumphrey complained to Mr. Waters that the property lacked basic amenities, such as heating, smoke detectors, and carbon monoxide detectors. Mr. Pumphrey contacted Charlotte's Code Enforcement Division ("CCED"), and CCED agreed and issued a notice of violation to Mr. Waters in March 2018.

In December 2018, Mr. Waters filed a summary ejectment action against Mr. Pumphrey. Mr. Pumphrey counterclaimed for retaliatory eviction, unfair trade practices, and unfair debt collection. The small claims magistrate entered judgment in Mr. Pumphrey's favor, awarding damages and denying Mr. Waters' claim for possession. Mr. Waters appealed that decision to the district court, and later took a voluntary dismissal, terminating the case.

In the summer of 2019, Mr. Waters terminated the lease and gave two weeks notice by certified mail to Mr. Pumphrey. Despite the notice, Mr. Pumphrey refused to vacate, and Mr. Waters filed a second action for summary ejectment in small claims court. The magistrate granted Mr. Waters' claims, and Mr. Pumphrey appealed to district court.

In district court, Mr. Waters asked the court to grant summary judgment against Mr. Pumphrey, contending that proper notice to quit had been provided pursuant to N.C.G.S. § 42-14. Mr. Pumphrey again claimed that Mr. Waters was retaliating against him for CCED's actions in 2018. The district court disagreed with Mr. Pumphrey given that the CCED action had taken place 12 months prior to the second action for summary ejectment, and it granted summary judgment to Mr. Waters for possession and unpaid rent.

### *Decision of the Court of Appeals*

The Court first noted that the original oral lease created a periodic tenancy, terminable by either party upon proper notice. The periodic tenancy in this case was week-to-week, and no other term of possession was agreed upon. Under N.C.G.S. § 42-14, Mr. Waters was only required to give

two days notice to quit. Since Mr. Waters had given two weeks notice, the notice was sufficient under the statute.

After the periodic tenancy was terminated, Mr. Pumphrey became a holdover tenant subject to Mr. Waters' right to seek summary ejectment. The only question remaining for the Court was therefore whether summary judgment was appropriate given Mr. Pumphrey's second retaliatory eviction claim.

The retaliatory eviction statute, N.C.G.S. § 42-37.1, does provide a list of protections for a tenant. However, the Court noted that this same statute contains a list of exceptions to those protections. One of the exceptions states that "[a] landlord may prevail in an action for summary ejectment if: In a case of a tenancy for a definite period of time where the tenant has no option to renew the lease, the tenant holds over after the expiration of the term." N.C.G.S. § 42-37.1(c)(2). The Court held that this exception controls over Mr. Pumphrey's defense of retaliatory eviction, and concluded that summary ejectment was properly granted by the district court.

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