

Navigating Summary Ejectment Case Involving Public and Subsidized Housing

Magistrates from around the state report to me that summary ejectment actions involving public housing authorities seem to be on the rise. In North Carolina, summary ejectment is the judicial process by which a landlord can seek an order of the court granting the landlord possession of a rental property. The two-step process begins with a judgment for possession rendered by a judicial official, often a magistrate in small claims court, and is completed by the issuance of a writ of possession that authorizes the sheriff to remove tenants who fail to vacate the rental property or who fail to stay the issuance of a writ of execution. When the landlord is a public housing authority or a participant in a housing voucher program, both state and federal housing laws are involved which adds to the level of complexity already present in an action for summary ejectment. In fact, these types of cases are specifically referred to as “complex” in [GS 7A-222\(b\)](#), the statutory provision that authorizes magistrates to reserve judgment in more complex summary ejectment actions. Added to the legal complexity are the high stakes for renters with low incomes who may be ineligible for participation in subsidized housing for years following an eviction.

How Did We Get Here? A Very Brief History of Public Housing

In the 1930s, the lack of sanitary and safe housing, especially for people with low incomes, became a growing concern at both the national and state levels. The enactment of the United States Housing Act of 1937 established a public housing program through which the federal government contracts with public housing agencies to provide financial assistance to states to address the lack of affordable housing for families with low incomes, the elderly, and the disabled. ([42 U.S.C. 1437f](#)). [GS Ch. 157](#), “Housing Authorities and Projects,” is the state enabling legislation that governs the creation of public housing authorities ([GS 157-4](#)) and their power to operate housing projects ([GS 157-9](#)). Public housing authorities in the state administer federal housing assistance that is received from the Department of Housing and Urban Development (HUD).

Where Are We Now? Numbers and Context

In 2023, 229,706 North Carolinians received assistance from one of three categories of HUD programs: public housing, the Housing Choice Voucher (Section 8 HCV) program, or privately-owned, project-based Section 8 housing. (HUD User Data, Picture of Subsidized Households (Jul. 10, 2024) huduser.gov/portal/datasets/assthsg.html#year2009-2023.) Additionally, thousands of low-income tenants in North Carolina reside in properties that benefit from the [Low-Income Housing Tax Credit](#), a program created by the Tax Reform Act of 1986 that gives state housing agencies the authority to issue tax credits to encourage private developers to build affordable housing. To evaluate a summary ejectment claim involving federally subsidized housing, the judicial official must first determine which category of public housing is involved. This post will explore summary ejectment actions from traditional public housing and the Section 8 HCV program

(commonly referred to as “Section 8 housing”), two of the categories that judicial officials are likely to encounter. Below is a summary of each category:

1. Public Housing-units owned and operated by a local public housing authority (PHA). The PHA is the landlord, and the lease is between the PHA and the tenant(s). HUD provides an operating subsidy to the PHA to supplement the rental income from the tenant(s).
2. Housing Choice Voucher Program (Tenant-Based Section 8 Housing)-vouchers through which HUD provides rental subsidies to the PHA for low-income tenants to find and lease homes in the private market. The owner of the property is the landlord, and the lease is between the property owner and the tenant(s). The tenant pays the Total Tenant Payment (a portion of the approved rent), and the balance is subsidized by HUD funds administered by the PHA. The private landlord enters into a contract with the PHA to maintain certain Housing Quality Standards (HQS) and abide by program requirements in exchange for a Housing Assistance Payment (HAP). If a termination of assistance occurs, the tenant can remain in the property but must pay the full contract rent or market rent.

More in-depth descriptions of both programs can be found in [HUD Housing Programs: Tenants' Rights](#), National Housing Law Project, Fifth Ed. (2018) or by visiting the HUD website for [Public and Indian Housing](#).

Summary Ejectment for Breach of a Lease Condition

In order to evict a tenant in North Carolina for breaching a lease condition, a landlord must prove (1) that the lease contains a forfeiture clause allowing the landlord to terminate the lease for breach of certain conditions, (2) that the tenant breached a condition for which forfeiture is specified, and (3) that the landlord followed the procedure set out in the lease for declaring a forfeiture and terminating the tenant's right to possession. All PHAs and private landlords who participate in the Section 8 voucher program are required to have written leases with their tenants. ([24 CFR §966.4](#) and [§982.308](#)) An action for summary ejectment brought by one of these landlords will most likely be based on the tenant's breach of a lease condition for which the landlord's right of reentry is specified.

For example, both the PHA lease and the Section 8 Addendum to the lease contain provisions that allow for termination of the lease for violent criminal activity or criminal activity that threatens the health, safety, or the right of others' peaceful enjoyment of the property which is committed by a tenant (or a tenant's household member or guest). If the tenant breaches this provision, the landlord has reserved the right to declare a forfeiture and retake possession. If the tenant fails to vacate after receiving notice of the termination, the landlord must complete the judicial process of summary ejectment to lawfully regain possession.

In the instance of criminal activity, another option is available to remove the tenant. The PHA or the private landlord can file for summary ejectment based on the ground of criminal activity of the

tenant, the tenant's household member, or the tenant's guest pursuant to [GS Ch. 42, Art. 7](#), "Expedited Eviction of Drug Traffickers and Other Criminals." This ground requires proof of different elements than when the PHA or landlord bases the action for summary ejection on breach of a lease condition for which the right of reentry is specified. The ground of criminal activity also allows the tenant to raise an "innocent tenant" defense which would not be available in a case based solely on breach of a lease condition for which reentry is specified. This distinction between the two grounds is important to remember because it impacts what the PHA or the landlord will have to prove to the judicial official to prevail and what defenses may be available to the tenant.

It is important to note that the [Violence Against Women Act](#) (VAWA), 34 U.S.C.12491, *et. seq.*, protects victims of domestic violence from eviction based on the criminal activity of the perpetrator that directly relates to domestic violence, which may require bifurcating the lease to remove the perpetrator and allowing a reasonable time for the victim to establish eligibility for housing assistance or find alternative housing. ([24 CFR § 5.2009](#).) In addition to domestic violence, these protections include dating violence, sexual assault, or stalking. (*Id.*) If the tenant in a summary ejection action raises domestic violence (or other protected, covered crimes) as a defense, the judicial official should determine whether the grounds for summary ejection are based solely on those protected crimes against the tenant. Summary ejection should be denied if the basis for the termination is criminal activity directly related to one of those crimes.

The elements for summary ejection for breach of a lease condition from public housing or Section 8 housing are the same as in conventional, private landlord situations. There are a few key differences, however, that arise from the lease terms that are required in public housing leases (but not all of which are required by law in private landlord-tenant agreements, even those used in Section 8 leases). For example, these terms provide for grievance procedures that may be available to public housing tenants upon receipt of the notice to terminate a public housing lease. PHAs are required to include the following provisions in their leases:

- Term of 12 months that automatically renews for twelve months if tenants remain eligible for subsidized housing.
- Security deposit limited to one-month's rent or a reasonable fixed amount (contrast with [GS 42-51\(b\)](#) which allows for a security deposit of up to two months' rent for terms greater than month-to-month).
- Smoke free rules prohibiting smoking in living units and interior areas and designating outdoor smoking areas ([24 CFR §965.653](#)).
- Grievance procedures either stated in the lease or incorporated by reference outlining the process for tenants to bring grievances and have them heard.
- Annual and interim re-examination of rent and family composition.
- Limitation on a tenant's legal profit-making activities conducted in the unit, unless they are incidental to the primary use of the unit as a residence and requiring the PHA's consent. Examples of potentially approved activities include online sales, sales of crafts or handmade goods, or consulting, such as tutoring or freelance writing.

- Allowance of common household pets in general occupancy developments, subject to reasonable requirements for pet ownership and possibly a pet deposit. (These policies and deposits are not applicable to assistance animals, and the rules for pet policies vary for developments designated for the elderly or disabled. For more about assistance animals and summary ejection, see my blog post: "[Issues with Assistance Animals in Summary Ejection.](#)")

Other provisions included by the PHA are subject to a reasonableness test in that they must be fair and practical, properly adopted, made available to tenants, and included or incorporated by reference in the lease. Tenants are entitled to 30 days' notice and the right to comment on any changes or new rules. For example, one North Carolina PHA's lease includes 30 "House Rules" that tenants are expected to follow, and which would be subject to a reasonableness test if challenged.

Private landlords participating in the Section 8 program are not required to have all of these provisions in their leases. However, they are required to have written leases with their tenants and to attach the [Tenancy Addendum Section 8 Tenant-Based Assistance Housing Choice Voucher Program](#) (Section 8 Addendum) to the lease. The Section 8 Addendum does include some of the above provisions, such as the restriction on the use of the unit as primarily residential rather than for profit-making activities.

More information on HUD's lease requirements for families in the Public Housing program is located in the "Lease Requirements" chapter of the [Public Housing Occupancy Guidebook](#) and is specified in the federal regulations at [24 CFR Part 966 Subpart A: Dwelling Leases, Procedures, and Requirements](#). More information about the [Housing Choice Voucher Program](#) can be found on the HUD website.

An Alleged Breach of a Public Housing Lease Occurred; Now What?

When a tenant in a public housing development receives a notice to terminate the tenancy for violation of the lease, the grievance procedure stated in the lease (or incorporated by reference) provides tenants with procedural safeguards to protect their right to due process. The basic components of procedural due process include notice from the PHA to the tenant of the specific grounds for termination of the tenancy, an opportunity to be heard on the alleged lease violations, the right to be represented by an attorney, and a decision on the merits by an impartial decision-maker.

Notice of Adverse Action

The PHA is obligated to notify tenants, in writing, of proposed adverse actions, including proposed lease terminations. The notice must adequately identify the violations of the lease that are the grounds for the termination and inform the tenant of the right to request a grievance hearing before

an impartial hearing officer selected by the PHA (not the person who made the decision under review or their subordinate) and held according to the PHA's grievance procedures. Pursuant to [24 CFR 966.4](#), the notice must:

- State the specific grounds for termination and facts giving rise to the violation.
- Notify the tenant of the right to respond and to examine documents.
- Notify the tenant whether they have the right to request a grievance hearing. If the tenant is not entitled to a grievance hearing under the PHA's procedures, the notice must state that, specify the judicial eviction procedure to be used by the PHA, and state whether the eviction is for criminal activity or drug-related criminal activity.

PHAs are limited to certain [grounds for termination](#). A tenancy can be terminated for serious or repeated violations of materials terms, such as the failure to make rental payments or repeatedly making late payments. If the tenant's income has changed and is over the income limits for the program, the PHA can terminate the lease. The PHA can terminate the lease for other "good cause," such as discovery of facts that make the tenant ineligible for subsidized housing or fraud on the tenant's application or re-examination of income. The tenant's failure to accept a lease revision when the PHA has given the tenant 60 calendar days' written notice before the revision takes effect can result in termination by the PHA. Criminal activity and required lifetime participation in sex offender registration can also be grounds for termination.

The [amount of notice](#) to the tenant of the termination varies depending on the type of violation and will be specified in the lease. The tenant's failure to pay rent requires the PHA to give the tenant 14 days' notice. (It is important to note that HUD is currently proposing a [rule](#) that would provide residents of public housing 30 days' notice for nonpayment of rent, but it is not yet in effect.) For violations that involve threats to the health or safety of residents, PHA employees, or persons residing in the immediate vicinity of the premises, the drug-related or violent criminal activity of any member of the household, or the felony conviction of any household member, the PHA must give reasonable notice not to exceed 30 days. For all other violations of the lease, e.g., failure to comply with reexamination requirements, the PHA must give the tenant 30 days' notice.

The tenant can present a grievance, either orally or in writing, to the PHA in response to the notice of termination. After the tenant presents the grievance to the PHA, the PHA must follow any required grievance procedures before filing for summary ejectment. The tenant waives the right to the grievance procedures if not requested before the expiration of the applicable termination notice period, and the PHA may choose to go forward with an action for summary ejectment if the tenant fails to vacate. The tenant does not waive the right to contest the PHA's action under state or federal law in a judicial proceeding, which in North Carolina is the summary ejectment action. ([HUD Housing Programs: Tenants' Rights](#), National Housing Law Project, Fifth Ed. (2018).)

Private landlords who participate in the Section 8 HCV program do not have the same notice requirements as PHAs. The Section 8 Addendum to the landlord's lease only requires the landlord

to give the tenant written notice of the grounds “at or before the beginning of a court action to evict the tenant.” A copy of such notice must also be provided to the PHA. The Addendum further defines “eviction notice” as a “notice to vacate, or a complaint...used to begin an eviction action” under state law. However, the landlord may choose to put notice requirements in the lease that exceed the federal law’s minimum requirements. To know if the landlord has complied with any notice requirements in the lease, the judicial official must carefully review the lease.

The Grievance Procedure

Once the tenant originates a grievance either orally or in writing, the grievance procedure begins with an attempt to resolve the issue with an informal settlement. If successful, the informal settlement allows the PHA and tenant to reach an agreement without court intervention which saves the PHA court costs and saves the tenant from a summary ejectment filing on their record. If the informal settlement requires the tenant to vacate, and the tenant fails to vacate, the grievance procedure continues.

Whether the PHA is required to provide the tenant with a hearing on termination depends on whether HUD has determined that the state’s judicial process for eviction satisfies the elements of procedural due process set out above. HUD has issued a due process determination for North Carolina’s summary ejectment procedures as specified at [GS Ch. 42, Art. 3. \(62 Fed. Reg. 45434 \(Aug. 27, 1997\).\)](#) The PHA may still choose to provide the tenant with a grievance hearing prior to filing for summary ejectment. If the grievance procedures in the lease require such a hearing, the PHA will have to complete the hearing process before applying to the court for summary ejectment.

Since HUD has made a due process determination for North Carolina, PHAs in the state may exclude the following three types of terminations from their grievance procedures:

1. Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
2. Any violent or drug-related criminal activity on or off the premises; and
3. Any criminal activity that resulted in felony conviction of a household member.

The protections in VAWA (as discussed above) for victims of domestic violence and other protected crimes would still apply to these evictions for criminal activity.

More information on HUD’s grievance procedure requirements for the Public Housing program is located in the “Grievance Procedure” chapter of the [Public Housing Occupancy Guidebook](#) and is specified in [24 CFR Part 966 Subpart B: Grievance Procedures and Requirements](#).

Private landlords who participate in the Section 8 HCV program are not required to adopt the grievance procedures described above. The Section 8 Addendum does specify the permissible grounds for termination during the initial term of the lease. It also includes an explicit requirement of

eviction by court action which is an implicit protection in every residential lease in North Carolina. Unlike PHAs, landlords who participate in the Section 8 HCV program do not have to automatically renew a lease in the program and may choose to terminate the lease at the end of the initial term, as long the termination is not a result of illegal discrimination.

Practical Considerations

Any action for summary ejectment begins with an examination of the lease. The lease determines who the parties are, governs the landlord-tenant relationship, and sets out the procedures the landlord must follow before filing for summary ejectment based on a breach of the lease condition. It is especially important in cases involving PHAs and the Section 8 HCV program that the judicial official read the lease and hold the landlord and the tenant to the terms of the lease. Since different housing programs have different requirements, knowing which housing program is involved is key to the analysis of the summary ejectment action. This blog is just the tip of the public housing iceberg, so as GS 7A-222(b) suggests, judicial officials should treat these cases as complex and proceed with caution.