

Summary Ejectment: Public Housing & Legal Update

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1

Agenda



2




**“HUD’s mission is to
create strong,
sustainable, inclusive
communities and quality
affordable homes for all.”**

U.S. Department of Housing and
Urban Development Website


3

3


Brief History of Public Housing




1930's
Growing concerns over lack of sanitary & safe housing



1937
United States Housing Act established public housing program



1965
HUD created to tackle urban problems in a coordinated manner



2023
229,706 North Carolinians assisted by HUD programs

4

4

Categories of Public & Subsidized Housing



5

HUD Programs

Public Housing	Housing Choice Voucher Program	Project-Based Vouchers	Low-income Housing Tax Credit
Owned and operated by local Public Housing Authorities (PHAs)	Vouchers for private market rentals (Section 8 HCV)	PHAs enter long-term contracts with private landlords to assign a portion of HCV funds to units in a project (Section 8 PBV)	Financial incentive for investors/developers to construct and/or rehabilitate affordable rental housing (LITC)

6

6



Public Housing

Key Components

- Limited to individuals and families with low incomes
- Managed by local housing agencies
- PHA=Landlord

7

7



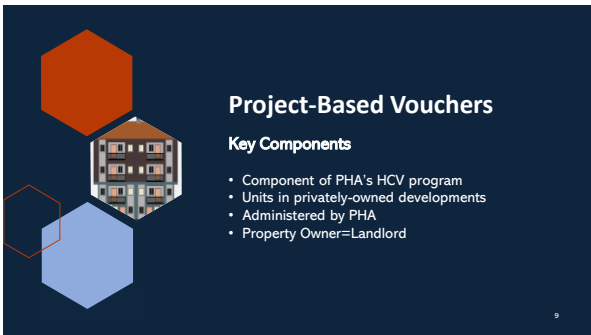
Housing Choice Voucher Program

Key Components

- Assistance for very low-income families, the elderly, and the disabled to afford housing in the private market
- Administered by the PHA
- Minimum standards of health and safety
- Property Owner=Landlord

8

8



Project-Based Vouchers

Key Components

- Component of PHA's HCV program
- Units in privately-owned developments
- Administered by PHA
- Property Owner=Landlord

9

9



Low-Income Housing Tax Credits

Key Components

- Incentives for development of affordable rental housing through federal tax credits
- Administered by the IRS through state housing finance agencies
- Reduces investor's federal income tax liability over a 10-year period=lower rents

10

10

Summary Ejectment



11

11

Breach of a Lease Condition for which Reentry is Specified



12

12

**Public Housing
Required
Lease
Conditions**

- 12-Month Term
- Security Deposit Limit
- Smoke-Free Rules
- Grievance Procedures
- Re-examination of Rent
- Profit-Making Limit
- Pets
- Criminal Activity

13

Reasonableness Test



14

Tenant Obligations

- Residential Use**
 - No subletting, assigning, boarders
 - No commercial uses beyond legal profit-making activities in accordance with PHA policy
- Decent, Safe, and Sanitary Condition**
 - Abide by necessary and reasonable regulations
 - Abide by state and local building and housing codes
 - Keep unit in safe and clean condition
 - Dispose of trash in sanitary and safe manner
 - Use facilities and appliances in reasonable manner
 - Not destroy, deface, or damage unit or project
 - Pay for repairs beyond normal wear and tear

15


Tenant Obligations

 **Peaceful Enjoyment**


- Act in a manner that will not disturb other residents' peaceful enjoyment and conducive to maintaining a decent, safe and sanitary condition
- Ensure no tenant, household member or guest engages in:
 - Any criminal activity that threatens health, safety, or right to peaceful enjoyment
 - Any drug-related criminal activity on or off the premises
 - Any smoking in restricted areas
- Ensure that no household member engages in abuse of alcohol

16

Notice

 **Notice of Adverse Action**

- Specific grounds for termination and facts giving rise to violation
- Tenant's right to respond and examine documents
- Right to grievance hearing or not
- Amount of notice

 **Termination Grounds**

- Serious or repeated violations of material terms
- Income exceeds program limits
- Failure to accept lease revision
- Criminal activity and sex offender registration
- Other "good cause"

17

Grievance Procedures

 **Grievance Process**

- Presentation of grievance to PHA
- Informal settlement
- Grievance hearing/Action for Summary Ejection
- Excludable types of terminations
 1. Any criminal activity
 2. Any violent or drug-related criminal activity
 3. Any criminal activity resulting in felony conviction

18

Don't Forget VAWA

- Violence Against Women Act, 34 U.S.C.12491, *et. seq.*
- Protects victims of domestic violence from eviction based on criminal activity of the perpetrator
 - Lease bifurcation possible to remove perpetrator
 - Includes domestic violence, dating violence, sexual assault, or stalking
 - Defense to summary ejection based solely on those protected crimes



22

Legal Update & Practical Considerations



23

Legal Update-Legislation




GS 42-14.1
Preemption of local regulations.

GS 42-46
Authorized fees, costs, and expenses.

GS 7A-224
Rendition and entry of judgment.

GS 7A-228
New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal.

24



Changes to GS Ch. 42


GS 42-14.1. Preemption of local regulations.

- Prohibits county or city from enacting law that prohibits owner, etc. from refusing to lease to a person whose income includes federal assistance.
- Adds exception for owners, etc. who receive funding/incentives from county or city.

GS 42-26. Authorized fees, costs, and expenses.

- Adds "calends" to days when calculating late payment. Day 1=day after rent is due
- Adds that landlord can recover attorney's fees only if they prevail.
- Adds that landlord is entitled to attorney's fees on appeal to district court if appeal was in bad faith.

25



Changes to GS 7A, Art. 19

GS 7A-224. Rendition and entry of judgment.

- Adds language to include rendering judgments electronically.

GS 7A-228. New trial before the magistrate;

- Replaces "entry of judgment" with "a judgment is rendered."

26

Legal Update-Case Law

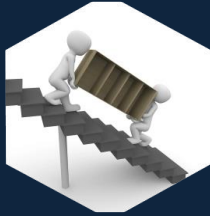


- Notice to Terminate
- Tenants' Rights
- NC Debt Collection Act
- Perol Evidence Rule

27

Notice to Terminate in Summary Ejectment

- ★ Notice to terminate must be in strict compliance with the lease as to both time and contents.
 - ★ For public housing and federally subsidized housing, effective notice must comply with the lease as well as federal regulations, including the Violence Against Women Act.
- *LIC Assoc. I, LP v. Brown*, ___ N.C. App. ___, 904 S.E.2d 822 (2024).
 - *Rosewood Estates I, LP v. Drummond*, 290 N.C. App. 366 (2023) (unpublished).
 - *Oxford Housing Authority v. Glenn*, 290 N.C. App. 243 (2023) (unpublished).



28

Tenants' Rights Statutes

- ★ *Waters v. Pumphrey*, 286 N.C. App. 151 (2022) (disc. rev. denied). Tenant's status as holdover tenant precluded success on assertion of retaliatory eviction.
- ★ *Terry v. Public Service Co. of NC, Inc.*, 385 N.C. 797 (2024). The Residential Rental Agreements Act does not create a duty for the landlord to inspect property. Landlord did not violate the Act by failing to make repairs when landlord did not have actual knowledge or notice of the problem.
- ★ *Myers v. Broome-Edwards*, ___ N.C. App. ___, 903 S.E.2d 381 (2024). A landlord's trespass upon leased premises to perform self-help eviction violated landlord-tenant statute and public policy and constituted an unfair and deceptive practice under the consumer protection statute. The owner and the agent who carried out the self-help eviction are both liable under the Ejectment of Residential Tenants Act.



29

NC Debt Collection Act

- ★ *Onnipauper LLC v. Dunston*, 290 N.C. App. 486 (2023) (disc. rev. denied).
- NCDCA claims require:
1. a consumer
 2. that owes a debt
 3. to a debt collector
 4. the debt collector to commit an unfair act
 5. that affects commerce and
 6. that proximately injures the consumer.



For purposes of the NCDCA, a landlord is a debt collector, and a tenant is a consumer. The landlord did not violate the NCDCA by charging the tenant for access to the well at a rented house.

30

Parol Evidence Rule

★ *Adventure Trail of Cherokee, Inc. v. Owens*, 287 N.C. App. 217 (2022) (unpublished).

Where the language of a contract is plain and unambiguous, the court must construe the contract as written, and the parol evidence rule prohibits the admission of evidence to vary, add to, or contradict the written terms.

Where the language is susceptible to multiple meanings and there is no ordinary meaning, parol evidence can be used to discern the meaning of an ambiguous term.

In this case, the phrase "survivor of the Lessee" was explained using parol evidence because there was no ordinary meaning available.



31

Practice Tips



Examine the lease.

Determine the type of housing program.

Determine compliance with notice and grievance procedures.

Consider any possible defenses raised by the tenant.

Reserve judgment, if necessary.

32

Conclusion



HUD History

Categories

Summary Ejectment

Legal Update & Practical Considerations

33



34
