

845.05 SUMMARY EJECTMENT - FAILURE TO PAY RENT.

NOTE WELL: Use this instruction where the parties did not enter into a lease specifically providing for automatic forfeiture and the landlord's right of reentry if the tenant fails to pay rent. If there is such a lease provision, use N.C.P.I.-Civil 845.00. Under N.C. Gen. Stat. § 42-33, the tenant may tender the full amount of rent due plus court costs at any time before judgment is entered. If this occurs, the suit must be dismissed. If there is an issue of whether defendant tendered the rent, use N.C.P.I.-Civil 845.04 as the first issue. This instruction would follow, to be answered if the jury found that there was no tender.

This issue reads:

"Is the plaintiff entitled to possession of the leased premises?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant took possession of the premises under a lease with the plaintiff.¹ A lease is a contract for the exclusive possession of a premises. A lease may be written or verbal.²

Second, that the parties agreed as part of the lease that the defendant was to pay (state amount of periodic rent and date payment is due).

Third, that the defendant failed to pay the full amount of rent on the date it was due.

And fourth, that after the defendant failed to pay the rent as agreed, the plaintiff demanded payment from the defendant at least ten days before filing this lawsuit.³ This lawsuit was filed on (*state date of*

filing). A demand may be made verbally or in writing and must be a clear, unequivocal statement by the plaintiff (or *his* agent) demanding that the defendant pay all past due rent.⁴

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff is entitled to possession of the leased premises, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. Summary ejectment is also available when the tenant entered into the lease with someone under whom the landlord claims privity. *McCombs v. Wallace*, 66 N.C. 481 (1872). Modify this instruction accordingly if that situation occurs.

Plaintiff and defendant must have a landlord-tenant relationship. *McLaurin v. McIntrye*, 167 N.C. 350, 352, 83 S.E. 627, 628 (1914); *Hayes v. Turner*, 98 N.C. App. 451, 454, 391 S.E.2d 513, 515 (1990); *Jones v. Swain*, 89 N.C. App. 663, 668, 367 S.E.2d 136, 138-39 (1988).

2. A lease that is for longer than three years from the date of making must be in writing.

3. N.C. Gen. Stat. § 42-3.

4. *Snipes v. Snipes*, 55 N.C. App. 498, 504, 286 S.E.2d 591, 595, *aff'd*, 306 N.C. 373, 293 S.E.2d 187 (1982).