

N.C.P.I.-Civil. 845.10
SUMMARY EJECTMENT - HOLDING OVER AFTER THE END OF THE LEASE
PERIOD.
GENERAL CIVIL VOLUME
FEBRUARY 1993

845.10 SUMMARY EJECTMENT - HOLDING OVER AFTER THE END OF THE
LEASE PERIOD.

NOTE WELL: Use this instruction when the term of the lease has ended but the tenant is still in possession of the premises. If the tenant has breached the lease and is being sued before the end of the lease term, use either N.C.P.I.-Civil 845.00 or 845.05.

This issue reads:

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

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

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

Second, that the lease

[by its terms ended on (*state date*).]

[was terminated³ by the landlord effective (*state date*). To terminate the lease effective (*state date*), the landlord must have given the tenant

(two days prior notice before the end of the week because the tenant's tenancy is from week to week)

(seven days prior notice before the end of the month because the tenant's tenancy is from month to month)

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(thirty days prior notice before the end of the year because the tenant's tenancy is from year to year)

(thirty days prior notice before the end of the [week] [month] [year] because the premises rented by the tenant is a mobile home space)

(*state prior notice required by the lease*)].

The notice given by the landlord need not be in any particular form, and may be written or verbal.⁴ It must be sufficient to put the tenant on notice that the lease will terminate at the end of the period and that the tenant must vacate at that time.^{5]}

And third, that the tenant did not vacate the premises after (*state date*).⁶

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

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 tenant.

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, 482 (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).

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

3. See N.C. Gen. Stat. § 42-14.

4. If the lease agreement specifies that notice be given in a specific form, modify the instruction accordingly.

5. A notice may be in the alternative to meet condition or to quit. *Cla-Mar Management v. Harris*, 76 N.C. App. 300, 304, 332 S.E.2d 495, 497 (1985).

6. A tender of past due rent and costs does not affect the landlord's right to eject the tenant. *Charlotte Office Tower Assocs. v. Carolina SNS Corp.*, 89 N.C. App. 697, 366 S.E.2d 905 (1988).

If the tenant has offered evidence of an attempt to pay the landlord, you may wish to instruct the jury that "Tenant's tender or offer to pay the rent due does not stop the landlord from pursuing this action."