

EVICTED IN NORTH CAROLINA



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Eviction in North Carolina

Filing an eviction is never a fun process. However, it's a reality many property owners face, so it's important to know how to do it right. Landlords must follow the law when serving and executing evictions, also known as summary ejectment. We're here to help you, the landlord or property owner, understand the rules and avoid overlooking any details.

You may decide to consult an attorney and work with them to file. If you decide to file on your own, this is known as "pro se," a self-represented party. You will be solely responsible for all the information you submit being up to date and correct.

The Eviction Process

First, you must provide the tenant with a 10-day notice to evict. Make sure one or more of these notices has a time/date stamp — send it in the mail, as an email or text, and post it on the door. If you don't know how to word it, you can find templates and examples online.

Next, head to the courthouse. Fill out the Complaint of Summary Ejectment form. You, the landlord, are the plaintiff, and your tenant is the defendant in this case. You also find this form online.

You will also fill out a Magistrate Summons form, which signals the court that a legal procedure has begun. Be prepared to fill out four copies of this form and the Complaint form. You may want to print and fill them out ahead of time.

Another part of the process is to complete a Servicemembers Civil Relief Act report. You're required to have proof of your tenant being in the military, as they have certain protections. Even if they are not active duty servicemembers or you don't know, fill out this form.

Remember to have your LLC and EIN information handy when filing this paperwork, and bring a stamped envelope.

For more details on the Complaint of Summary Ejectment form, read on. We'll go over the reasons you need to choose from to file an eviction in North Carolina.

Reasons to Evict

The following information does not apply to federally-subsidized housing, armed service members and their dependents, and domestic violence victims.

The reasons to evict a tenant in North Carolina are: **nonpayment of rent, holdover, breach of lease and criminal action**. Select the appropriate reason on the complaint in the summary ejectment form.

1. Nonpayment of Rent

You can select this reason if the tenant did not pay rent on the specified due date, you sent them a demand for that payment and then waited the 10-day grace period.

This option applies to leases without a “default” or “re-entry” clause. A default or re-entry clause outlines what happens if the tenant breaks the lease terms by not paying the rent on time. It can also apply to a situation in which the tenant owns a mobile home but is renting the lot.

2. Holdover

This applies when the lease has ended and the tenant is still occupying the property, thus “holding over.”

There are different types of leases, so look at the correct end date of the type of lease you have with the tenant. The lease can be verbal or written. A **week-to-week** lease ends every week the day before rent is due. A **month-to-month** lease ends every month the day before rent is due. A lease **six months or longer** ends when the lease is over.

For a week-to-week lease, you must give the tenant notice at least two days before the lease ends. For a month-to-month lease, you must give the tenant notice at least seven days before the rent is due. For a year-to-year lease, the landlord must give notice at least 30 days before the lease ends.

For mobile homes, the situation is a little different. When the tenant owns the mobile home and is renting the mobile home space, the landlord must give notice at least 60 days before the end of a term. In this instance, the eviction is no-fault.

3. Breach of Lease

Select this option if your tenant broke the conditions of the lease in any way. They must have a written lease with a “re-entry” or “default” clause. This is the part of the lease that describes what happens if the tenant breaks the rules of the lease. Examples include unauthorized persons, pets, and drug trafficking or other criminal activity.

Next Steps

After filing your paperwork, wait for the courts to help you proceed. Do not change locks or try to get the tenant out on your own. Even if the tenant is at fault for breaching the lease, they have rights that you need to respect lawfully. This may seem time-consuming or frustrating, but it's important to stay on the good side of the courts.

Your tenant may leave willingly after being served a court summons and eviction notice. However, they may stay and fight the eviction in court. If the tenant chooses the latter option, they must appear at the court hearing.

The Eviction Hearing

At the eviction hearing, you will present your case first to the judge or magistrate. Even though they may be in the right, many landlords lose eviction hearings because they don't have proper documentation. That's why it's so important to have written agreements at all times.

Bring the lease or rental agreement and the notice that was served on the tenant, as well as any other correspondence pertaining to the eviction.

The tenant will then argue their case and present any defenses to the eviction. They may claim improper notice, "self-help" methods, or retaliatory eviction. The tenant may bring evidence to support their case, such as photos of the rental property, rent receipts, witnesses, and written communications.

The judge will then consider the evidence and determine whether you, the landlord, are entitled to possession of the premises. They will likely make a decision on the spot. If you win the eviction hearing, a judgment will be entered in your favor.

After the Hearing

Your tenant will have ten days to appeal the decision after the judgment in your favor. The court may order your tenant to make bond payments to the court while an appeal is processing. If the tenant fails to make those payments, you can cancel the appeal. If the tenant chooses not to appeal or loses the appeal, the tenant must vacate your property.

After winning the hearing, wait ten days after the initial judgement and file for a “writ of possession,” which allows you to remove the tenant from the premises. If you have won an appeal, you may file for a writ of possession immediately. If the tenant remains on the property, call the county sheriff to accompany you to padlock the premises within seven days of receiving the writ of possession.

If the hearing did not end in your favor, you also have ten days to appeal. If the tenant wins the eviction hearing (or the appeal, if one is sought), the eviction is stayed and the tenant will be able to remain on the premises.

Remember!

Keep documentation of all agreements with your tenant, and you'll save yourself a headache in the long run. Even if you like the tenant and they seem great, you never can tell.

If you're considering filing an eviction in Western North Carolina, we can help! Give us a call or email, or reach out on social media. We've got experience and insight into the process and can refer you to helpful people and resources. It's important to get all the information and not go into this process unprepared.

Contact Asheville Cash Buyers at 828-214-7320 or email info@ashevillecashbuyers.com.