EVICTION FAQ

(1) Can a landlord legally evict me without going through the courts?

No. In North Carolina, landlords must go through the courts to legally evict a tenant. A landlord may not force a tenant to move out by, for instance, padlocking the door, changing the door locks, turning off utilities, taking tenants' personal property, or removing the door. To start an eviction, landlords must file a document called a "complaint in summary ejectment" with the court.

The landlord must have the tenant "served" with the complaint and summary ejectment papers. The landlord must then prove in court that s/he has grounds to evict a tenant. After hearing from both sides, the magistrate judge (the judge in small claims court) will make a decision (called a "judgment"). If the judge enters a judgment for eviction, a tenant has 10 days to appeal the decision. The landlord may also appeal if the tenant wins. The judgment does not become "final" until this 10-day period has ended.

(2) What is the difference between notices I might get from my landlord—such as notices to pay past-due rent—and court papers (such as a summons and complaint)?

Before a landlord files an eviction action with the court, a tenant may receive a "notice" from the landlord. This notice may warn the tenant that eviction will be pursued if the tenant does not move out, pay rent, or stop behavior the landlord alleges violates the lease terms.

Notices such as these are different from the court papers that must be provided to tenants if the landlord files for eviction in court. When a landlord files for the eviction of a tenant, s/he must serve or have the tenant served with the "complaint and summary ejectment" and summons. The complaint and summons must state the grounds for the eviction and the date and time of the court hearing.

It is important to understand the difference between warning notices from a landlord and a summons and complaint. Receiving a summons and complaint means that a landlord has actually filed an eviction case. Other forms of notice from landlords, such as notices to pay, do not mean that anything has actually been filed yet. Some tenants feel pressured to move out after receiving notices stating that they will be evicted unless they voluntarily move out or pay a balance. But these notices are not court orders—and the landlord will still have to go through the court process to evict.

(3) Is it ever permissible for a landlord to padlock my door and/or change the locks?

The padlocking is only done by the sheriff with a "writ of possession." A landlord may ask the clerk of court for a writ of possession on the eleventh day after an eviction judgment is entered against the tenant. Even after the landlord has obtained an eviction judgment in small claims court, they cannot remove tenants from their home until the 10-day appeal period has ended. It is after this 10-day period that the eviction judgment becomes "final." Once the 10 days have passed, the landlord may request that the clerk of court issue an order for a "writ of possession."

This "writ of possession" allows the sheriff's office to padlock the tenant's home or change the locks. The sheriff will then post a notice of when they will come padlock the property.

A writ is the only legal means by which landlords may have tenants locked out of their residences. In short, landlords do not have the legal right to padlock tenants from their homes or change the locks without first going through the court process, getting an eviction judgment against a tenant, waiting at least 10 days, and requesting a "writ of possession" from the court clerk.

There are legal repercussions for landlords who violate the laws around padlocking.

(4) What is a "retaliatory eviction"?

In a "retaliatory evictions," landlords file eviction cases in response to tenants exercising their rights under the rental agreement or law, including their right to decent, safe, and sanitary housing.

For example, if a landlord files for eviction against a tenant after receiving a complaint about housing conditions or a request to make a repair, this may be deemed a retaliatory eviction. A tenant may raise the defense of "retaliatory eviction" if a landlord files an eviction action that the tenant believes is a response to some lawful exercise of rights provided by the lease or the law.

A landlord may not evict a tenant because the tenant, in good faith, lodged a maintenance complaint or requested repairs from the landlord or the landlord's employees. The landlord is also barred from evicting a tenant for requesting a housing inspection or submitting a complaint about housing conditions to a government agency. But the law against retaliatory evictions does not just ban evictions in response to complaints or requests related to housing maintenance or conditions.

A landlord is also prohibited from evicting or attempting to evict a tenant for any other exercise of their legal rights, including trying to organize, join, or become involved with a tenant's union or other organization meant to support or enforce tenants' rights.

Additionally, landlords are barred from evicting tenants in response to tenants' good faith efforts to use, secure, or enforce rights given to them under the terms of the lease. For example, if the tenant objects to a landlord's attempts to collect charges not included in the rental agreement and the landlord responds by filing an eviction against the tenant, that may be deemed a retaliatory eviction.

(5) If I am being evicted, can I tell a judge about issues I experienced as a tenant such as poor maintenance, pests, harassment, etc.?

Yes, but these are not always a complete defense to eviction. Landlords are required to provide tenants with "fit" premises—this means that the premises must generally be kept in a safe and sanitary condition and in compliance with housing and building codes.

North Carolina law does not authorize tenants to unilaterally withhold rental payments because of problems with the condition of the residence.

However, if a landlord has filed for eviction against a tenant who believes the landlord has violated this requirement to keep the premises in fit condition, they may raise these issues with the court as defenses or counterclaims. If a tenant proves that there are problems with the fitness of the premises, the magistrate judge can order "rent abatement" for past rent, future rent, or both.

"Rent abatement" is a reduction in the amount due or owed. The amount by which the rent is abated will depend on the evidence presented and the judge's findings about the seriousness of the conditions of the premises. Tenants can receive money damages for rent abatement or for injuries or property damage resulting from the landlord's failure to repair and maintain the home. This amount may in some cases offset the amount of rent owed to the landlord. If the landlord has been on notice of the poor conditions and continues to demand full market rent, the tenant may be entitled to triple damages.

In cases where there are severe problems with the fitness of the premises, a tenant may consider raising the claim of "constructive eviction." "Constructive eviction" is a claim that the landlord, by supplying unlivable or unsafe conditions, has for all practical purposes evicted the tenant so that the tenant should be able to break the lease without penalty. Common examples of habitability problems that may be deemed to constitute "constructive eviction" include a failure to provide essential utilities such as heating, electricity, or running water. But any condition that rises to such a level that it may be deemed to have made the premises "uninhabitable" may support a claim of constructive eviction.

(6) What is an "eviction moratorium?" In what circumstances does a moratorium protect me?

An "eviction moratorium" is a temporary pause on certain evictions. In 2020, in response to the COVID-19 pandemic, the Center for Disease Control and Prevention (CDC) issued a nationwide eviction moratorium for tenants who a sign declaration form attesting to the fact that they meet certain requirements.

The current eviction moratorium does not prevent all evictions on other grounds besides nonpayment of rent. More, it does not stop rent from becoming due each month or forgive tenants' balances. The current CDC eviction moratorium went into effect in the summer of 2020 and has been extended several times. It is currently scheduled to be in effect through June 30, 2021.

The moratorium is not automatic and only protects tenants who have signed a special form, called a declaration, and given it to their landlord. Tenants who are facing the possibility of eviction for nonpayment of rent should consider whether the current CDC eviction moratorium applies to them. After reviewing the declaration form, tenants should determine whether they qualify for this protection. To qualify for the protection, a tenant must expect to earn less than $99,000 as an individual (or $198,000 as a joint filer) in 2021. By signing the declaration form, a tenant is certifying that they cannot pay full rent because: (1) the tenant's household income has gone down substantially; (2) the tenant has been laid off from work; (3) the tenant's work hours or wages have been cut; and/or (4) the tenant is dealing with extraordinary out-of-pocket medical expenses. The declaration form also requires tenants to certify that: (a) the tenant has done their best to make timely partial payments that are as close as possible to the full payment and to get government assistance in making rent or housing payments and (b) if the tenant was evicted, they would have no other available housing options and thus would face homelessness or would need to move in with others in a crowded living arrangement.

If tenants feel that they qualify for the eviction moratorium protection and would like to trigger the protection, they may print, sign and date the declaration form and give it to their landlord. The declaration form can be found at www.cdc.gov or at www.legalaidnc.org/cdcem. Ideally, tenants should also keep a copy of the signed declaration for their own records. If a landlord files to evict, filing the signed declaration at the courthouse with the case number on it may ensure that the judge and clerk knows of its existence. Tenants may also bring a signed copy to their court hearing if they believe that the protection applies to them, whether or not they have previously submitted it to their landlord.