

A Brief Legal Eviction Picture in Mecklenburg County

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I. Legal framework for evictions

- A. Landlords must file court actions to lawfully evict any tenants. Generally, evictions can be allowed for violation of a lease obligation for which landlord has reserved a right to terminate (including non-payment of rent, behavioral issues), certain criminal acts, or holding over after the tenant's lease has expired and not renewed.
- B. Tenants in federally subsidized housing (see list below) may have additional procedural rights, such as an informal hearing with the landlord, before an impartial hearing officer, or before a grievance panel. But, subsidized tenants must know of those rights and request hearings before they are sued for eviction.
- C. Under state law, landlords may draft leases that allow them to file for summary ejectment (swift eviction) with or without prior notice of the grounds claimed for breach of the lease.
- D. Court hearings are scheduled in small claims court within 10 days of the landlord's filing of the complaint, and tenants may get only 2 days' notice of the trial.
- E. Recently, in Mecklenburg County there are approximately 28,000 to 29,000 eviction complaints filed annually. Based upon the study of the Urban Institute at UNCC, approximately 80% of the landlords are represented in these actions. Legal Aid of NC (LANC) is the only organization that represents residential tenants (other than Charlotte Center for Legal Advocacy, which represents some immigrants), and we are able to represent only about one-percent of the total sued. The initial eviction trials occur in small claims courts, where two or three courtrooms run concurrently every morning. During the third and fourth weeks of the month it is common for there to be scheduled 30 to 120 cases per hour, starting at 9:00 A.M., and repeated at 10:00 A.M. Unless the tenant hears the magistrate call her name and tells the magistrate that she is present, the magistrate will enter a judgment for possession of the dwelling upon request of the landlord's counsel, and the tenant does not receive a copy of the judgment.

- F. If the tenant learns that she has a right to appeal the magistrate's judgment, she must do so within 10 days. Then, the tenant must pay her rent into court while awaiting a new trial in district court to remain in her home. In Mecklenburg County, there are approximately 830 appeals for new trials per year. Legal Aid or our volunteer attorneys may represent the tenants in approximately two-percent of these cases.
- G. Unlike in criminal matters, there is no constitutional right to counsel for indigents in civil matters such as evictions. Legal Aid may represent about 400 tenants per year with three attorneys, plus some pro bono attorneys that we recruit and train. Those 400 cases include tenants who are threatened with eviction before litigation, those sued for eviction, tenants needing repairs, voucher holders threatened with loss of their subsidy, and a few tenants who have been illegally evicted by lock-outs and utility terminations by landlords outside of the judicial process. We delay or stop completely virtually all evictions when we represent the tenants. But, we get about 10 to 20 new calls per day from tenants seeking help with evictions or repairs, and we lack the resources to help most of them. We prioritize helping all tenants who rely upon federal subsidies because if they lose they will likely be homeless for years and not be eligible for another subsidized dwelling.

II. Summary of federally subsidized tenancies: limited supply and unavailable to those who have eviction records

- A. Three federally subsidized housing programs assist very low-income individuals and families. The Charlotte Housing Authority (CHA) and its affiliates own and manage about 4000 units of public housing. The CHA also administers almost 5,000 portable subsidies known as Section 8 Housing Choice Vouchers that can be used by tenants to pay the difference between what they can afford (set at 30% of their net income) and the contract rent of willing private landlords. Once in about seven years the CHA opens the application process. In 2014 CHA opened it for only five days and required people to apply on line (no in-person, on-paper, or by-phone). Over 32,000 people applied, and of those over 4,400 identified as homeless. Only about 300 to 400 of these vouchers may turnover and become available to folks on the waiting list annually. A voucher holder can be disqualified and lose her voucher if anybody in her household commits serious

criminal activities, she fails to provide accurate financial information for recertification, she has unauthorized occupants, or is evicted by the landlord for breach of the lease.

B. Project-based Section 8 Complexes

There are numerous older apartment complexes owned by private landlords who have long-term rent subsidy contracts with HUD. The managers determine financial eligibility and make leases with the tenants which conform to HUD model leases. The tenant's share of rent and utility obligations is 30% of the net family income. There are about 4,000 units of these types of tenancies in Charlotte.

C. General right to continue federally-subsidized housing

As long as the tenants in public housing, voucher holders, or project-based Section 8 remain financially eligible, generally below 60% of area median income (AMI), and do not violate the rules or their leases, they have the right to remain in their programs indefinitely. Only the landlords in voucher-holder cases may choose to not renew the leases without good cause after a year.

D. Low-income Housing Tax Credit Program

The federal government, by the Treasury Department, issues to state housing finance agencies certain amounts of federal housing tax credits to be allocated geographically on a competitive basis. Historically, the allocation for Mecklenburg County may be enough to support 2 or 3 developments per year. The CHA, Charlotte-Mecklenburg Housing Partnership, and other developers compete for these allocations. The developer who wins a tax credit will sell it to a bank for some amount close to the face value and use that capital to buy the land and construct an apartment complex that can be occupied by tenants at the 60% of AMI level, or below, in some mix approved by the North Carolina Housing Finance Agency. The developer gets no operating subsidy or rent subsidy and needs additional gap financing to make it work. It can set below-market rent rates in the general range of \$300- to \$750/month according to a business model that enables it to operate in the black. The developer cannot refuse to renew the lease of its tenants without "good cause", which means some legitimate business reason. There are probably about 2000 of these tax credit units in Charlotte. The tax credit program may be adversely impacted, prospectively, by the recent tax reform passed by Congress.

- E. Thus, the approximately 15,000 tenants who are fortunate to participate in any of these federally subsidized programs represent only about one-fourth of the families who need them. The other 75% of the tenants who need them are cost-burdened and threatened in varying degrees with eviction for simply economic reasons. Many of these tenants also suffer dangerous and unhealthy conditions and overcrowding. Many of them have eviction records, and those records ironically serve as a barrier to their acceptance to any of the subsidized programs. Therefore, to avoid perpetuating their poverty, it is important for these non-subsidized tenants to avoid evictions.

III. Some legal limitations on evictions—many can be avoided with legal knowledge and help

- A. Retaliatory evictions—Landlords may not terminate leases in substantial part because the tenant requested repairs, complained to a housing or health department inspector, or exercised her rights under state or federal law.
- B. Protections of victims of domestic violence—Landlords cannot refuse to rent to families, evict, or discriminate in services because a member of family is a victim of domestic violence (e.g., charging a tenant for a door broken by abusive former boyfriend who tried to force entry), stalking, or sexual assault
- C. Fair housing under federal and state laws—Landlords may not refuse to rent to or discriminate against tenants or their family members on account of race, color, gender (not sexual orientation), age, familial status, religion, or disability.
- D. Implied warranty of habitability—Landlord must put and keep the premises in habitable condition, and the tenant may be entitled to rent abatement for periods in which the landlord defaults on that duty.

IV. Conclusion

The law in North Carolina affords legal protections against many arbitrary, unfair, and discriminatory evictions. But, many tenants are unaware of their rights and unable to afford counsel in order to protect themselves. We cannot know the total number of those who suffer unnecessary and unfair evictions, but we know that their doing so relegates them to substandard housing, burdensome rents, and even homelessness for protracted periods. Those conditions make for unstable homes and adverse impacts on families and neighborhoods. Tenants who

know their rights and have legal representation are much more likely to avoid eviction and to maintain reasonably safe and healthy housing. This is a major strategic challenge for our community.