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Landlord-Tenant -- Spinks v. Taylor and G.S. 42-26: Abolition of Self-Help Evictions in North Carolina

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Landlord-Tenant—*Spinks v. Taylor* and G.S. 42-26: Abolition of Self-Help Evictions in North Carolina

The issue of a landlord's right to use self-help for evicting residential tenants was addressed during the summer of 1981 by both the North Carolina Supreme Court and the North Carolina General Assembly. The supreme court, in *Spinks v. Taylor*,[1] ruled that the existence of North Carolina's summary ejectment procedures[2] did not preclude a landlord's use of peaceful self-help measures in evicting tenants who are in default of rental payments. Ten days later, the General Assembly enacted "An Act to Clarify Landlord Eviction Remedies in Residential Tenancies."[3] This legislative action bars all use of landlord self-help, including peaceful measures. Thus, currently a landlord's only available eviction remedy against residential tenants is through the courts.[4]

The law of landlord self-help has had a long and confusing history although it has been subject to increasing clarification in recent years.[5] As with most property matters, the legal heritage of landlord-tenant relations is English, medieval and agrarian.[6] At early common law, a landlord (or any person entitled to possession of land) could forcibly evict a tenant not legally entitled to possession.[7] Subsequently, in 1381, Parliament made forcible dispossession

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1. 303 N.C. 256, 278 S.E.2d 501 (1981). The case involved two separate actions brought on behalf of two separate tenants. The actions were consolidated by order of the District Court of Guilford County. Brief for Appellee at 1-2, *Spinks*. Only the Spinks action, based on a verified complaint, survived the supreme court's review of the trial court's grant of summary judgment on behalf of the defendant. 303 N.C. at 264, 278 S.E.2d at 504-05.

2. N.C. Gen. Stat. § 42-26 (1976). See notes 6-33 and accompanying text infra.

3. Law of June 12, 1981, ch. 566, [1981] 6 N.C. Adv. Legis. Serv. 238 (to be codified at N.C. Gen. Stat. §§ 42-25.1 to -25.4, 44A-2). See notes 39-47 and accompanying text infra.

4. "It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in Article 3 of this Chapter [summary ejectment proceedings]." Id. at § 1 (to be codified at N.C. Gen. Stat. § 42-25.1). Section 1 of the Act also prohibits distress and distraint (seizure of personal property for rent past due). Id. (to be codified at N.C. Gen. Stat. § 42-25.2).

5. Appellate and statutory clarifications appear to result from the availability of legal services to the poor. One commentator noted in 1969 that little modern litigation on this issue existed at the appellate level. Because prosecuting an appeal is expensive, the impoverished evicted tenant could not afford to initiate legal action. On the other hand, tenants who located a new residence probably did not deem it worth the trouble to proceed with any legal remedy. This commentator, however, predicted that with the advent of the legal services program, such appellate sterility would be unlikely to continue. Note, Self-Help Eviction: Proposals for the Reform of Eviction Procedures in New Jersey, 1 Rut.-Cam. L.J. 314, 328 n.58 (1969). The *Spinks* case was initiated by Legal Services of Southern Piedmont, Inc.; the General Assembly's statutory response to the decision was also at the behest of legal services. Interview with State Senator Joseph Johnson, conducted by Martin L. Holton, III, in Raleigh, N.C., Oct. 1, 1981.

6. Most existing landlord-tenant law developed from a legal basis created when society was rural and agrarian. For an excellent discussion of how social changes in England and the United States since the eighteenth century have made the presumptions of agrarian landlord-tenant law inappropriate, see Model Residential Landlord-Tenant Code 5-10, General Introduction (American Bar Found. Tent. Draft 1969).

7. 1 F. Harper & F. James, The Law of Torts § 3.15 (1956).

a criminal offense.[8] Currently, almost all jurisdictions in the United States,[9] including North Carolina,[10] continue to adhere to the policy of designating forcible entry as a criminal offense.

A landlord's potential criminal liability for forcible entry generally does not provide a civil remedy for the tenant.[11] A minority of American jurisdictions hold that a landlord may use reasonable force to evict a wrongful tenant without incurring civil liability.[12] A sizeable number of states deem judicial proceedings in summary ejectment to be the landlord's sole remedy; self-help, either forcible or peaceful, renders available to the tenant a civil remedy.[13] Courts in a majority of jursidictions,[14] however, hold that a landlord may resort to self-help measures without civil liability provided the means employed are peaceful.[15]

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8. 5 Rich. 2, 1 stat., ch. 8 (1381). The rationale for Parliamentary action appears to be preservation of the peace and not protection of either landlord or tenant rights. Jordan v. Talbot, 55 Cal. 2d 597, 603 n.2, 361 P.2d 20, 23 n.2, 12 Cal. Rptr. 488, 491 n.2 (1961).

9. Comment, Defects in the Current Forcible Entry and Detainer Laws of the United States and England, 25 U.C.L.A. L. Rev. 1067, 1076 n.44 (1978).

10. No one shall make entry into any lands and tenements, or term for years, but in cases where entry is given by law; and in such case, not with strong hand nor with multitude of people, but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor.

N.C. Gen. Stat. § 14-126 (1981). This language is essentially identical to the 1381 English statute.

11. Several isolated cases awarded the tenant damages for a landlord's use of force, see, e.g., Newton v. Harland, 133 Eng. Rep. 490 (1840); Hillary v. Gay, 172 Eng. Rep. 1243 (1833); but the law of England until 1965 held no civil cause of action maintainable. See, e.g., Hemmings v. Stoke Poges Golf Club, Ltd., [1920] 1 K.B. 720 (expressly overruling *Newton*); Pollen v. Brewer, 141 Eng. Rep. 860 (1859); Turner v. Maymott, 130 Eng. Rep. 64 (1823); Taunton v. Costar, 101 Eng. Rep. 1060 (1797). The *Hemmings* court reasoned that a criminal prohibition against a forcible entry hardly justifies making a civil award to a wrongdoer whose wrongdoing provoked the entry. Moreover, if a landlord cannot forcibly effect an eviction without being liable in damages to the wrongful tenant, it must follow that the law confers a civil right of occupancy on the tenant "the length of which is determined only by the law's delay." [1920] 1 K.B. at 737. See generally Barnett, When the Landlord Resorts to Self-Help: A Plea for Clarification of the Law in Florida, 19 U. Fla. L. Rev. 238, 278-79 (1966).

The Rent Act, 1965, ch. 75, pt. III, however, makes landlord self-help in any form a criminal offense. A landlord with a right of possession must instead obtain a court order and await restoration of the premises by the bailiff. Note, supra note 5, at 317-18.

12. See, e.g., Howe v. Firth, 43 Colo. 75, 95 P. 603 (1908); Gower v. Waters, 125 Me. 223, 132 A. 550 (1926); Stone v. Lahey, 133 Mass. 426 (1882); Paddock v. Clay, 138 Mont. 541, 357 P.2d 1 (1960); Whitney v. Sweet, 22 N.H. 10 (1850); Virginia Iron, Coal & Coke Co. v. Dickenson, 143 Va. 250, 129 S.E. 543 (1925); cf. Vissenberg v. Bresnahen, 65 Wyo. 367, 202 P.2d 663 (1949) (standard of landlord responsibility in connection with tenant's goods remaining on premises is reasonable conduct under the circumstances).

13. Prior to 1981, as a result of Mosseller v. Deaver, 106 N.C. 494, 11 S.E. 529 (1890), North Carolina was identified by one commentator as belonging to this group of states. Annot., 6 A.L.R.3d 177, 186-87 (1966). For the *Mosseller* facts, see text accompanying notes 27-29 infra.

For other states in this group, see, e.g., Jordan v. Talbot, 55 Cal. 2d 597, 361 P.2d 20, 12 Cal. Rptr. 488 (1961); Malcolm v. Little, 295 A.2d 711 (Del. 1972); Mendes v. Johnson, 389 A.2d 781 (D.C. Ct. App. 1978); Weber v. McMillan, 285 So. 2d 349 (La. App. 1973); Berg v. Wiley, 264 N.W.2d 145 (Minn. 1978); Polley v. Shoemaker, 201 Neb. 91, 266 N.W.2d 222 (1978); Edwards v. C.N. Inv. Co., 27 Ohio Misc. 57, 272 N.E.2d 652 (Shaker Heights Mun. Ct. 1971); Fla. Stat. Ann. § 83.59(3) (West 1976).

14. See generally 2 Restatement (Second) of Property, § 14.2 reporter's note 1 (1977). Other commentators, also relying on *Mosseller*, placed North Carolina within this group of jursidictions. See Boyer & Grable, Reform of Landlord-Tenant Statutes to Eliminate Self-Help in Evicting Tenants, 22 U. Miami L. Rev. 800, 801 n.4 (1968). But see Annot., supra note 13.

15. See, e.g., Krasner v. Gurley, 252 Ala. 235, 40 So. 2d 328 (1949); Mason v. Hawkes, 52

In *Spinks v. Taylor* the North Carolina Supreme Court addressed the legality of peaceful self-help in North Carolina. In *Spinks* the landlord padlocked plaintiff's apartment because of her failure to pay rent.[16] Since resort to judicial process was severely limited,[17] padlocking was the standard operating procedure for dealing with tenants in arrears on their rent. Up until Spinks' suit, the procedure had proven successful,[18] with beneficial results for

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Conn. 12 (1884); Perry v. Evanston YMCA, 92 Ill. App. 3d 820, 416 N.E.2d 340 (1981); Calef v. Jesswein, 176 N.E. 632 (Ind. App. 1931); Whitney v. Brown, 75 Kan. 678, 90 P. 277 (1907); Stoll Oil Ref. Co. v. Pierce, 337 S.W.2d 263 (Ky. 1960); Pine Hill Assocs. v. Malveaux, 93 Misc. 2d 63, 403 N.Y.S.2d 398 (App. Term 1978); Simhiser v. Farber, 270 Wis. 420, 71 N.W.2d 412 (1955).

In jurisdictions that permit a landlord to resort to peaceful self-help without incurring civil liability, difficulty arises in defining which acts constitute force and which are merely "peaceful." In arriving at a definition for civil causes of action, courts may refer to the meaning of force as interpreted in relation to the criminal forcible entry and detainer statutes. See generally Note, Landlord-Tenant Law: Abolition of Self-Help in Minnesota, 63 Minn. L. Rev. 723, 727 n.26 (1979). Defendants in *Spinks* took this tack in proclaiming padlocking to be peaceful in reliance on State v. Leary, 136 N.C. 578, 48 S.E. 570 (1904), in which the landlord's lockout of tenant did not subject him to criminal liability under N.C. Gen. Stat. § 14-126. See Brief for Appellee at 26-27, *Spinks*.

Actions short of actual violence may be deemed forcible. See, e.g., Karp v. Margolis, 159 Cal. App. 2d 69, 323 P.2d 557 (1958) (entry with help of locksmith; commercial tenants); McNeil v. Higgins, 86 Cal. App. 2d 723, 195 P.2d 470 (1948) (entry through an open window in tenant's absence); Adelhelm v. Dougherty, 129 Fla. 680, 176 So. 775 (1937) (procurement of keys and entry by landlord in tenant's absence); Walls v. Endel, 17 Fla. 478 (1880) (duress by frequent visits to emphasize hopelessness of tenant's situation); Ardell v. Milner, 166 So. 2d 714 (Fla. Dist. Ct. App. 1964) (changing locks); Schwartz v. McQuaid, 214 Ill. 357, 73 N.E. 582 (1905) (removing obstruction over opening in building); Pelavin v. Misner, 241 Mich. 209, 217 N.W. 36 (1928) (false pretenses; threat of force); Crossen v. Campbell, 102 Or. 666, 202 P. 745 (1921) (threats of force); Buchanan v. Crites, 106 Utah 428, 150 P.2d 100 (1944) (entrance with passkey and removal of door after entry); Simhiser v. Farber, 270 Wis. 420, 71 N.W.2d 412 (1955) (ruse or stratagem).

16. The lease entered into between the landlord and the plaintiff-tenant specifically provided for termination on default of rent and gave the landlord a right of reentry. Spinks v. Taylor, 303 N.C. at 258, 278 S.E.2d at 502. At common law a lease provision to this effect was essential and absent such an agreement, a tenancy was not terminated by the tenant's failure to pay rent. North Carolina has modified the common-law rule by conferring on the landlord the right to immediate possession whenever the tenant defaults in payment of rent subsequent to a ten-day demand. N.C. Gen. Stat. § 42-3 (1976).

17. In 1974, due to the burdensome number of summary eviction actions, personnel of the office of the clerk of superior court imposed a rule limiting the number of complaints in summary ejectment filed by any one landlord to ten per day and also limited the total number of complaints in summary ejectment that would be calendared on any given day to twenty-five. Affidavit of Ann Hackney, Deputy Clerk of Superior Court, Guilford County, Addendum to Record, at 2-4, *Spinks*.

By 1976, out of defendant's 825 apartments, approximately 400 units were in default seven days after rent was due. Because of the rule imposed in 1974, defendant was without adequate means to evict tenants defaulting during the month; he subsequently resorted to the padlocking procedure. Affidavit of John R. Taylor, Jr., Record at 45-46.

18. Empirical evidence from the period April 1977 to March 1978 revealed that the padlocking procedure accomplished the business purpose of prompting tenants to cure defaults. The average monthly number of defaults was 426 ($60,000-80,000 in rents). By padlocking day, the last Tuesday of the month, an average of 374 tenants had cured their delinquency, leaving 52 apartments to be padlocked. By the time the resident manager went to carry out the procedure, an average of six tenants had vacated. Of the remaining 46, an average of 36 paid their rent in full with an average of 9 more paying within 48 hours. This left an average of one tenant to be evicted.

In the pre-padlocking era, when summary ejectment procedures had been utilized, 600 tenants were evicted by the courts in 1974, and 650 in 1975. In contrast, during the interval when the padlocking procedure was used, 50 tenants were evicted in 1976, 75 in 1977, and 125 in 1978 (figures for the latter two years apparently include apartments acquired after 1976 as to which the self-help procedures were never used). Affidavit of John R. Taylor, Jr., Record at 49-50.

both the tenants and the landlord.[19]

In accordance with the landlord's procedure,[20] Spinks received warning that unless payment were made the apartment would be padlocked. Spinks failed to pay the rent, and her apartment was padlocked. Thereafter, Spinks filed a verified complaint alleging that the resident manager denied her access to the locked premises to retrieve certain items of clothing. Such refusal was in direct contradiction to the landlord's eviction procedure.[21] Plaintiff claimed damages for trespass to real and personal property, for breach of the covenant of quiet enjoyment, for conversion of personal property and for violation of the Unfair and Deceptive Trade Practices Act.[22] Both plaintiff-tenant and defendant-landlord stipulated plaintiff's failure to pay rent and moved for summary judgment. The trial court granted defendant's motion.[23]

The North Carolina Court of Appeals subsequently affirmed the trial court action and held that self-help is lawful when the means employed are peaceful.[24] The appeals court noted that self-help remedies are consistent with the modern policy of diverting conflicts away from the courts.[25] The appeals court relied heavily on the late nineteenth century case of *Mosseller v.*

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19. Defendant-landlord alleged that because of the delays inherent in summary ejectment generally, coupled with those inherent in limitations imposed by the rules established in 1974 by court personnel, tenants ended up at least two months in arrears. These tenants were rarely, if ever, financially able to pay rent for two or more months. Defendant was also financially unable to risk allowing tenants two months behind to remain in possession upon a tenant's promise to pay promptly in the future. After initiation of self-help, however, tenants were more likely to make their accounts current. Less turnover resulted, and as defendant-landlord alleged, both he and the tenants appeared to appreciate the stability in the residential population. Id. at 51.

20. Defendant-landlord described the procedure established by his attorney and carried out by his resident managers as follows: Rent throughout the complex was due on the first of every month. Eight days later, the apartment manager issued notices to delinquent tenants—unless rent was received before the last Tuesday of the month, the apartment would be padlocked. On the day scheduled for padlocking, the apartment manager would go and knock loudly announcing the purpose of the visit. If the tenant paid the rent, or if the tenant protested, the manager ceased the padlocking procedure and informed the tenant that court proceedings would be initiated. If the tenant was absent, the manager first checked the apartment to insure no children or pets were present and then padlocked the door. Notice of padlocking was posted and the manager attempted to notify the tenant personally. If the tenant requested personal property, he was permitted to enter and remove it. Again, if at any time the tenant objected to the padlocking, the self-help procedure ceased and resort was to be made to the courts. 303 N.C. at 263, 278 S.E.2d at 505.

21. See id. at 263-64, 278 S.E.2d at 505-06.

22. The supreme court denied the applicability of the Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 to -56 (1981). "We cannot say that defendant's padlocking procedures offend 'established public policy' or constitute a practice which is 'immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.' " 303 N.C. at 265, 278 S.E.2d at 506.

23. 303 N.C. at 259-60, 278 S.E.2d at 503.

24. Spinks v. Taylor, 47 N.C. App. 68, 266 S.E.2d 857 (1980), aff'd in part, rev'd in part, 303 N.C. 256, 278 S.E.2d 501 (1981).

25. In addition, the modern policy of diverting conflicts away from the courts supports lawful self-help remedies. This theory, utilizing arbitration, "citizen courts," . . . and other non-court methods of resolving disputes, recognizes that the courts cannot resolve every dispute between persons and the state. Proper and peaceful self-help remedies by landlords have a place in this scheme.

Id. at 76, 266 S.E.2d at 861.

The court went on to note that

[h]ere, plaintiffs do not deny that they were delinquent in their rent payments and that defendant was entitled to possession of the premises. They only insist defendant could

Deaver[26] in rendering its decision. In *Mosseller* the landlord entered the tenant's house while the tenant was present "under such circumstances as to constitute a forcible entry under the [forcible entry and detainer] statute."[27] The trial judge instructed the jury that the landlord "had the right to go there and put him out by force, if no more force was used than was necessary for that purpose."[28] The North Carolina Supreme Court held the instruction incorrect because public policy "required the owner to use peaceful means or resort to the courts in order to regain his possession."[29]

In *Spinks* the North Carolina Supreme Court approved the appeals court's determination of North Carolina law.[30] It refused, however, to permit any overreaching by the landlord, noting the contradiction between the proposed padlocking procedure and its actual implementation with respect to Spinks.[31] The court implicitly recognized and addressed the potential for violence by narrowly defining what constituted "peaceful" self-help measures. While a landlord was permitted to use peaceful means such as padlocking to reenter and take possession of leased premises subject to forfeiture, he could not do so against the tenant's will; an objection by the tenant elevated the landlord's reentry to a forcible one. At that time, the landlord's sole lawful recourse was formal judicial proceedings.[32] Based on this narrow holding the supreme court reversed the trial court's entry of summary judgment on behalf of defendant-landlord.[33]

The supreme court's narrow definition of peaceful self-help, which enhanced tenant security, followed the efforts of the General Assembly to improve the procedures by which residential tenants could protect their rights. In 1977 the legislature substantially changed North Carolina's residential landlord-tenant law by enacting two new articles in chapter 42 of the North Carolina General Statutes—article 5, Residential Rental Agreements,[34] and article 6, Tenant Security Deposit Act.[35] The more significant of these changes, arti-

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not use peaceful self-help to regain possession of the premises and that he must resort to the courts for this purpose. Under the facts of this case, we reject plaintiff's argument.

Id.

26. 106 N.C. 494, 11 S.E. 529 (1890).

27. Id. at 495, 11 S.E. at 530.

28. Id.

29. Id.

30. "It seems clear to us, then, that this state recognizes the right of a lessor to enter peacefully and repossess leased premises which are subject to forfeiture due to nonpayment of rent." 303 N.C. at 262, 278 S.E.2d at 504.

31. Id. at 264, 278 S.E.2d at 506. The supreme court noted that plaintiff Spinks' allegation that she requested access to her apartment to retrieve clothing contradicted defendant's assertion that an ousted tenant requesting entrance to the apartment to obtain personal property would be allowed to enter. Id.

32. Id. at 263, 278 S.E.2d at 505.

33. Id. at 266, 278 S.E.2d at 506. "A refusal by the landlord to permit a tenant to enter the premises, for whatever purposes, would elevate the taking to a forceful taking and subject the landlord to damages." Id. at 254, 278 S.E.2d at 506.

34. Law of June 28, 1977, ch. 790, 1977 N.C. Sess. Laws, 1st Sess. 1006 (codified as amended at N.C. Gen. Stat. §§ 42-38 to -44 (Cum. Supp. 1981)).

35. Law of July 1, 1977, ch. 914, 1977 N.C. Sess. Laws, 1st Sess. 1237 (codified as amended at N.C. Gen. Stat. §§ 42-50 to -56 (Cum. Supp. 1981)).

cle 5, made it the legal duty of a residential landlord to provide a fit and habitable dwelling.[36] Subsequently, in 1979 the General Assembly declared that retaliatory eviction is an affirmative defense in summary ejectment actions because it is public policy "to protect tenants . . . who seek to exercise their rights to decent, safe, and sanitary housing."[37] In 1979 North Carolina legislators also created a new procedure for staying execution in summary ejectment actions.[38]

In 1981 the General Assembly enacted "An Act to Clarify Landlord Eviction Remedies in Residential Tenancies."[39] This Act abolished self-help evictions in residential tenancies and continues the evolutionary process toward greater tenant rights. The new law not only mandates judicial proceedings in every eviction situation, it also outlaws any lease or contract provision to the contrary as "void against public policy."[40] The North Carolina General Assembly expressly premised the new law on the public policy of maintaining the public peace.[41] Few things are more important to a person than his or her home; nothing short of a criminal act is more likely to provoke violence, anger and breaches of the peace than locking a person or family out of their home.[42]

The mandatory requirement that a landlord use a judicial proceeding for eviction of residential tenants also promotes the public policy of guaranteeing to all citizens a meaningful opportunity to defend themselves. The tenant receives notice and is ordinarily allowed to present his side at a hearing.[43]

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36. N.C. Gen. Stat. § 42-42 (Cum. Supp. 1981).

37. Law of June 7, 1979, ch. 807, 1979 N.C. Sess. Laws, 1st Sess. 960 (codified at N.C. Gen. Stat. § 42-37.1(a) (Cum. Supp. 1981)).

38. Law of June 7, 1979, ch. 820, §§ 1-6, 1979 N.C. Sess. Laws, 1st Sess. 1032 (codified at N.C. Gen. Stat. § 42-34 (b)-(g) (Cum. Supp. 1981)).

39. Law of June 12, 1981, ch. 566, [1981] 6 N.C. Adv. Legis. Serv. 238 (to be codified at N.C. Gen. Stat. §§ 42-25.1 to -25.4, 44A-2). See notes 1-4 and accompanying text supra.

40. Id. § 1 (to be codified at N.C. Gen. Stat. § 42-25.3). When landlord self-help is outlawed by case law rather than by statute, this aspect is usually not directly addressed. Although assertable by implication, without direct prohibition of reentry clauses, problems can arise. For example, one Minnesota commentator noted that although the Minnesota Supreme Court implicitly invalidated reentry clauses

> reentry clauses may continue to be written into leases. If a tenant is unaware that a reentry clause included in his lease is un-enforceable, the clause may either deter him from challenging a self-help eviction by the landlord, or cause him to move if the landlord threatens a self-help eviction. Hence, to ensure that the effectiveness of the *Berg* rule [Berg v. Wiley, 264 N.W.2d 145 (Minn. 1978)] is not diminished by any *in terrorem* effects of reentry clauses, the court or the legislature should specifically prohibit the inclusion of such clauses in leases.

Note, supra note 15, at 733.

41. Law of June 12, 1981, ch. 566, § 1, [1981] 6 N.C. Adv. Legis. Serv. 238 (to be codified at N.C. Gen. Stat. § 25.1).

42. Amicus Curiae Brief (State of North Carolina) at 10, *Spinks*. The Minnesota Supreme Court has also pointed out that "to approve [a] lockout . . . merely because in [the plaintiff's] absence no actual violence erupted when locks were being changed, would be to encourage all future tenants, in order to protect their possessions, to be vigilant and thereby set the stage for [every] kind of public disturbance." Berg v. Wiley, 264 N.W.2d 145, 150 (Minn. 1978).

43. One can question whether summary ejectment proceedings provide a meaningful opportunity for the tenant's presentation of a defense. Because the proceedings are summary, the range of issues litigated is limited. Legal title or ultimate right to possession will not be considered by the court. The landlord and tenant deal or compete on different levels. The landlord is generally a professional with knowledge of business and the resources to use the legal process for his own

An additional reason for requiring judicial process is that the need for housing, and any hardship resulting from its denial, are probably issues too vital to be adjusted outside the orderly process of law.

Although the 1981 Act seemingly continues the evolutionary process toward ensuring greater tenant rights, its effectiveness may be limited. This Act appears to be inapplicable when the residential tenant has already abandoned the premises.[44] Furthermore, the Act limits the tenant's recovery to actual damages and specifically excludes punitive damages, treble damages and damages for emotional distress.[45] In most instances of peaceful self-help, actual damages will be minimal. A tenant will probably view litigation as inappropriate because of the time and expense involved. The law's effectiveness is also undermined by its failure to provide any criminal sanctions against self-help.[46] Nonetheless the new law conceivably may lead to peaceful self-help action being deemed offensive to the state's forcible entry and detainer statute.

The 1981 Act is applicable only to residential tenancies.[47] Thus, the *Spinks* rule that peaceful self-help may be used continues as good law for commercial tenancies. In commercial situations, the potential for violence is less. Loss of one's home is more personally and psychologically threatening than loss of possession of commercial premises, and the need for immediate replacement of commercial space is less vital in terms of immediate survival needs. Moreover, in a business situation the parties are generally dealing at arms length; the potential for landlord overreaching is not as great.

In a practical sense, however, resort to the legal process in a commercial

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purposes; the tenant is an amateur operating in a system that is alien if not hostile to him. The various summary ejectment statutes that provide a simple, inexpensive and expeditious procedure are pro-landlord statutes. See Haemmel, The North Carolina Small Claims Court—An Empirical Study, 9 Wake Forest L. Rev. 503, 508 (1973); Whitman, Defending the Low-Income Tenant in North Carolina, 2 N.C. Cent. L.J. 21 (1970).

44. See Martinez v. Steinbaum, — Colo. —, 623 P.2d 49 (1981); Bunel of New Orleans, Inc. v. Cigali, 348 So. 2d 993 (La. App.), cert. denied, 350 So. 2d 1210 (La. 1977); Berg v. Wiley, 264 N.W.2d 145 (Minn. 1978).

At least one statutory scheme for the abolition of landlord self-help makes abandonment an express exception; in Florida, resort to judicial process is unnecessary

> [w]hen the tenant has abandoned the dwelling unit. In the absence of actual knowledge of abandonment, it shall be presumed that the tenant has abandoned the dwelling unit if he is absent from the premises for a period of time equal to one half the time for periodic rental payments. However, this presumption shall not apply if rent is current or tenant has notified the landlord of his intended absence.

Fla. Stat. Ann. § 83.59 (West 1976).

45. Law of June 12, 1981, ch. 566, § 1, [1981] 6 N.C. Adv. Legis. Serv. 238 (to be codified at N.C. Gen. Stat. § 42-25.4).

46. Subsequent to judicial abolition of landlord self-help, at least one state has expressly made use of self-help a criminal offense:

> A landlord, agent of the landlord or person acting under the landlord's direction or control who unlawfully and intentionally removes or excludes a tenant from lands or tenements or intentionally interrupts or causes the interruption of electricity, heat, gas, or water services to the tenant with the intent to unlawfully remove or exclude the tenant from lands or tenements is guilty of a misdemeanor.

Minn. Stat. Ann. § 504.25 (West Supp. 1981).

47. Law of June 12, 1981, ch. 566, § 1, [1981] 6 N.C. Adv. Legis. Serv. 238 (to be codified at N.C. Gen. Stat. § 42-25.1).

situation will probably always be the end result. The commercial tenant is more aware of his legal rights, and more likely to raise an objection to the self-help eviction. In accordance with the *Spinks* rule, any objection necessitates judicial action. However, since the *Spinks* decision did not expressly address the ability of the landlord and tenant to contract for self-help eviction even in the face of tenant objections, commercial landlords may still attempt to incorporate such contractual remedies in their lease agreements. However, tenants who lease premises for both commercial and residential purposes will probably be protected by the 1981 Act prohibiting self-help.[48]

Although the 1981 Act promotes tenants' rights, it imposes a substantial burden on the courts in terms of the volume of ejectment proceedings. In urban North Carolina areas, summary ejectment proceedings constitute the bulk of actions in small claims court.[49] Tactics by the local trial court in an effort to limit the number of actions per landlord apparently drove Spinks' landlord to establish a self-help procedure.[50]

When the statutory eviction remedy is limited or takes an unreasonable length of time, a landlord is unable to collect the rent due. Loss of profits and possible inability to meet the landlord's own credit obligations ensue. If unable to sustain a minimal level of profit, the landlord may be compelled either to withdraw housing units from the marketplace or to rent only to tenants certain not to fall delinquent.[51] These alternatives could have drastic effects on the availability of housing for poorer tenants—the very tenants sought to be protected by the statute.

Because of the limitations of the 1981 Act the State must now look for alternative solutions that will satisfy the judicial process requirement but will not over-burden the court system. The use of citizen and housing courts to divert landlord-tenant conflicts away from the formal legal system may be one such creative alternative.[52]

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48. Accord, Zankman v. Tireno Towers, 121 N.J. Super. 346, 297 A.2d 23 (1972) (tenant deemed to occupy his apartment solely as a resident within meaning of unlawful entry and distraint statute although he executed lease in his own name and also in name of his company and made some incidental use of apartment in his capacity as a salesman).

49. See Haemmel, supra note 43, at 505. For an excellent empirical examination of landlord-tenant justice in small claims courts, see J. Ruhnlea, Housing Justice in Small Claims Courts (1979).

50. See note 21 supra.

51. See Note, supra note 5, at 331.

52. See R. Scott, Specialized Courts: Housing Justice in the United States (1981).