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WHEN A HOTEL IS YOUR HOME, IS THERE PROTECTION? — Baker v. Rushing

INTRODUCTION

Property law, specifically as it relates to the residential landlord-tenant relationship, has undergone significant reform over the past twenty years.1 Necessarily, to receive the benefits of this reform, the occupant must establish that he or she is a tenant and has not attained the status of some other type of occupant, such as a guest or lodger.2 Difficulty arises when the line distinguishing the class of establishment (e.g. hotel, boarding house, apartment) blurs and, thus, the legal status of the parties becomes an issue.3 In this situation one factor is not dispositive, rather, various factors are weighed against each other to determine the nature of the parties' relationship.4

The North Carolina Court of Appeals adopted this approach in Baker v. Rushing.5 The court held that occupants of a putative hotel may be residential tenants.6 By looking at the "totality of the circumstances,"7 the court determined these circumstances might entitle plaintiffs to assert claims under North Carolina’s Residential Rental Agreements Act (“RRA”) and Article 2A, Chapter 42, “Ejectment of Residential Tenants."8 Thus, the decision reflects

2. The author does not attempt to distinguish between the terms "guest" and "lodger." To clarify the distinction, see Comment, Tenant, Lodger, and Guest: Questionable Categories for Modern Rental Occupants, 64 YALE L.J. 391 (1955); 40 AM. JUR. 2D Hotels, Motels, and Restaurants § 14 (1968).
4. Id.
6. Id. at 247, 409 S.E.2d at 112. The court also held summary judgment against fewer than all defendants was immediately appealable. See infra note 15. Furthermore, the court deemed the lower court had improperly granted summary judgment for defendants on defendant Claude Steven Mosley’s status as a landlord and on defendants The Franklin Apartments of Monroe’s and The Franklin Hotel, Inc.'s liability terminating upon their respective dissolutions. Baker, 104 N.C. App. at 249-50, 409 S.E.2d at 113-14.

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the necessity of regarding substance over form.

First, this Note will provide a brief history of landlord-tenant law, tracing the common law through the development of pro-tenant reforms. Then, this Note examines the distinction between a tenant and a guest and the legal consequences of that distinction. This Note also discusses the rationale behind the *Baker* decision and its legal implication. This Note concludes with suggestions of the broader ramifications of *Baker*.

**THE CASE**

Plaintiffs were fifteen occupants of defendant The Franklin Hotel.¹⁰ Pursuant to an oral lease, each plaintiff maintained an apartment in the hotel as his or her sole residence and made weekly “rent” payments.¹¹ Despite plaintiffs’ repeated requests, defendants failed to make necessary repairs to correct the numerous defects in the premises.¹² Approximately eleven months after The Franklin Hotel obtained a hotel license, defendant Claude Steven Mosley instructed the building manager to inform plaintiffs the building would close the following month.¹³ Subsequently, plaintiffs were evicted without judicial process.¹⁴

Plaintiffs commenced this action, alleging breach of the implied warranty of habitability, breach of the covenant of quiet enjoyment, unfair or deceptive trade practices, unfair debt collection practices, trespass, trespass to chattels, and conversion.¹⁵ The trial court entered summary judgment in favor of defendants¹⁶ on the basis of plaintiffs’ status as transient occupants.¹⁷ On appeal, plaintiffs argued their status as residential tenants, while defend-

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9. *Id.* at 243, 409 S.E.2d at 110.
10. *Id.* at 247, 409 S.E.2d at 112.
11. *Id.* at 243, 409 S.E.2d at 110. Defects included intermittent supply of hot water, leaking ceilings, missing windows, rodent infestation, defective plumbing, and trash accumulation in common areas. *Id.*
12. *Id.* at 244, 409 S.E.2d at 110.
13. *Id.* In fact, plaintiffs’ eviction occurred two days before Christmas and in violation of a temporary restraining order. *Id.*
14. *Id.* at 243, 409 S.E.2d at 110.
15. The court entered summary judgment in favor of defendants Mosley, The Franklin Apartments of Monroe, and The Franklin Hotel, Inc. The action against Leroy Rushing and Rushing Construction Co. was pending. The court deemed appropriate immediate appeal from the interlocutory order. *Id.* at 245-46, 409 S.E.2d at 111.
16. *Id.* at 246, 409 S.E.2d at 112. Also, the trial court entered summary judgment on other grounds. *See supra* note 6.
ants alleged plaintiffs could not achieve this status due to the building's identification as a "hotel." The court of appeals rejected defendants' argument, holding that although premises may be referred to as a hotel, occupants may be deemed residential tenants.

**BACKGROUND**

Under the common law, the doctrine of *caveat emptor* applied; the landlord had no obligation to render the premises habitable. Although this rule is appropriate for an agrarian society in which tenants place great value on the land itself and can make repairs themselves, modern tenants value the actual accommodations over the land. These tenants want more than an interest in land; they expect a habitable place with adequate electricity, plumbing, and maintenance. Thus, retaining the common law in contemporary society afforded landlords significant protection, at the expense of tenants.

To alleviate the harshness of *caveat emptor*, exceptions to the doctrine developed. Limited exceptions, such as the landlord's duty to disclose known, latent defects, provided little assistance to the typical tenant who held a long-term lease on the premises. Another tenant benefit, the implied covenant of quiet enjoyment, entitled the lessee to quiet and peaceable possession of the premises. This covenant protects the lessee "against the wrongful acts

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17. *Id.*
18. *Id.* at 247, 409 S.E.2d at 112.
19. 1 HERBERT T. TIFFANY, LANDLORD AND TENANT § 86 (1912) ("[T]here is, apart from fraud, no law against letting a tumble-down house."). See also Robinson v. Thomas, 244 N.C. 732, 94 S.E.2d 911 (1956).
25. Andrews & Knowles Produce Co. v. Currin, 243 N.C. 131, 135, 90 S.E.2d
of the lessor, someone claiming under the lessor, or one who has a
title paramount to the title of the lessor."26 These remedies were
not sufficient to protect tenants' rights.

Not surprisingly, a housing revolution occurred during the late
sixties and early seventies, primarily in response to societal
changes.27 The landmark decision of Javins v. First National Re-
alty Corp. determined every lease of a dwelling unit covered by the
applicable housing code contains an implied warranty of habitabil-
ity.28 The court recognized the inequality in the tenant's bargain-
ing power based on discrimination, standardized form leases, and a
shortage of adequate housing.29 The court based its holding upon
the modern trend to interpret leases according to contract law, as
opposed to traditional property law which is not well-suited to ur-
ban society.30

Four years after the Javins decision, with Hartley v. Ballou,31
North Carolina began its move away from the common law by rec-
ognizing an implied warranty of habitability in the construction of
new homes.82 In 1977, the legislature extended this rule by enact-
ing North Carolina's first "consumer-oriented" real property legis-
lation: the RRA.33 The RRA implicitly provides an implied war-

228, 230 (1955); Dobbins v. Paul, 71 N.C. App. 113, 117, 321 S.E.2d 537, 541

26. JAMES A. WEBSTER, JR., WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA

27. See generally Rabin, supra note 1. Rabin attributes the housing revolu-
tion to the civil rights movement, economic prosperity, resistance to the Vietnam
War, and legal precedents. Id. at 540-44.


29. Id. at 1079.

30. Id. at 1074-75.


32. Theodore O. Fillette, III, North Carolina's Residential Rental Agree-
ments Act: New Developments for Contract and Tort Liability in Landlord-Ten-
ant Relations, 56 N.C. L. Rev. 785, 786 (1978). Coincidentally, the author of this
article represented the plaintiffs in Baker for Legal Services of Southern Pied-

33. N.C. GEN. STAT. §§ 42-38 to -49 (1984 & Supp. 1991); see Fillette, supra
note 32, at 806. The landlord has the following obligations:

(1) [to] comply with the current applicable building and housing codes

(2) [to] make all repairs and do whatever is necessary to keep the prem-
ises in a fit and habitable condition;

(3) [to] keep all common areas of the premises in safe condition; and

(4) [to] maintain in good and safe working order and promptly repair all
TENANT STATUS

Ranty of habitability in residential leases. Landlords now have a duty to repair and a violation of this duty is evidence of negligence.

The RRA delineates, among other things, the rights of persons who occupy a "facilit[y] normally held out for the use of residential tenants who are using the dwelling unit as their primary residence." Consequently, transient occupants of hotels or motels do not receive protection of the RRA. Unlike these transient occupants, residential tenants may only be evicted pursuant to summary ejectment proceedings, a court in such a proceeding has jurisdiction only where a landlord-tenant relationship exists.

Formerly, under Spinks v. Taylor, landlords had the option of peaceable self-help eviction and did not have to resort to judicial process. Eviction is peaceful so long as the tenant does not object. Self-help includes padlocking and interruption of utilities or water service. Not satisfied with the Spinks decision, the legislature enacted Article 2A of Chapter 42, "Ejectment of Residential..."


37. See id. § 42-39(a).
38. See id. § 42-25.6. Liability is as follows:
If any lessor, landlord, or agent removes or attempts to remove a tenant from a dwelling unit in any manner contrary to this Article, the tenant shall be entitled to recover possession or to terminate his lease and the lessor, landlord or agent shall be liable to the tenant for damages caused by the tenant's removal or attempted removal.

Id. § 42-25.9(a) (Supp. 1991).
41. See id. at 262, 278 S.E.2d at 504.
42. Id. at 263, 278 S.E.2d at 505.
43. Rabin, supra note 1, at 538.


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This article prohibits landlord self-help in residential tenancies. Arguably, in the absence of a residential landlord-tenant relationship, peaceable self-help remains as an alternative to evict occupants.

The applicability of both the RRA and the right to summary ejectment proceedings depend upon the occupant's status as a residential tenant. In order for a landlord-tenant relationship to exist, the landlord must transfer the right to possession of the premises. Transfer of the right to possession occurs when the occupant has "control over and the power to exclude others from the property." Various factors examined in determining whether the owner transferred this right include the description of the property, any limitations on the occupant's use of the premises, and terms used surrounding the transaction.

In contrast to transferring to the tenant the right to exclusive possession, the owner might retain control over the property and only give the occupant the right to use the premises. This situation creates a licensor-licensee relationship and occurs in the case of transient occupancies. The North Carolina Supreme Court defines a hotel guest as a "transient person who resorts to and is received at an inn for the purpose of obtaining the accommodations which it purports to afford." As a transient person, a hotel guest is within the classification of licensees. The guest acquires no interest in land and, thus, courts are less willing to afford a guest the same protection as a tenant.

44. Webster, supra note 26, § 72.1 n.76. For a discussion of the evolution of the self-help eviction doctrine, the provisions of Chapter 42 and its probable impact, see Robert S. Thompson, Comment, Landlord Eviction Remedies Act: Legislative Overreaction to Landlord Self-Help, 18 Wake Forest L. Rev. 25 (1982).
47. Restatement (Second) of Property, § 1.2 (1977); Schoshinski, supra note 21, § 1.3.
48. Restatement (Second) of Property, supra note 47, § 1.2 cmt. a.
49. Schoshinski, supra note 21, § 1.3.
50. Comment, supra note 2, at 392.
51. See id.
53. Webster, supra note 26, § 344; 49 Am. Jur. 2d, supra note 3, § 6; Schoshinski, supra note 21, § 1.5. See also Hutchins v. Durham, 118 N.C. 457, 471, 24 S.E. 723, 728 (1896).
54. 49 Am. Jur. 2d, supra note 3, § 6; 1 Tiffany, supra note 19, § 8.
55. Comment, supra note 2, at 402.
If the hotel as the owner and licensor has retained control of the premises, the license granted to the guest may be freely revoked. The owner often evinces control by: retaining the room key, providing maid services, sharing facilities with the occupant, repairing and maintaining rooms, supplying furniture and other furnishings, and providing utilities. Rather than consider one factor dispositive in classifying an occupant’s status, courts generally focus on all the facts of the case. Even when the occupant agrees to pay the owner what is called “rent,” the use of this term does not conclusively establish the existence of a landlord-tenant relationship. Although the distinction between a tenant and a guest under the RRA is one of first impression in North Carolina, other jurisdictions have adopted the rationale set forth above and classified occupants as tenants when the facts indicate the hotel has relinquished control over the premises. The importance of the distinction between a tenant and a guest revolves around the legal consequences of the relationship created. The RRA protects only residential tenants. Also, summary ejectment proceedings are the exclusive remedy for landlords who seek to evict residential te-

56. WEBSTER, supra note 26, § 344.
57. SCHOSHINSKI, supra note 21, § 1.5.
58. CUNNINGHAM ET AL., supra note 23, § 6.6. See also Comment, supra note 2, at 410-11.
59. 1 TIFFANY, supra note 19, § 7.
60. See, e.g., Williams v. Alexander Hamilton Hotel, 592 A.2d 644 (N.J. Super. Ct. App. Div. 1991) (occupants lived at hotel over two years, used their own linens, did not receive maid service, registered to vote at the hotel’s address, and intended to remain indefinitely); Serreze v. YMCA of Western Mass., Inc., 572 N.E.2d 581 (Mass. App. Ct. 1991) (residents of transitional living program who paid monthly rent entitled to protection of statute prohibiting self-help eviction); Chawla v. Horch, 333 N.Y.S.2d 531 (N.Y. Civ. Ct. 1972) (written lease for eleven month period, maid service provided, occupants paid rent on monthly basis); Hundley v. Milner Hotel Management Co., 114 F. Supp. 206 (W.D. Ky. 1953) (maid service not provided, unfurnished room, paid monthly, occupant lived on premises a number of years), aff’d, 216 F.2d 613 (6th Cir. 1954); Lambert v. Sine, 256 P.2d 421 (Utah 1953) (owner insisted occupants remain for period longer than a usual traveler would, rent paid in advance); Brin v. Sidenstucker, 8 N.W.2d 423 (Iowa 1943) (paid “rent,” unfurnished room, building called “hotel”). Compare Sawyer v. Congress Square Hotel Co., 170 A.2d 645 (Me. 1961) (occupant classified as guest: owner furnished room, bed linens, maid service, and utilities, and retained keys to the room).
61. SCHOSHINSKI, supra note 21, § 1.4.
62. See supra notes 36-37 and accompanying text.
nants. Unlike other occupants, tenants under periodic tenancies are entitled to statutory notice to quit. Quite clearly, none of these statutory forms of protection are available to a hotel guest.

Although the RRA and the right to summary ejectment do not protect all types of occupants, hotel guests are not without rights. Under the common law, guests receive significantly more protection than tenants. The innkeeper has a duty to maintain the premises in reasonably safe condition and warn a guest of hidden dangers. Also, if wrongfully evicted, although he or she cannot recover possession in an ejectment proceeding, the guest may maintain an action for damages. Yet, with the statutory pro-tenant reform, tenants' rights are more clearly delineated than the rights of guests. Therefore, an occupant would most likely prefer the status of a tenant, particularly with respect to actions for breach of the implied warranty of habitability and wrongful eviction.

ANALYSIS

In Baker, the North Carolina courts had the first opportunity to address the issue of whether an occupant of a hotel may meet the definition of residential tenant as contained in Chapter 42, "Landlord and Tenant." An unanimous court of appeals held that genuine issues of material fact precluded summary judgment on the basis of plaintiffs' status as tenants. The court placed great weight on the fact that plaintiffs leased the premises as primary residences along with other factors tending to indicate the existence of a landlord-tenant relationship.

63. See supra notes 38-39 and accompanying text.
66. N.C. GEN. STAT. § 72-1 (1985) provides: "Every innkeeper shall at all times provide suitable lodging accommodations for all persons accepted as guests in his inn or hotel."
72. See Id.
Rather than focus on the building's classification as a hotel, the court of appeals appropriately considered all of the circumstances surrounding the transaction. Each apartment consisted of one or two bedrooms and separate kitchen/living rooms and baths. Plaintiffs maintained no other residences outside of The Franklin Hotel. Furthermore, the duration of some occupancies had lasted as long as six years. The parties described the weekly payments as "rent." Although defendant Mosley had obtained a hotel license for the building, the building continued to operate in virtually the same manner as before the designation. These factors indicate the hotel was a facility held out for the use of the plaintiffs as their primary residence as opposed to an establishment which receives transient persons for compensation. Apparently, the court viewed the building not as a hotel in the true sense of the word, rather, as analogous to an apartment building. The factors in the case indicate The Franklin Hotel had relinquished control and transferred exclusive possession to plaintiffs, and, thus, in the absence of the statutory definition of residential tenant, the court likely would have reached the same result.

The Baker decision is not surprising based on the historical development in landlord-tenant law towards protecting tenants. The court of appeals did not drastically alter tenants' rights; the holding merely clarifies who constitutes a residential tenant.

The implication of the decision is clear: landlords cannot circumvent the purposes behind the RRA and summary ejectment by labeling a building a "hotel." Residential tenants are entitled to fit and habitable living conditions. And, "in order to maintain the public peace," a landlord may only evict a residential tenant through judicial process. The legislature could not have envisioned a landlord successfully eradicating these basic tenant rights

73. Id. at 247, 409 S.E.2d at 112.
74. Id. at 243, 409 S.E.2d at 110.
75. Id. at 247, 409 S.E.2d at 112.
76. Id. at 243, 409 S.E.2d at 110.
77. Id. at 247, 409 S.E.2d at 112. Yet, interestingly, the practice of using summary ejectment to evict tenants did cease upon hotel licensure. Id. at 244, 409 S.E.2d at 110.
81. See Id. § 42-25.6.
based on the technical distinction of the premises.

CONCLUSION

The North Carolina Court of Appeals in *Baker* examined the applicability of the Residential Rental Agreements Act and the Ejectment of Residential Tenants Act as they pertain to persons who permanently reside in a hotel. The court held that occupants of a hotel may be residential tenants for purposes of these acts. This holding extends significant protection to "hotel" residents, affording them habitable housing and the right to statutory notice and judicial process prior to eviction. The short-run benefit is a blessing to the low-income tenant who frequently resides in this substandard type of housing. Yet, what of the long run? Might these obligations discourage a landlord from providing low-income housing? Now, landlords will have to expend sums to bring the accommodations up to the RRA standard and to bring an action in summary ejectment. The cost of rent will increase to offset the increase in expenditures, thereby forcing out the low-income tenant. Such a result runs counter to the ultimate goal of pro-tenant reform: the provision of habitable and affordable housing for all. Widespread withdrawal from the "hotel-housing" market may or may not occur, as only the future will tell the ultimate impact of this holding.

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