Coates' Canons Blog: Minimum Housing: A Way Around Residential Inspection Limits?

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Tim Taylor is both a housing inspector and the appointed minimum housing public officer for the town of Tooltime, North Carolina. For years he has conducted periodic inspections of dwellings throughout the town in accordance with his town's periodic inspection program. When those inspections revealed minimum housing violations, he used his powers as a minimum housing public officer to ensure that the dwellings were either repaired or demolished as required (of course following the strict procedures for minimum housing actions as required by law). He has never given much thought to the distinction between his role as an inspector and his role as a minimum housing public officer. That is, until the summer of 2011.

It was during that summer that the General Assembly enacted **S.L. 2011-281** (the "Rental Inspection Law"), significantly curtailing an inspector's authority to conduct periodic inspections of dwellings. Under that law (as described in an **earlier post**), inspectors may conduct periodic inspections of residential property only when there is reasonable cause to do so. Reasonable cause is defined in the law to include circumstances such as a history of code violations by the owner or landlord, a request for an inspection, knowledge of a violation, or the presence of a violation visible from outside the property. Tim assumed that this law effectively ended his town's periodic inspection program as currently structured, so he suspended all periodic inspections that did not meet the new reasonable cause requirements.

Recently, however, his decision to suspend those inspections has come under question. Town council member Al Borland has suggested that Tim was too hasty. Councilman Borland argues that the new reasonable cause requirements in the Rental Inspection Law were directed at "inspection departments" only. In Councilman Borland's view, this means that only inspectors in inspection departments are required to follow the law's tough reasonable cause requirements. A minimum housing public officer, the Councilman insists, is not bound by the law's reasonable cause provisions. Why not remove Tim from his position as a housing inspector and direct him to conduct periodic inspections solely in his role as the minimum housing public officer? Tim isn't convinced by Councilman Borland's argument, so he seeks the advice of the town attorney, Heidi Keppert. What might Heidi tell him?

There are two basic assumptions that can be used to frame the discussion: (1) minimum housing public officers have always possessed independent authority to conduct periodic inspections of dwellings and therefore never relied upon G.S. 160A-424 (cities) and G.S. 153A-364 (counties) (both amended by the Rental Inspection Law) to conduct periodic inspections of dwellings, or (2) minimum housing public officers have never possessed such independent authority and periodic inspections of dwellings have always been conducted pursuant to G.S. 160A-424 or G.S. 153A-364, even when conducted by minimum housing public officers.

If the second assumption is made—that minimum housing public officers have no authority to conduct periodic inspections other than G.S. 160A-424 or G.S. 153A-364—then the changes made to those statutes by the Rental Inspection Law must also be followed by minimum housing public officers. Essentially, the conclusion is that minimum housing public officers rely upon the same authority as any other inspector when conducting periodic inspections, and therefore they are required to comply with the same reasonable cause requirements.

But what if the first assumption is made: namely, that a minimum housing public officer possesses independent authority under the minimum housing statutes (Part 6 of **Article 19 of G.S. Chapter 160A**) to conduct periodic inspections? That assumption would be based on two sections of the minimum housing statutes. Under G.S. 160A-448, a local ordinance may grant a minimum housing public officer "additional powers" to "investigate the dwelling conditions in the [jurisdiction] in order to determine which dwellings … are unfit" and to "enter upon premises for the purpose of making examinations." G.S. 160A-449 directs local governments to prepare an estimate of the costs "to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the city for the purpose of determining

the fitness of dwellings for human habitation."

Even making this assumption—that G.S. 160A-448 and G.S. 160A-449 provide separate authority for minimum housing public officers to conduct periodic inspections—a court is likely to resist an interpretation that allows minimum housing public officers to get around the reasonable cause provisions of the Rental Inspection Law. Rules of statutory interpretation dictate that statutes on the same topic should be read together and harmonized, with any repugnancy between them eliminated. *See, e.g.*, *Nat'l Food Stores v. N. Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 628-29, 151 S.E.2d 582, 586 (1966). G.S. 160A-448 and G.S. 160A-449 arguably deal with the same topic as the Rental Inspection Law: that is, local government authority to inspect residential dwellings for code compliance. It could be viewed as repugnant to the Rental inspection Law to allow minimum housing public officers to disregard the Rental Inspection Law's reasonable cause provisions. To avoid this repugnancy, a court could take any of the following approaches:

1. A court could take a broad reading of the term "inspection department" in the Rental Inspection Law, making the assumption that the General Assembly intended that law to cover all periodic inspections of dwellings, regardless of the title of the official conducting the inspection. Housing inspectors are already listed as a type of inspector in an inspection department under G.S. 160A-411. Although a housing inspector is not necessarily the legal equivalent of a minimum housing public officer, it is common for minimum housing public officers, like Tim, to also serve as housing inspectors. A court might decline to make such a fine distinction between housing inspectors and minimum housing public officers, and would simply determine that minimum housing public officers are members of the inspection department, particularly when conducting periodic inspections. Accordingly, they would be required to follow the reasonable cause provisions of the Rental Inspection Law.

2. One rule of statutory interpretation states that specific provisions trump general ones dealing with the same topic. A court could view the rather specific reasonable cause provisions of the Rental Inspection Law as trumping the general language of G.S. 160A-448 and G.S. 160A-449. After all, neither G.S. 160A-448 nor G.S. 160A-449 defines what is a permissible minimum housing inspection. Further, neither provides procedures for conducting such an inspection. The Rental Inspection Law, on the other hand, limits when inspectors may inspect dwellings for code compliance in a very specific way: by listing the types of reasonable cause that must be met prior to conducting a periodic inspection.

3. A court could adopt a narrow or restrictive interpretation of the authority for inspections under the minimum housing statutes. For example, a court could take notice of the fact that G.S. 160A-448 and G.S. 160A-449 refer only to "investigations" and "examinations," not inspections; indeed, the terms "inspect," "inspector," and "inspection" are not found in the minimum housing statutes at all. A court could attempt to give meaning to this distinction in terminology, noting that in the minimum housing statutes, a "preliminary investigation" by a minimum housing public officer is triggered under G.S. 160A-443(2) only after (i) a complaint is filed or (ii) a dwelling appears to the officer to be unfit. If it is assumed that references to investigations and examinations in G.S. 160A-448 and G.S. 160A-449 refer only to this "preliminary investigation," then it can be further concluded that minimum housing public officers are permitted to do nothing more than investigate or examine dwelling conditions from outside the property or curtilage until a complaint has been filed or the dwelling appears to be unfit. This interpretation would be the equivalent of the second assumption discussed earlier, that the minimum housing statutes contain no broad independent authority for periodic inspections.

No court has yet examined this issue, so there is some uncertainty about which path a court would take. Still, Tim now feels more confident about his decision to suspend inspections that do not comply with the Rental Inspection Law's reasonable cause provisions. Councilman Borland's proposal seems to carry some risks that must be weighed carefully. For now, however, he can go home and watch his favorite sitcom.

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