What Magistrates Need to Know About Tenants' Rights,

or "I Stopped Paying Rent Because the Toilet Won't Flush."

The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

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What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
    a. Unsafe wiring.
    b. Unsafe flooring or steps.
    c. Unsafe ceilings or roofs.
    d. Unsafe chimneys or flues.
    e. Lack of potable water.
    f. Lack of operable locks on all doors leading to the outside.
    g. Broken windows or lack of operable locks on all windows on the ground level.

h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
i. Lack of an operable toilet.
j. Lack of an operable bathtub or shower.
k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

There is something a little confusing about this: some of these overlap. Rental premises might, for example, have a broken furnace that violates obligation #4 above, but the fact that it's below-freezing in the house also means the premises are not habitable. The reason it matters is that different rules apply as far as the notice that's required. Let's look at that more closely:

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Notice Requirements

Only one of the obligations has a notice requirement written specifically into the statute: a landlord's obligations with regard to electrical, plumbing, and other "facilities and appliances" arise only if he has written notice that repair or maintenance is necessary. After receiving notice, the landlord is entitled to a "reasonable time" to make repairs. The exception to this requirement is when there is an emergency. If the shower handle breaks off and water is pouring out of the tub onto the floor, the law will not require the tenant to notify the landlord in writing and then wait a few days before imposing an obligation on the landlord to make a repair.

A common-sense rule applies to the other obligations: the tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations. If there's a leak in the roof, for example, the tenant must notify the landlord before it's reasonable to expect the landlord to repair it. In that case, however, oral notice is acceptable. It may be that in some cases, no notice at all is required, when the evidence demonstrates that the landlord actually knew of the problem (for example, there were holes in the floor before the tenant moved in).

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Waiver

The RRAA is a consumer-protection statute. Like other consumer protection legislation, the rights of the parties are not created by contract—or agreement—in these cases. Instead, the obligations of the landlord are imposed by law—even if the contract says nothing about them, **or even if the lease says the tenant waives those rights.** The statute is clear that a tenant doesn't waive his rights by signing a lease providing for waiver; nor does a tenant waive his rights to fit and habitable housing by agreeing to rent a place with obvious defects, even if the landlord specifically tells him about them. If a tenant rents a house without air conditioning, that's fine. But if a tenant rents a house with air conditioning and then the air conditioning tears up, the landlord has a statutory obligation to repair the air conditioning, even if the lease says otherwise.

Sometimes a landlord will say, "I know the house wasn't up to code, but that's why the rent was so low. I agreed to let him live in the house for low rent, and he agreed that he would do some work on the house for me." The RRAA anticipated this, and sets out the following rule: An agreement between the landlord and tenant that the tenant will work on the house and be paid by the landlord is fine, so long as the agreement is entered into AFTER the lease agreement is complete, and the arrangement for payment by the landlord for the tenant's work is separate from the rent payment.

Sometimes a landlord will say, "The reason the house isn't up to code is that the tenant himself keeps damaging it." This allegation, if true, is a valid defense to the landlord's violation of the Act. The tenant also has obligations under the Act, including refraining from deliberately or negligently damaging any part of the premises. The obligations of the landlord and tenant are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. If a tenant violates his obligation to avoid damaging property, it relieves the landlord of his obligation to keep the property in good repair. Obviously, this rule makes good sense, but is a potential swamp, since each party may be in flagrant violation of the Act and point to the other's violation as excusing their own.

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Remedies: What Happens When a Landlord Fails to Meet His Responsibilities Under the Act?

At the outset, you are confronted with two apparently contradictory provisions of the Act that have worried commentators. On the one hand, the obligations of the landlord and the tenant under the Act are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. Based just on this provision, one might reasonably conclude that a tenant's obligation to pay rent "depends" on the landlord's provision of fit and habitable premises. But another section of the Act specifically says that a tenant may not "unilaterally withhold rent prior to a judicial determination of the tenant's right to do so." What does this mean?

No one is absolutely certain, because there have actually been only a few appellate cases interpreting the RRAA. It seems clear, though, that a tenant who withholds rent because the landlord violates the RRAA risks being evicted for failure to pay rent. A much safer course would be to pay rent and then

bring an action in rent abatement; a tenant who prevails in this action will recover damages for the landlord's past violation of the Act and may well also secure a "judicial determination of [his] right" to withhold future rent until the landlord complies with the law.

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If a tenant does not adopt this safer course, but instead withholds rent, one leading commentator suggests the following approach:

First, determine the actual amount of rent owed, after factoring in the amount of offset to which the tenant is entitled due to the landlord's breach of the RRAA. If that amount is zero, dismiss the action. If the amount is greater than zero, the next step depends on the specific basis for the action:

If the action is based on breach of a lease condition for which forfeiture is specified, the landlord is entitled to possession upon making the usual showing.
If the action is based on failure to pay rent, however, the tenant may successfully defend by tendering the amount which the magistrate has determined is actually owed.

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Repair & Deduct?

Can a tenant hire someone to fix the roof, pay for it out of his own pocket, and then take that amount out of the rent? We don't know, and the commentators are divided in their predictions. Until North Carolina courts clarify the law, it seems likely that many courts will cautiously allow tenants to do this, with the facts of the individual case being important (a tenant who gives notice, waits a long time, and then spends a small amount of money being much more likely to prevail than a tenant who fails to give notice and makes major repairs, such as replacing a roof).

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Other Questions about the RRAA

Who is responsible? Clearly, the owner of the property is subject to the Act, but in Surrat v. Newton, 99 NC App 396 (1990), the Court of Appeals found that a property manager (who had authority to make repairs) was also subject to liability under the Act.

What is the statute of limitations applicable to actions based on violations of the RRAA? 3 years.

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Procedure

The Act states that a tenant may enforce his rights under the Act by civil action, including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession." Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.

2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.

3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.

4. The tenant files an action for rent abatement.

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Damages

The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

How are damages proven? No expert testimony is required. Witnesses may offer their opinon about the FRV of property, and the magistrate may also rely on his own experience in determining reasonable damages.

Are punitive damages allowed? No, punitive damages are not authorized in actions for breach of contract. Treble damages under G.S. 75-1.1 (prohibiting unfair or deceptive acts or practices affecting commerce) are available, however, if the tenant is able to demonstrate the essential elements of that claim.

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Exercise: Let's Look at Some Leases

Lease #1:

Resident accepts Property in its present "AS-IS" condition . . .

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All appliances of any kind including window air conditioners are specifically excluded from this Agreement. Such appliances remain as a convenience to Resident and Management assumes no responsibility for their operation. No part of the monthly rent is attributable to them.

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Discount for prompt payment and maintenance: Time is of the essence of this Agreement. If the rent, and any previous balance due, is received and accepted on or before (the due date described above) and Resident complies with the maintenance requirements contained herein, a _____ Dollar discount will be credited to the rental payment.
Resident shall at his own expense and at all times maintain the premises in a clean and sanitary manner, including all equipment and appliances therein. . . Resident expressly stipulates and agrees that

Management is granting a rental discount in exchange for Resident's agreeing to perform and bear the expense of, or have performed, minor maintenance and repairs on the dwelling, therefore Management shall NOT be responsible for maintenance and repairs of the premises during the term of this Agreement. If Resident repair responsibilities conflict with any state laws to the contrary, Resident expressly agrees to fully waive and relinquish any protections so provided.

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Lease #2

28. In the event repairs are needed beyond the competence of the Tenant, Tenant is urged to contact the Landlord. Tenant is offered the loan of the shed as an incentive to make his own decisions on repairs to the property and to allow Landlord to rent the property without the need to employ professional management. Therefore, as much as possible, Tenant should refrain from contacting the landlord or his agent except for emergencies, or for expensive repairs.
29. Tenant warrants that any work or repairs performed by him will be undertaken only if he is competent and qualified to perform it. Tenant will be totally responsible for all activities to assure that work is done in a safe manner which will meet all the applicable codes and statutes. Tenant further warrants that he will be accountable for any mishaps or accidents resulting from such work, and will hold the Landlord free from harm, litigation, or claims of any other person. Tenant is responsible for all plumbing repairs including faucets, leaks, stopped up pipes, frozen pipes, water damage, and bathroom caulking.

31. Appliances or furniture in the unit at date of lease are loaned not leased to Tenant. Maintenance of appliances or furniture is the responsibility of Tenant who will keep them in good repair.

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