

# Issues in Summary Ejectment: Rent Abatement

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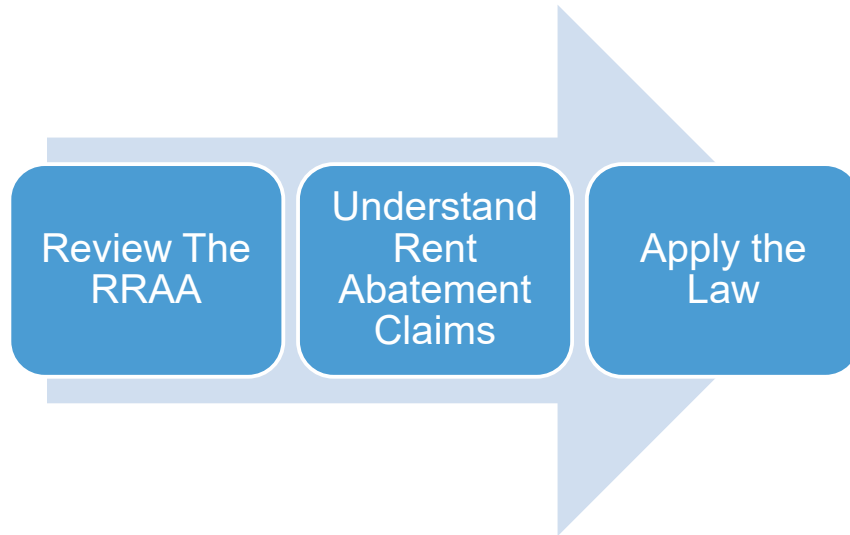
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## Where are we going, and how do we get there?

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# The Residential Rental Agreements Act

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## Purpose of the Act

- Creates an implied warranty of habitability in residential leases
- Requires LLs to provide “fit and habitable” premises
- Creates mutually dependent obligations of LL and T

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## Covered Property

- Dwelling units, including mobile homes and MH spaces
- Grounds, areas, and facilities held out for use by T, including yards

GS 42-40(b)

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## Property Not Covered

- Hotels, motels, or similar temporary lodging
- Vacation rentals
- Dwelling furnished without charge

GS 42-39

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## Who's Covered

Landlord=owners, rental management company, rental agency, or others who have or appear to have authority

GS 42-40(3)

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## Landlord's Obligations (GS 42-42)

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1. Comply with building and housing codes and elevator safety requirements
2. Keep premises in a fit and habitable condition
3. Keep common areas safe
4. Maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances
5. Install and keep in good repair a smoke alarm
6. Notify tenant if water LL charges to provide exceeds a certain contaminant level
7. Install and keep in good repair a carbon monoxide alarm

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## Landlord's Obligations-Continued (GS 42-42)

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8. Repair within a reasonable time any "imminently dangerous condition"
  - 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
  - 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
  - l. Excessive standing water, sewage, or flooding

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## Unsuccessful Arguments for Not Applying the RRAA

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- T's waiver
- Lack of notice from T to L
- LL's reasonable efforts
- Rent reduced to fair price due to defects
- T unilaterally withheld rent

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1. How do you rule on Paul Manager's motion to dismiss?
2. How do you rule on Patty Photographer's counterclaim?
3. How do you rule on the enforceability of the "as-is" provision?
4. How do you rule on Oscar Owner's motion to dismiss Tariq Tenant's counterclaim?

## RRAA Problems

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# Rent Abatement

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**How is the claim asserted?**

1. Affirmative cause of action
2. Counterclaim
3. Defense to avoid eviction
4. Defense for a setoff

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# What evidence is required?

1. Notice
2. Defect
3. Fair Rental Value

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## Notice

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- T must give whatever notice is necessary to reasonably permit the LL to fulfill his obligations, subject to exceptions.
- Owner is presumed to have knowledge of conditions in existence at the beginning of the tenancy, and no further notice by T is required.



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## Written Notice Required-T to LL

- Repairs to electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, except in emergencies-G.S. 42-42(a)(4)
- Replace or repair smoke or carbon monoxide alarm-G.S. 42-43(a)(7)



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## Written Notice Required-LL to T

For Violations of G.S. 42-43(a)

- Keep premises clean and safe
- Dispose of waste
- Keep plumbing fixtures clean
- Not destroy, deface, damage or remove any part of premises
- Comply with building and housing codes
- Be responsible for damage beyond ordinary wear and tear
- Notify LL in writing of replacement/repair smoke or carbon monoxide alarm



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## Defect

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- Type of defect that violates the RRAA
- Duration of the defect after notice to LL
- Months T paid rent and defect went unrepaired

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## Fair Rental Value (FRV)

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- “FRV as warranted”-value of the premises in full compliance with G.S. 42-42
- “FRV as is”-value of the premises in their unfit condition for any period of the tenant’s occupancy



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## Evidence of FRV

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### Direct Evidence

- Opinion of what the premises would rent for on the open market from either an expert or a witness qualified by familiarity with the specific piece of property

### Indirect Evidence

- Other facts from which the FRV may be determined, including the dilapidated condition of the premises
- Contractual rent amount

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## What is the measure of damages?

1. Difference in “FRV as warranted” & “FRV as is” up to the amount of rent actually paid
2. Incidental damages
3. Treble damages if T also proves unfair trade practice

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## Example of FRV Calculation

	Month 1	Month 2	Month 3
FRV as is	\$800	\$800	\$800
Rent paid by T & FRV as warranted	\$1000	\$1000	\$1000
Balance	+\$200	+\$200	+\$200

Judgment for T=\$600

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## Example of FRV Calculation

	Month 1	Month 2	Month 3
FRV as is	\$800	\$800	\$800
Rent paid by T & FRV as warranted	\$1000	\$0	\$0
Balance	+\$200	-\$600	-\$1400

Total amount of rent T should have paid=\$2400

Total amount of rent T actually paid=\$1000

Total amount of rent T owes to LL=\$1400

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## Rent Abatement Problems

1. Tanisha Tenant v. Lucy Landlord
  - a. What damages would you award Tanisha for her rent abatement claim?
  - b. Was Tanisha required by G.S. 42-42 to provide written notice of the defects? Why or why not?
  - c. What role, if any, does your experience have in determining fair rental value?



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## Tanisha Tenant v. Lucy Landlord

	Aug 22	Sept 22	Oct 22	Nov 22	Dec 22	Jan 23
FRV as is	\$500	\$500	\$500	\$500	\$500	\$500
Rent paid by T and FRV as warranted	\$1200	\$1200	\$1200	\$1200	\$1200	\$1200
Balance	+\$700	+\$700	+\$700	+\$700	+\$700	+\$700

Total difference between FRV as warranted and FRV as is=\$4200

Total amount of rent paid by Tanisha=\$7200

Total amount of rent paid by Tanisha exceeds the difference in FRV as warranted and as is, so Tanisha is entitled to a judgment of \$4200.

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## Rent Abatement Problems

### 2. Luke Landlord v. Tony Tenant

- a. What notice, if any, was Tony required to give Luke and The Realty Company of the defects?
- b. Assuming you find for Tony on his rent abatement claim, what is the maximum amount of damages he would be entitled to?
- c. How would you rule on Luke's claim for summary ejectment?



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## Luke Landlord v. Tony Tenant

	July	August	September
FRV as is	\$250	\$250	\$250
FRV as warranted	\$700	\$700	\$700
Difference	\$450	\$450	\$450
Rent paid by T	\$550	\$550	\$0

Total difference between FRV as warranted and FRV as is=\$1350

Total amount of rent paid by Tony=\$1100

Total difference exceeds the total amount of rent paid by Tony, so the maximum amount of the judgment Tony is entitled to is \$1100.

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## Rent Abatement Problems

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3. Landowners, LLC v. Teresa Tenant
  - a. What notice, if any, was Teresa required to give Landowners, LLC?
  - b. Do you think Teresa's defense would be successful? Why or why not?
  - c. Even if you abate the rent for January, could Teresa still be evicted?



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## What did we learn?

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- The RRAA creates an implied warranty of habitability in every residential lease in NC.
- The protections of the RRAA cannot be waived by T.
- Written notice of the LL's violations of the RRAA is NOT always required. Written notice of T's violations is required.
- Tenants who have paid rent for a property that was not fit and habitable can assert a claim or defense for rent abatement.
- The measure of damages is the difference between the FRV as warranted and FRV as is; provided, however, the damages do not exceed the total amount of rent paid by the T.

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# Questions?

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