
What Judges Need to Know About the RRAA

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, changed NC law to require landlords to maintain residential rental premises at a certain minimal level of habitability. This obligation is imposed as a matter of social policy by the State of North Carolina. For that reason, a tenant has no authority to give a landlord permission to violate the law. In exchange for providing greater protections to tenants, including prohibiting self-help eviction and requiring landlords to provide fit and habitable housing, a number of preferential procedures are provided to landlords allowing fast and inexpensive evictions when tenants breach a lease.

Who and What is Covered by the Law?

The RRAA applies only to residential rental agreements.

The law applies to any dwelling unit, including mobile homes and mobile home spaces, as well as surrounding grounds and facilities provided for use by residential tenants.

The statute defines "landlord" to include not only property owners, but also rental agencies or other persons who have or appear to have authority to comply with the legal requirements imposed by the RRAA.

The RRAA does not apply to vacation rentals covered by GS Ch. 42A, temporary lodging in hotels or motels, and to permissive occupancy of premises furnished without charge.

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. It must comply with building and housing codes.
2. It must keep premises in a fit and habitable condition.
3. It must keep common areas in safe condition
4. It must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. It must install a smoke detector and keep it in good repair.
6. It must install a carbon monoxide detector and keep it in good repair.

7. It must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. It 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.

Notice Requirements

General rule: The tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations.

With regard to #4, the rule related to electrical, plumbing, and other “facilities and appliances,” the tenant is required to give written notice that repair or maintenance is necessary (except in case of emergency).

A property owner is presumed to have knowledge of conditions in existence at the beginning of the rental, and no further notice by the tenant is required.

A Tenant Can't Excuse a Landlord from the Law's Requirements

The obligations imposed on landlords by the RRAA are not based on the rental agreement between the parties, but are imposed by law. Consequently, the rules apply

- even if the contract says nothing about them
- even if the lease specifically states that the tenant waives those rights
- even if the housing had obvious violations which the tenant was aware of when the tenant entered into the lease
- even if the rent is substantially lowered to reflect the FRV of the defective property

Q: What is the effect of a lease provision that specifies that an appliance (e.g., dishwasher) is being provided as an accommodation to the tenant, but only if the tenant agrees to pay any cost of repair if the appliance breaks?

A: The provision is not enforceable; the landlord is required to repair the dishwasher. Note that the landlord is not required to provide a dishwasher, but is required to maintain and repair those appliances it provides.

Q: What are the landlord's rights and obligations if the tenant's own behaviors cause an imminently dangerous condition (#8) on the property?

A: The landlord is required to repair or remedy any imminently dangerous condition, even one that results from the tenant's fault, but the tenant is responsible for paying the actual and reasonable costs of repairs.

A Tenant Has Obligations Too

GS 42-43 lists the requirements applicable to tenants related to keeping property clean and undamaged and to cooperating with the landlord to ensure that the rental unit has at all times an operable smoke and/or carbon monoxide alarm. A landlord who becomes aware of a tenant's violations of these requirements is required to give written notice to the tenant except in case of emergency.

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.

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 court has determined is actually owed.

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).

Procedure

The Act states that a tenant may enforce his rights under the RRAA by civil action, *including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession."* Thus, a judge 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.

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.

How are damages proven? No expert testimony is required. Witnesses may offer their opinion about the FRV of property, and the court may also rely on the judge's own experience in determining reasonable damages.

Exercise: Let's Look at Some Lease Provisions

Lease #1:

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

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.

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.

Lease #2

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.

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.

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.

Rent Abatement Problem

Larry Landlord rents an apartment to Tommy Tenant. There is no written lease. Tommy pays \$600 rent on the first of each month. Larry files for summary ejectment based on failure to pay rent on March 15, based on Tommy’s failure to pay rent for February and for March. You hear the case on March 25.

Imagine that Larry establishes a prima facie case, but Tommy’s testimony is that the apartment has had no heat since he moved in, on Jan. 1st. He testifies that he notified Larry immediately of the problem, and Larry promised to fix it, but beyond providing a space heater, has taken no other steps to repair the heating system. Tommy tells you that he believes the apartment with a single space heater, rather than a central heating system, is worth only \$300 a month. He is prepared to tender the full amount due in order to maintain possession of the property.

Assuming you find Tommy’s estimate credible, what amount must he tender? _____

	January	February	March
FRV	\$300	\$300	\$300
Amt pd by T	\$600	0	0
Balance	+\$300	0	-\$300

Assume that Tommy is not asking to remain in possession of the property, but that he is instead merely disputing the amount owed. What is your money judgment? _____