

845.30 LANDLORD’S RESPONSIBILITY TO PROVIDE FIT RESIDENTIAL PREMISES.

NOTE WELL: The Residential Rental Agreements Act codified the implied warranty of habitability.¹ N.C.G.S. § 42-44(a) provides that any right or obligation declared by the Residential Rental Agreements Act is enforceable by civil action. N.C.G.S. § 42-40 defines action to include recoupment, counterclaim, defense and setoff. This instruction may be used when the tenant brings a rent abatement action against the landlord, when the tenant files a rent abatement proceeding as a counterclaim to landlord’s summary ejectment action, or when the tenant raises this issue as a defense to a summary ejectment action.

The (*state number*) issue reads:

“Did the landlord violate the Residential Rental Agreements Act?”

On this issue the burden of proof is on the tenant. This means that the tenant must prove, by the greater weight of the evidence, that the premises rented were not maintained in compliance with the Residential Rental Agreements Act.

Under this Act, a landlord must:

[comply with the applicable building and housing codes]

[make all repairs and do whatever is necessary² to put and keep the premises in a fit and habitable condition. Premises are not fit and habitable if they are not suitable for human habitation. You may consider violations of building or housing codes³ in making your determination of whether the premises are fit and habitable.⁴ “Whatever is necessary” may require something other than repair. It is your decision to determine “what is necessary” under the circumstances.⁵]

[keep all common areas of the premises in a safe condition.]

[maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord.]

[within a reasonable period of time based upon the severity of the condition, repair or remedy any imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition.]

A landlord is not relieved of the landlord's obligations by [a tenant's explicit or implicit acceptance of the premises that violate the Act] [the fact that the premises are not in a fit and habitable condition when a tenant first enters the lease] [the fact that a tenant continues to pay rent or live in the premises that do not comply with the Act].

A tenant is not required to give the landlord notice of defects which are in existence at the beginning of the lease  or which the landlord has actual or implied knowledge.⁶

However, a tenant must give the landlord notice of any defects that arise after the tenant has taken possession of the premises and of which the landlord does not have actual or implied knowledge.⁷ [Notice may be oral or in writing]. [If a tenant requests the landlord to make [electrical] [plumbing] [sanitary] [heating] [ventilating] [air conditioning] [(state other facility or appliance supplied or required to be supplied by the landlord)] repair(s), and the situation is not an emergency, the tenant must give the landlord notice of the needed repair(s) in writing.⁸] [A tenant must give notice to the landlord even if the repair(s) [is] [are] necessary to keep the premises in a fit and habitable condition.⁹]

The tenant contends, and the landlord denies, that the landlord has violated the Residential Rental Agreements Act in one or more of the following ways:

[(State provisions of housing and building codes that tenant alleges have been violated.)]

[(state all contentions of tenant regarding

(unfitness and uninhabitability of the premises)

(landlord’s failure to maintain common areas of the premises in a safe condition)

(landlord’s failure to repair or do whatever is necessary to put and keep the premises in a fit and habitable condition)

(landlord’s failure to repair or remedy any imminently dangerous condition on the premises).)]

Finally, as to this issue on which the tenant has the burden of proof, if you find by the greater weight of the evidence, that the landlord has violated the Residential Rental Agreements Act in any one or more of the ways which I have explained to you, then it would be your duty to answer this issue “Yes” in favor of the tenant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the landlord.

1. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 802, 898 S.E.2d 648, 652 (2024).

2. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 809, 898 S.E.2d 648, 656 (2024) (concluding that “whatever is necessary” is language broad enough to encompass the requirements of each of the subsections of N.C.G.S. § 42-42 when read harmoniously and that “it is not a codified requirement for a landlord to stop at nothing to comply—such as regular inspections to find violations. ‘Whatever is necessary’ leaves room for the multitude of requirements detailed within the RRAA and the building and housing codes, incorporated into a landlord’s responsibility by subsection (a)(1)”.)

3. The court may take judicial notice of the state building code, but not of local housing codes. N.C.G.S. § 143-138.

4. *Miller v. C.W. Myers Trading Post*, 85 N.C. App. 362, 369-70, 355 S.E.2d 189, 193-94 (1987).

5. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 809, 898 S.E.2d 648, 656 (2024).

6. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 804, 898 S.E.2d 648, 653 (2024) (“The RRAA expressly abrogates the common law in that it requires landlords to make repairs after receiving notice or acquiring actual knowledge, depending on the nature of the necessary repair or remedy. Accordingly, no duty to inspect exists and no duty to repair arises prior to the tenant providing notice to the landlord or the landlord acquiring actual knowledge of the needed repair.”).

7. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 805, 898 S.E.2d 648, 653–54 (2024). As explained by *Terry*, the RRAA “softens—but does not completely abrogate—the common law concept of *caveat emptor* regarding repairs and imminently dangerous conditions on leased residential premises This Court has explained that a tenant, as an occupier of land, stands in the same position as the landowner with respect to standards of care and duties owed to others. This is because the tenant, as the occupier, is in a much better position to know about the condition of the property. Accordingly, the tenant bears the burden to inform the landlord of the need for repair. The RRAA applies this common law concept to tenants generally. By codifying the notice requirement, the RRAA further highlights the interplay between common and statutory law.” *Id.* (internal quotation marks and citations omitted).

8. N.C.G.S. § 42-42(a)(4).

9. *Terry v. Pub. Serv. Co. of N. Carolina, Inc.*, 385 N.C. 797, 811, 898 S.E.2d 648, 657 (2024) (“When repair is necessary to keep a premises in a fit and habitable condition, this does not obviate the requirement that a tenant must give notice to the landlord of the repair that is needed.” (internal quotations omitted)).