

845.35 LANDLORD'S RESPONSIBILITY TO PROVIDE FIT RESIDENTIAL
PREMISES—ISSUE OF DAMAGES.

The (*state number*) issue reads:

“What amount of damages, if any, is the tenant entitled to recover?”

If you have answered (*state number*) issue “yes” in favor of the tenant, the tenant is entitled to recover nominal damages even without proof of actual damages.¹ Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages resulting from the failure to comply with the Residential Rental Agreements Act.

The tenant may also be entitled to recover actual damages. 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 tenant has suffered damages and the amount of such damages.

To find the amount of the tenant's damages, if any, you must make the following determinations:

First, you must determine the period of time during the tenant’s occupancy of the premises that the landlord was in violation of the Act. [The parties have stipulated that this period of time began on (*state date*) and ended on (*state date*).] [The tenant contends, and the landlord denies, that this period of time began on (*state date*) and ended on (*state date*).]

Second, for this period of time, you must determine the fair rental value of the premises in its then-existing condition. Fair rental value is the amount which would be agreed upon as fair rent by a landlord who wishes to rent, but is not compelled to do so, and a tenant who wishes to rent, but is not compelled to do so. In determining the fair rental value of this premises, you may consider evidence of what the premises would rent for in the open

market, the rent agreed upon by the parties in the lease,² and any other evidence from which the fair rental value of the premises may be determined.

Third, for this same period of time, you must determine what the fair rental value of the premises would have been had the landlord complied with the Act.

Fourth, you must determine the total amount of rent previously paid by the tenant to the landlord. [The parties have stipulated that the total amount of rent previously paid by the tenant to the landlord was (*state amount*).]

The tenant’s damages, therefore, are equal to the difference, if any, between the fair rental value of the premises in its then existing condition and what its fair rental value would have been had the landlord complied with the Act during this same period of time. However, the amount of damages you find must not exceed the total amount of rent previously paid by the tenant to the landlord.³

NOTE WELL: If evidence of consequential damages was presented to the jury, the verdict sheet should include two separate lines for the jury to award damages: one designated line for actual, direct damages and a second designated line for actual, consequential damages.⁴ In such a case, use the following bracketed language.

[The tenant’s damages may also include special or consequential damages, that are losses that occurred because of special circumstances or conditions attending the landlord’s failure to comply with the Residential Rental Agreements Act of which the landlord knew or should have known and of which the tenant could not have reasonably prevented. However, the tenant is not entitled to recover twice for the same element of damages. Therefore, you should not include any amount you have already allowed for in damages when calculating the tenant’s special or consequential damages. In this case, the tenant contends, and the landlord denies, that the tenant sustained the

following consequential damages (*here enumerate the type(s) of consequential damages contended by the tenant and supported by the evidence*).]

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 tenant has sustained damages under the law as I have explained it to you, you will answer this issue by writing the amount of such damages you find in the [first] blank space provided.

[If you find by the greater weight of the evidence that the tenant has sustained special or consequential damages under the law as I have explained it to you, you will answer this issue by writing the amount of such damages you find in the second blank space provided.]

On the other hand, if you fail to find any damages, then you would answer this issue by writing a nominal amount such as “One Dollar” in the blank space provided.

1. See *Liss of Carolina Inc. v. South Hills Shopping Center, Inc.*, 85 N.C. App. 258, 260, 354 S.E.2d 549, 550 (1987); *Martin-Kahill Ford Lincoln Mercury, Inc. v. Skidmore*, 62 N.C. App. 736, 739, 303 S.E.2d 392, 393 (1983); *Richard W. Cooper Agency, Inc. v. Irwin Yacht and Marine Corp.*, 46 N.C. App. 248, 253, 264 S.E.2d 768, 771 (1980).

2. *Cotton v. Stanley*, 86 N.C. App. 534, 539, 358 S.E.2d 692, 695 (1987), disc. review denied, 321 N.C. 296, 362 S.E.2d 779 (1987).

3. The tenant’s actual damages remedy is in the nature of “rent abatement” and, thus, is limited by the amount of rent previously paid. See *Von Pettis Realty, Inc. v. McKoy*, 135 N.C. App. 206, 210, 519 S.E.2d 546, 549 (1999), *Creekside Apartments v. Poteat*, 116 N.C. App. 26, 34, 446 S.E.2d 826, 831, disc. rev. denied, 338 N.C. 308, 451 S.E.2d 632 (1994), *Foy v. Spinks*, 105 N.C. App. 534, 414 S.E.2d 87 (1992), *Allen v. Simmons*, 99 N.C. App. 636, 394 S.E.2d 478 (1990), *Surratt v. Newton*, 99 N.C. App. 396, 407, 393 S.E.2d 554, 560 (1990), and *Miller v. C. W. Myers Trading Post, Inc.*, 85 N.C. App. 362, 371, 355 S.E.2d 189, 194 (1987).

4. See *Von Pettis Realty, Inc. v. McKoy*, 135 N.C. App. 206, 211 n.4, 519 S.E.2d 546, 549 n.4 (1999).