

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--OWNER'S MEASURE OF RECOVERY FOR LOSS OF USE DUE TO A LESSEE'S, OCCUPIER'S OR POSSESSOR'S BREACH OF A LEASE OF REAL ESTATE OR PERSONAL PROPERTY.

NOTE WELL: *This instruction is to be used primarily where a tenant breaches a lease covenant that makes the premises unrentable to a third party for some period of time (e.g., environmental contamination or damage to the structure of the premises).*

Direct damages are the economic losses that usually or customarily result¹ from a breach of contract. In this case, you will determine direct damages, if any, by determining the fair rental value of *(describe property)* on [the date that *(describe events constituting breach)*] [*(specify date)*] for the period of time (if any) that the plaintiff was deprived of its use by reason

¹ "In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury." *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (quoting the RESTATEMENT OF THE LAW OF CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

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of the breach of contract.² Fair rental value is the amount which would be agreed upon as a fair rent by an owner who wishes to lease, but is not compelled to do so, and a tenant who wishes to lease, but is not compelled to do so.

²A party who is injured by a breach of contract is entitled to compensation for the injury sustained and is entitled to be placed, as near as this can be done with money, in the same position he would have occupied if the contract had been performed. *Perkins v. Langdon*, 237 N.C. 159, 169-70, 74 S.E.2d 634, 643 (1953). Therefore, the measure of damages for the breach of a contract is the amount which would have been received if the contract had been performed as made, which means the value of the contract, including the profits and advantages which are its direct results and fruits. *Id.* When a tenant abandons the leased premises and fails to pay rent, the landlord can recover only those damages which he could not with reasonable diligence avoid by reletting the premises. *Isbey v. Crews*, 55 N.C. App. 47, 51, 284 S.E.2d 534, 537 (1981). However, the burden is on the breaching party to prove that the nonbreaching party failed to exercise reasonable diligence to minimize the loss. *Id.* at 51, 284 S.E.2d at 538.