DUTY OF LANDLORD TO TENANT--VACATION RENTAL.

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the defendant?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

Every person is under a duty to follow standards of conduct enacted as laws for the safety of the public. The North Carolina Vacation Rental Act[1] imposes upon landlords of vacation rentals a duty to exercise ordinary care to maintain their vacation rental properties in a fit condition.[2] A standard of conduct established by a safety statute must be followed. A person's failure to do so is negligence in and of itself.[3]

In order to prevail on this issue, the plaintiff must prove, by the greater weight of the evidence, five things:

First, that the plaintiff was a tenant of a vacation rental premises leased from the defendant. (A "vacation rental" is a rental of residential property for vacation, leisure or recreational purposes for

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[1]N.C.G.S. §42A-1. The act became effective January 1, 2000 and applies to all vacation rental agreements entered on or after that date.

[2]N.C.G.S. §42A-31.

[3]Unlike the North Carolina Residential Rental Agreements Act which specifically states that a violation of its provisions is not negligence *per se*, N.C.G.S. §42-44(d), the Vacation Rental Act contains no such provision.

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fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.)[4]

Second, that an unfit condition existed on the vacation rental premises. [This includes not only the vacation rental unit itself, but the amenities and common areas under the landlord's control and made available for the tenant's use.][5]

Third, that the defendant knew or, in the exercise of ordinary care, should have known of the existence of the unfit condition. Landlords have a duty to make a reasonable inspection of their vacation rental premises and are responsible for knowing what a reasonable inspection would reveal.[6]

Fourth, that the defendant failed to exercise ordinary care to remove or remedy the unfit condition. Landlords are required by law to

[comply with the current applicable building and housing codes (*Read applicable code provisions*)[7]]

[make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[8]]

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[4]N.C.G.S. §42A-4(3). Hotels, motels and tourist camps, rentals necessitated by business or employment travel, gratuitous rentals and the like are not "vacation rentals." N.C.G.S. §42A-3(b).

[5]By analogy to N.C.G.S. §42-40(2). *See also* the definition of "residential property" at N.C.G.S. §42A-4(2).

[6]The duty to keep the premises in a safe condition "implies the duty to make reasonable inspection and correct an unsafe condition which a reasonable inspection might reveal...." *Lenz v. Ridgewood Associates*, 55 N.C. App. 115, 121, 284 S.E.2d 702, 706 (1981).

[7]N.C.G.S. §42A-31(1). Read applicable code provisions only if competent evidence has been admitted as to their existence and content.

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[keep all common areas of the premises in a safe condition][9]

[maintain in good and safe working order and reasonably and promptly repair all [major appliances] [[electrical] [plumbing] [sanitary] [heating] [ventilating] system(s)] [(*name other system(s)*)] supplied by or required to be supplied by the landlord, provided that notification of needed repairs has been given to the landlord in writing by the tenant[10]]

[provide operable smoke detectors][11]

[replace or repair smoke detectors, provided that notification of needed replacement or repair has been given to the landlord by the tenant in writing][12]

[annually place new batteries in a battery-operated smoke detector].

A landlord's failure to comply with [this requirement] [any of these requirements] is negligence in and of itself.

And Fifth, that such failure was a proximate cause of the plaintiff's [injury] [damage]. Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage] and is a cause which a reasonable and prudent person could have

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[8]N.C.G.S. §42A-31(2).

[9]N.C.G.S. §42A-31(3).

[10]N.C.G.S. §42A-31(4).

[11]N.C.G.S. §42-31(5).

[12]*Id.*

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foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following respects:

(Read all contentions of negligence supported by the evidence.)

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant was negligent and that such negligence was a

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proximate cause of plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.