

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, re-wrote the common law to provide that landlords must maintain residential rental premises to be fit to live in, and to make clear that a tenant's right to such housing cannot be waived. Prior law had followed the rule of *caveat emptor* ("let the buyer beware").

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. He must comply with building and housing codes.
2. He must keep premises in a fit and habitable condition.
3. He must keep common areas in safe condition
4. He must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. He must install a smoke detector and keep it in good repair.
6. He must install a carbon monoxide detector and keep it in good repair.
7. He must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. He 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.

There is something a little confusing about this: some of these overlap. Rental premises might, for example, have a broken furnace that violates obligation #4 above, but the fact that it's below-freezing in the house also means the premises are not habitable. The reason it matters is that different rules apply as far as the notice that's required. Let's look at that more closely.

Notice Requirements

Only one of the obligations has a notice requirement written specifically into the statute: a landlord's obligations with regard to electrical, plumbing, and other "facilities and appliances" arise only if he has written notice that repair or maintenance is necessary. After receiving notice, the landlord is entitled to a "reasonable time" to make repairs. The exception to this requirement is when there is an emergency. If the shower handle breaks off and water is pouring out of the tub onto the floor, the law will not require the tenant to notify the landlord in writing and then wait a few days before imposing an obligation on the landlord to make a repair.

A common-sense rule applies to the other obligations: the tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations. If there's a leak in the roof, for example, the tenant must notify the landlord before it's reasonable to expect the landlord to repair it. In that case, however, oral notice is acceptable. It may be that in some cases, no notice at all is required, when the evidence demonstrates that the landlord actually knew of the problem (for example, there were holes in the floor before the tenant moved in).

Waiver

The RRAA is a consumer-protection statute. Like other consumer protection legislation, the rights of the parties are not created by contract—or agreement—in these cases. Instead, the obligations of the landlord are imposed by law—even if the contract says nothing about them, **or even if the lease says the tenant waives those rights**. The statute is clear that a tenant doesn't waive his rights by signing a lease providing for waiver; nor does a tenant waive his rights to fit and habitable housing by agreeing to rent a place with obvious defects, even if the landlord specifically tells him about them. If a tenant rents a house without air conditioning, that's fine. But if a tenant rents a house with air conditioning and then the air conditioning tears up, the landlord has a statutory obligation to repair the air conditioning, even if the lease says otherwise.

Sometimes a landlord will say, "I know the house wasn't up to code, but that's why the rent was so low. I agreed to let him live in the house for low rent, and he agreed that he would do some work on the house for me." The RRAA anticipated this, and sets out the following rule: An agreement between the landlord and tenant that the tenant will work on the house and be paid by the landlord is fine, so long as

the agreement is entered into AFTER the lease agreement is complete, and the arrangement for payment by the landlord for the tenant's work is separate from the rent payment.

Sometimes a landlord will say, "The reason the house isn't up to code is that the tenant himself keeps damaging it." This allegation, if true, is a valid defense to the landlord's violation of the Act. The tenant also has obligations under the Act, including refraining from deliberately or negligently damaging any part of the premises.

Procedure:

The Act states that a tenant may enforce his rights under the Act by civil action, including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession." Thus, a magistrate 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. If he lived in the property and paid no rent, for example, he is not entitled to also recover money damages.

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

Are punitive damages allowed? No, punitive damages are not authorized in actions for breach of contract. Treble damages under G.S. 75-1.1 (prohibiting unfair or deceptive acts or practices affecting commerce) are available, however, if the tenant is able to demonstrate the essential elements of that claim.

Retaliatory Eviction

G.S. 42-37.1 to 42-37.3: North Carolina has a strong public policy protecting tenants who exercise their rights to safe housing. When a landlord files an action for summary ejectment, a tenant may *defend* against ejectment by proving by the *greater weight of the evidence* that the landlord's action is *substantially in response* to one of several listed events that has occurred within the last 12 months.

What are those events?

1. Asking landlord to make repairs;
 2. Complaining to government agency about violation of law;
 3. Formal complaint lodged against landlord by government agency;
 4. Attempting to exercise legal rights under law or as provided in lease;
 5. Organizing or participating in tenants' rights organization.
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Remedy

If a tenant successfully demonstrates retaliatory eviction, the magistrate must deny the landlord's request for possession (although the landlord is entitled to back rent in any case). Furthermore, a tenant may have an independent action for an unfair or deceptive act or practice (with treble damages) under G.S. 75-1.1.

Note that this law is based on public policy. It won't surprise you, then, to learn that the statute specifically provides that any attempted waiver by the tenant of his rights under this law is void. What's the obvious concern here? That a tenant will seek the protection of this law without really deserving it—in bad faith. If my lease has a forfeiture clause related to keep pets, and I get caught with my dog when the landlord drops by, I might quickly begin to organize a tenant's rights organization. That way, I think, if the landlord tries to evict me, I'll be able to claim it was because of my organizational efforts, and not the real reason—that I have a dog.

Rebuttal by the Landlord

When a tenant defends in an action for summary ejectment by asserting that the landlord is actually retaliating against him or her for an action protected under the statute, the landlord may rebut that argument by showing one of the following things:

1. Tenant failed to pay rent or otherwise broke the lease in a manner that allows eviction, and the violation of the lease is the reason for the eviction.
2. Tenant is holding over after termination of lease for definite period with no option to renew.
3. The violations the tenant complained about were caused by willful or negligent act of tenant.
4. Displacement of tenant is required in order to comply with housing code.
5. Landlord had given tenant a good-faith notice of termination before protected conduct occurred
6. Landlord plans in good faith to do one of the following after terminating tenancy:
 - 1) Live there himself;
 - 2) Demolish the premises, or make major alterations;
 - 3) Terminate use of premises as a dwelling for at least 6 months.

Self-Help Eviction

Back in the old days, a landlord who wished to evict a tenant simply changed the locks, or put their property out on the sidewalk. In 1981 the North Carolina General Assembly put G.S. 42-25.6 on the statute books:

“It is the public policy of the State of North Carolina, in order to maintain the public peace, that a residential tenant shall be evicted, dispossessed, or otherwise constructively or actually removed from his dwelling unit only in accordance with the procedure prescribed in [the remaining provisions of the statute].”

--Note: This rule applies only to *residential tenancies*. Self-help eviction is perfectly permissible in commercial lease situations.

--Note also the reference to “constructively . . . removed.” The law applies not only to actual removal of a tenant from rental premises, but also to actions taken by a landlord to make continued occupancy unpleasant: turning off utilities would be the most common example.

The General Assembly took aim at another common practice in 1981:

“It is the public policy of the State of North Carolina that distress and distraint are prohibited, and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with [other provisions of the statute].”

This law put an end to the practice of some landlords of either seizing property owned by the tenant to compensate for unpaid rent or refusing to release a tenant's property until that tenant paid past-due rent. As you well know (since you get hundreds of questions a year about it), landlords are now required to comply with specific legal requirements in dealing with property left behind by tenants.

As is typical of laws based on public policy, the statute provides that any attempted waiver of the legal prohibition against self-help eviction is void.

Tenant's Remedies

What remedies does a tenant have when a landlord violates the prohibition against self-help eviction? The law provides that a tenant in this circumstance is

“entitled to recover possession or to terminate his lease and the . . . landlord. . . shall be liable to the tenant for damages caused by the tenant's removal or attempted removal.”

Further, if a landlord takes possession of a tenant's personal property, or interferes with a tenant's access to his personal property, the statute provides that a tenant is entitled to recover possession of the property, or compensation for its value (as in an action for conversion). In addition, a landlord is liable for actual damages caused by his wrongful interference.

In addition to the actions authorized by this statute, our courts have held that a tenant may bring an action for unfair or deceptive acts or practices when a landlord violates these provisions.

Other Tenants' Rights Statutes

Security deposit (pp. 189-190): In residential leases, maximum security deposit established by statute (month-to-month maximum is 1 ½ months rent). Specifies permitted uses of security deposit, requires accounting by landlord within 30 (extension to 60 possible) days. Failure to do so, if willful, results in loss of deposit altogether in addition to responsibility for tenant's attorney fees.

Late fees (pp. 169-170): In residential leases, maximum established by statute (GS 42-46). Fee must be contained in written contract, payable only if rent is more than 5 days late. Violation of statute results in loss of fee.

Administrative fees (Small Claims Law is out-of-date on this point): GS 42-46 provides for specific fees for various stages of litigation, which will be an issue before a magistrate infrequently. Any fees associated with litigation not in compliance with statute are void as against public policy.