DUTY OF LANDLORD TO NON-RESIDENTIAL TENANT--CONTROLLED OR COMMON AREAS.[1]

Note Well: This instruction should not be used where the plaintiff is a tenant under a residential rental agreement for a dwelling unit and is injured on a common area (parking lot, swimming pool, hallway) made available to him as part of his rental package. See instead N.C.P.I.--Civil 805.71 Duty of Landlord to Residential Tenant--Residential Premises and Common Areas. This instruction is available for use in situations not presently encompassed by the Residential Rental Agreement Act such as commercial leases.

This 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].

Landlords have a duty to exercise ordinary care to maintain in a safe condition those parts of their rental properties over which they retain

---

[1]The common law does not ordinarily make actionable a landlord's failure to maintain the demised premises in a safe condition. Lenz v. Ridgewood Assoc., 55 N.C. App. 115, 117 (1982), disc. rev. denied, 305 N.C. 300 (1982), citing numerous cases. There are a couple of exceptions to this rule. The first is when there exists a latent defect on the premises, of which the tenant was unaware, and the landlord either had actual or constructive notice of the defect and failed to warn the tenant of its existence. Bradley v. Wachovia Bank & Trust Co., 90 N.C. App. 581, 584 (1988); Robinson v. Thomas, 244 N.C. 732, 736 (1956). The second situation may arise when the landlord is negligent in his repairs to the demised premises. If a landlord undertakes to make repairs, he must exercise ordinary care in doing so. See Lenz, supra, 55 N.C. App. at 117, n. 2, citing cases.

DUTY OF LANDLORD TO NON-RESIDENTIAL TENANT--CONTROLLED OR COMMON AREAS. (Continued.)

control.[2] A violation of this duty is negligence.

In order to prevail on this issue, the plaintiff must prove, by the greater weight of the evidence, the following five things:[3]

First, that the plaintiff was the defendant's tenant.

Second, that an unsafe condition existed on a part of the rental properties remaining under the landlord's control and made available for the tenant's use.

Third, that the defendant knew or, in the exercise of ordinary care, should have known of the existence of the unsafe condition. Landlords have a duty to make a reasonable inspection of rental properties remaining under their control and are responsible for knowing what a reasonable inspection would reveal.[4]

Fourth, that the defendant failed to exercise ordinary care to correct the unsafe condition.[5]

Fifth, that such failure was a proximate cause of the plaintiff's [injury] [damage]. Proximate cause is a real cause--a cause without which the

---

[2] Lenz v. Ridgewood Assoc., 55 N.C. App. 115, 117 (1982), disc. rev. denied, 305 N.C. 300 (1982).

[3] Id. at 121.

[4] 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 . . . ." Id.

[5] This affirmative duty owed by the landlord to the tenant is not a duty to warn of unsafe conditions but to correct unsafe conditions. Brooks v. Francis, 57 N.C. App. 556, 559 (1982). Similarly, the landlord owes the duty of ordinary care to the tenant. The landlord is not an insurer of the tenant's safety and is only under a duty of ordinary care in maintaining the premises. Cagle v. Robert Hall Clothes, 9 N.C. App. 243, 245 (1970).

DUTY OF LANDLORD TO NON-RESIDENTIAL TENANT--CONTROLLED OR COMMON AREAS. (Continued.)

claimed [injury] [damage] would not have occurred, and one which a reasonably careful and prudent person could foresee 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 this 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 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.