

SUMMARY EJECTMENT--DAMAGES¹.

This issue reads:

"What amount of damages, if any, is the landlord entitled to recover?"

You will answer this issue only if you have answered the (*state number(s) issue(s)*) in favor of the landlord.

On this issue the burden of proof is on the landlord. This means that the landlord must prove, by the greater weight of the evidence the amount of damages sustained as a result of [unpaid rent] [occupancy after the end of the term] [physical damage to the premises].

[Damages for unpaid rent may include the amount of rent which the tenant agreed to pay the landlord but did not.²]

[Damages for occupancy after the end of the term may include the fair rental value of the premises from the time the term ends until the tenant vacates the premises. Fair rental value is an amount which would be agreed upon as a 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. (The contract

¹The issue of mitigation of damages might arise in a summary ejectment case. If so, give N.C.P.I.--Civil 571.20.

²All party's damages resulting from a single wrong must be recovered in one action, including landlord's damages for future rents under contract. *Chrisalis Properties v. Separate Quarters, Inc.* 101 N.C. App. 81, 88, 398 S.E.2d 628, 633 (1990).

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rate of rent agreed upon by the landlord and tenant may be taken as some evidence of the fair rental value.))

[Damages for physical injury to the premises may be recovered if the premises are not in substantially the same condition as originally delivered to the tenant, normal wear and tear excepted, because of the tenant's negligent or intentional conduct or the negligent or intentional conduct of *his* family or *his* guest(s). (A tenant is not responsible for an act of God.) The landlord is entitled to recover the difference between the fair market value of the property immediately before it was damaged and immediately after it was damaged.³ The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so. The landlord has introduced evidence of [estimates of the cost to repair] [the actual cost of repairing] the damage to *his* property. Neither the actual cost of repairs nor an estimate of the cost to repair is the true measure of damages. However, you may consider this evidence in arriving at the amount of damages.]

Finally, as to this issue on which the landlord has the burden of proof, if you find, by the greater weight of the evidence, that the landlord was damaged, you may award the

³Paris v. Carolina Portable Aggregates, 271 NC. 471, 484, 157 S.E.2d 131, 141 (1967) (damages by blasting).

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landlord such amount as you find, by the greater weight of the evidence, represents the [unpaid rent for the term of the lease] [the fair rental value for occupancy by the tenant after the end of the term of the lease until judgment] [the difference between the fair market value immediately before and immediately after the physical damage occurred beyond normal wear and tear to the property] by writing the amount thereof in the space provided.

If, on the other hand, you fail to find any damage, it would be your duty to answer this issue by inserting a zero in the space provided.

