LANDLORD'S RESPONSIBILITY TO PROVIDE FIT RESIDENTIAL PREMISES.

Note Well: G.S. 42-44(a) provides that any right or obligation declared by the Residential Rental Agreements Act is enforceable by civil action. G.S. 42-40 defines action to include recoupment, counterclaim, defense and setoff. This instruction may be used when the tenant brings a rent abatement action against the landlord, when the tenant files a rent abatement proceeding as a counterclaim to landlord's summary ejectment action, or when the tenant raises this issue as a defense to a summary ejectment action.

This issue reads:

"Did the landlord violate the Residential Rental Agreements Act?"

On this issue the burden of proof is on the tenant. This means that the tenant must prove, by the greater weight of the evidence, that the premises *he* rented were not maintained in compliance with the Residential Rental Agreements Act.

Under this Act, a landlord

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

[must comply with the applicable building and housing codes]

[must repair promptly and maintain in good and safe working order all electrical, plumbing, sanitary, heating, ventilating,

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air conditioning, and other facilities and appliances supplied or required to be supplied by him].

Premises are not fit and habitable if they are not suitable for human habitation. You may consider violations of building or housing codes[1] in making your determination of whether the premises are fit and habitable.[2]

A landlord is not relieved of his obligations by (a tenant's explicit or implicit acceptance of premises that violate the Act) (the fact that premises are not in a fit and habitable condition when a tenant first enters the lease) (the fact that a tenant continues to pay rent or live in premises that do not comply with the Act).

A tenant is not required to give his landlord notice of defects which are in existence at the beginning of the lease. However, a tenant must give his landlord notice of any defects that arise after the tenant has taken possession of the premises. Generally, verbal notice is sufficient. However, if a tenant requests his landlord to make [electrical] [plumbing] [sanitary] [heating] [ventilating] [air conditioning] [*(state other facility or appliance supplied or required to be supplied by the*

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[1]The court may take judicial notice of the state building code, but not of local housing codes.

[2]Miller v. C.W. Myers Trading Post, 85 N.C. App. 362, 369-70, 355 S.E.2d 189, 193-94 (1987).

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landlord)] repair(s), and the situation is not an emergency, the tenant must give his landlord notice of the needed repair(s) in writing.[3]

The tenant contends, and the landlord denies, that the landlord has violated the Residential Rental Agreements Act in the following way(s)

[*(state all contentions of tenant regarding unfitness and uninhabitability of premises.)*]

[*(state provisions of housing and building codes that tenant alleges have been violated.)*]

[*(state contentions of tenant regarding landlord's failure to repair.)*]

Finally, as to this issue on which the tenant has the burden of proof, if you find by the greater weight of the evidence that the landlord has violated the Residential Rental Agreements Act in any one or more of the ways which I have explained to you, then it would be your duty to answer this issue "Yes" in favor of the tenant.

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 landlord.

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[3]G.S. 42-42(a)(4).