

LANDLORD'S RESPONSIBILITY TO PROVIDE FIT RESIDENTIAL PREMISES:
ISSUE OF DAMAGES.

This issue reads:

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

If you have answered the issue as to the landlord's violation of the Residential Rental Agreements Act "yes" in favor of the tenant, the tenant is entitled to recover nominal damages even without proof of actual damages.¹ Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages resulting from the failure to comply with the Act.

The tenant may also be entitled to recover actual damages. The burden of proving actual damages is on the tenant. This means that the tenant must prove, by the greater weight of the evidence, that the tenant has actually suffered damages and the amount of such damages.

To find the amount of the tenant's actual damages, if any, you must make the following determinations:

First, you must determine the period of time during the tenant's occupancy of the premises that the landlord was in violation of the Act. ***(The parties have stipulated that this***

¹See *Liss of Carolina Inc. v. South Hills Shopping Center, Inc.*, 85 N.C. App. 258, 260, 354 S.E.2d 549, 550 (1987); *Martin-Kahill Ford Lincoln Mercury, Inc. v. Skidmore*, 62 N.C. App. 736, 739, 303 S.E.2d 392, 393 (1983); *Richard W. Cooper Agency, Inc. v. Irwin Yacht and Marine Corp.*, 46 N.C. App. 248, 253, 264 S.E.2d 768, 771 (1980).

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period of time began on (state date) and ended on (state date).) (The tenant contends, and the landlord denies, that this period of time began on [state date] and ended on [state date].)

Second, for this period of time, you must determine the fair rental value of the premises in their then-existing condition. Fair rental value is the amount which would be agreed upon as 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. In determining the fair rental value of this premises, you may consider evidence of what the premises would rent for in the open market, the rent agreed upon by the parties in the lease,² and any other evidence from which the fair rental value of the premises may be determined.

Third, for this same period of time, you must determine what the fair rental value of the premises would have been had the landlord complied with the Act.

Fourth, you must determine the total amount of rent previously paid by the tenant to the landlord. (The parties have stipulated that the total amount of rent previously paid by the tenant to the landlord was (state amount)).

²Cotton v. Stanley, 86 N.C. App. 534, 539, 358 S.E.2d 692, 695 (1987), disc. review denied, 321 N.C. 296, 362 S.E.2d 779 (1987).

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The tenant's actual damages, therefore, are equal to the difference, if any, between the fair rental value of the premises and what their fair rental value would have been had the landlord complied with the Act during this same period of time. However, the amount of actual damages you find must not exceed the total amount of rent previously paid by the tenant to the landlord.³

(The tenant's actual damages may also include special or consequential losses, provided that such losses were reasonably foreseeable to a prudent person in the position of a landlord and which resulted from the landlord's failure to comply with the Act.)⁴

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 tenant has sustained actual damages under the law as I have explained it to you, you will answer this

³The tenant's actual damages remedy is in the nature of "rent abatement" and, thus, is limited by the amount of rent previously paid. See *Von Pettis Realty, Inc. v. McKoy*, ___ N.C. App. ___, 519 S.E.2d 546, 549 (1999), *Creekside Apartments v. Poteat*, 116 N.C. App. 26, 34, 446 S.E.2d 826, 831, disc. rev. denied, 338 N.C. 308, 451 S.E.2d 632 (1994), *Foy v. Spinks*, 105 N.C. App. 534, 414 S.E.2d 87 (1992), *Allen v. Simmons*, 99 N.C. App. 636, 394 S.E.2d 478 (1990), *Surratt v. Newton*, 99 N.C. App. 396, 407, 393 S.E.2d 554, 560 (1990), and *Miller v. C. W. Myers Trading Post, Inc.*, 85 N.C. App. 362, 371, 355 S.E.2d 189, 194 (1987).

⁴In *Von Pettis Realty, Inc. v. McKoy*, *supra*, the Court of Appeals noted that "[t]he better practice would be for the trial court to provide a separate issue for the jury on these special and consequential damages." ___ N.C. App. at ___, n. 4; 519 S.E.2d at 549, n. 4.

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issue by writing the amount of such damages you find in the blank space provided.

On the other hand, if you fail to find any actual damages, then you would answer this issue by writing a nominal amount such as "One Dollar" in the blank space provided.