DUTY OF LANDLORD TO RESIDENTIAL TENANT--RESIDENTIAL PREMISES AND COMMON AREAS.

Note Well: Use this instruction only where the Residential Rental Agreement Act, G.S. § 42-38, et seq., applies.[1]

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].

The Residential Rental Agreement Act[2] imposes upon landlords a duty to exercise ordinary care to maintain their residential properties in a safe condition.[3] A violation of this duty is negligence.

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[1]To invoke the Act, there must be a rental agreement for a residential premises within North Carolina. G.S. § 42-38. A "premises" is defined as "a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities normally held out for the use of residential tenants who are using their dwelling unit as their primary residence." G.S. § 42-40(2).

[2]The duty owed by a landlord to a tenant changed in 1977 with the enactment of the Residential Rental Agreement Act, G.S. Sections 42-38 et seq. (the "Act"). Prior to the passage of the Act, the rule of caveat emptor applied in the landlord-tenant context; the landlord was under no duty to make repairs and was not liable for injuries sustained for failure to make repairs even if he contracted with the tenant to do so. Thompson v. Shoemaker, 7 N.C. App. 687, 691 (1970); Jordan v. Miller, 179 N.C. 73, 75 (1919). It is now the affirmative duty of the landlord to make repairs to the demised premises such that the premises shall remain "fit and habitable."

[3]Bradley v. Wachovia Bank & Trust Co., 90 N.C. App. 581, 584 (1988); Lenz v. Ridgewood Associates, 55 N.C. App. 115, 117 (1981), disc. rev. denied 305 N.C. 300 (1982).

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

First, the plaintiff was a tenant under a rental agreement for a dwelling unit leased from the defendant.

Second, that an unsafe condition existed on the premises. [This includes not only the dwelling unit itself, but the amenities and common areas under the landlord's control and made available for the tenant's use.][4]

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 their residential premises and are responsible for knowing what a reasonable inspection would reveal.[5]

Fourth, that the defendant failed to exercise ordinary care to remove or remedy the unsafe condition.[6] Landlords are required by law to

[comply with the current applicable building and housing codes to the extent required by such codes *(Read applicable code provisions)*][7]

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[4]G.S. § 42-40(2).

[5]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...." Lenz v. Ridgewood Associates, 55 N.C. App. 115, 121 (1981) disc. rev. denied, 305 N.C. 300 (1982).

[6]This affirmative duty owed by the landlord to the tenant is not a duty to warn of unfit conditions but to correct unfit conditions. Brooks v. Francis, 57 N.C. App. 556, 559 (1982). Similarly, the landlord owes the duty of ordinary care to the tenant. Because the landlord owes the tenant the duty of ordinary care he is not, therefore, an insurer of the tenants' safety and may be held liable only for actionable negligence in maintaining the premises. Cagle v. Robert Hall Clothes, 9 N.C. App. 243, 245 (1970).

[7]G.S. § 42-42(a)(1). Read applicable code provisions only if competent evidence has been admitted as to their existence and content.

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[make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition][8]

[keep all common areas of the premises in a safe condition][9]

[maintain in good and safe working order all [electrical] [plumbing] [sanitary] [heating] [ventilating] [air conditioning] [appliances] [*(name other facility)*] supplied by or required to be supplied by the landlord, provided that notification of needed repairs has been given to the landlord in writing by the tenant, except in emergency situations].[10]

A landlord's failure to comply with [this requirement] [any of these requirements] may be considered by you as evidence of *his* failure to use ordinary care to maintain the leased premises in a safe condition.[11]

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 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

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[8]G.S. § 42-42(a)(2).

[9]G.S. § 42-42(a)(3). See Collingwood v. General Electric Real Estate Equities, Inc., 89 N.C. App. 656 (1988), aff'd in part, rev'd in part, 324 N.C. 63 (1989).

[10]G.S. § 42-42(a)(4).

[11]A failure to maintain the premises in a fit and habitable condition is evidence of negligence, not negligence per se. O'Neal v. Kellett, 55 N.C. App. 225, 228 (1981). Because the Act specifically states that a violation of the Act is not negligence per se, the legislature left intact established common-law standards of ordinary and reasonable care. Brooks v. Francis, 57 N.C. App. 556, 559-60 (1982); G.S. § 42-44(d).

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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 defendant's negligence was a proximate cause of 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.