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LANDLORDS' MAINTENANCE AND REPAIR DUTIES:
YOUR RIGHTS AS A RESIDENTIAL TENANT IN NORTH CAROLINA

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LANDLORD AND TENANT: REPAIRS

INTRODUCTION

Each year the Office of the Attorney General receives hundreds of complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What follows is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of the problems involving the landlord's failure to maintain or repair the rental property. Also available from the Office of the Attorney General, Consumer Protection Section, is another information booklet similar to this one discussing security deposit disputes between landlords and tenants.

It is hoped that the information provided here will be helpful to you. It can be surprising how just a little bit of knowledge of your rights as a tenant can help you resolve disputes with your landlord, and maybe even avoid them altogether.

PART ONE: THE RESIDENTIAL RENTAL AGREEMENTS ACT. Up until 1977 there was very little in the law of this state requiring landlords to make repairs to rental premises. Legal scholars say that the laws governing leases up until 1977 were based upon North Carolina's history as an agricultural state. When people entered into leases for land a hundred years ago, the most important thing was usually the value of the farmland itself, not the condition and up-keep of the farmhouse or other buildings on the land. By 1977 the economy of North Carolina was changing. Most leases by that time dealt with houses or mobile homes or apartments, and the condition and use of the living quarters had become primary concerns of tenants signing such leases.

The North Carolina Residential Rental Agreements Act of 1977 was passed by the General Assembly because of these changes in our economy. The Act defines the duties of both the landlord and the tenant with respect to the maintenance and repair of the premises. For the landlord, at least, many of these legal duties never existed before.

PART TWO: DUTIES OF THE TENANT. The tenant must pay all rent legally due under the lease and perform certain day-to-day maintenance duties in order to enforce the landlord's duties under the Residential Rental Agreements Act. The tenant's duties under the Act are as follows:

North Carolina General Statute 42-43(a)

- (1) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses;
- (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner;
- (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises or knowingly permit any person to do so;
- (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes;
- (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
- (7) Notify the landlord, in writing, of the need for replacement of or repairs to a smoke detector. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

PART THREE: DUTIES OF THE LANDLORD. The landlord's maintenance and repair duties under the Residential Rental Agreements Act are as follows:

North Carolina General Statute 42-42(a)

- (1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes: no new requirement is imposed by this subdivision(a)(1) if a structure is exempt from a current building code;
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

- (3) Keep all common areas of the premise in safe condition; and
- (4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by him provided that notification of needed repairs is made to the landlord in writing by the tenant except in emergency situations.
- (5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc. , listing or other equivalent national testing laboratory approval, and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designed in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord.

PART FOUR: DUTIES OF THE LANDLORD CANNOT BE WAIVED. North Carolina General Statute 42-42(b) states that a landlord cannot excuse himself from these duties through a special clause inserted into the lease. As discussed below, many leases contain such clauses, and tenants should not be fooled into thinking that such clauses are binding.

A landlord and a tenant can enter into an agreement separate from the lease through which the tenant will perform the landlord's maintenance duties, but only if the tenant is to receive reasonable and just compensation for it. Such would be the case when a carpenter, plumber or painter rents from the landlord, and the landlord wants to hire that tenant to help with the upkeep and repair of the rental property.

PART FIVE: WRITTEN NOTICE TO THE LANDLORD. The landlord's duty to repair promptly all plumbing, heating, air conditioning, and other appliances and facilities does not begin until the tenant has given written notice to the landlord of needed repairs. The written notice requirement does not apply in emergency situations, such as loss of heat in mid-winter or sudden leaks in the plumbing that are going to cause damage to the premises or injury to the tenant if a repair service is not called right away.

As a practical matter, the best thing to do when a refrigerator, oven, or air conditioner breaks down is to call or visit the landlord immediately to report the problem. Follow up the conversation with a note or letter to the landlord which mentions the earlier oral request for

repairs. For instance, "Dear Landlord: This is just a reminder of the request I made by phone this morning for repairs to the furnace at 344 Center Drive." Sign and date the note and **keep a copy**. If you have to hire a repair person yourself because the landlord will not do anything, a copy of the written notice will be very helpful if you go to Small Claims Court seeking reimbursement for the repair bill you paid.

PART SIX: LANDLORD DUTIES TO REPAIR THAT DO NOT DEPEND UPON WRITTEN NOTICE FROM THE TENANT. The other duties of the landlord under the Residential Rental Agreements Act do not depend upon the receipt of written notice of a problem. These other duties involve routine maintenance and repair obligations that exist prior to or throughout the tenancy, or are the subject of local health and building codes, or concern "common areas" of apartments or condominium projects.

PART SEVEN: DUTY TO KEEP ALL COMMON AREAS AND FACILITIES IN A SAFE CONDITION. Common areas and facilities, such as hallways serving several apartment units, parking lots, play areas, laundry rooms, swimming pools open to tenants, sewage or plumbing systems serving more than one rental unit, and similar areas and facilities on the grounds of multi-family rental properties, must be maintained in a safe condition by the landlord. Injuries caused by landlords' failure to safely maintain such areas and facilities have entitled tenants to recover money from their landlords in lawsuits. In situations where landlords' failures to maintain these facilities have not caused injury, courts have allowed tenants to reduce the amount of monthly rent due under their leases.

PART EIGHT: DUTY TO COMPLY WITH APPLICABLE LOCAL BUILDING AND HOUSING CODES. In most North Carolina cities and large towns, landlords have additional duties to maintain the rental premises because of the requirements of local building and housing codes. Failure by the landlord to comply with these codes gives a tenant the right to take legal action under the Residential Rental Agreement Act. These local codes also allow the tenant to seek the help of local authorities who can use their own legal powers to force a landlord to comply with the requirements of the codes.

Housing Codes. Most local building and housing codes contain a long list of maintenance and safety requirements for rental property. Under these codes, owners of such property must provide safe and properly functioning heating and plumbing systems. Heating systems in many communities must be capable of heating every habitable room in a dwelling to at least 65-70 degrees. Most local codes also require that all walls, doors and windows be weather tight. Walls, ceilings and floors must be free of holes, cracks, and peeling paint, according to many local codes. Similarly, most local codes require landlords to rid multi-family (but not necessarily single family) dwellings of infestations of rodents or bugs. Under many codes, all doors and windows opening to the outside of the dwelling must have locks on them, and unless the dwelling has air conditioning, most codes require that all windows in the dwelling

be equipped with screens.

Fire Codes. Malfunctioning heating systems, electrical systems, or appliances may pose a fire hazard, which may be a violation of the local fire code in addition to violating the housing code. Anything giving off shocks, sparks, or smoke should be reported to the landlord immediately, and if not fixed promptly, reported to the local fire safety inspector. Such officers usually have legal authority to force the landlord to repair such problems quickly.

Health Codes. Malfunctioning sewage disposal systems can also constitute violations of local health codes. County or city health departments usually can force landlords to fix malfunctioning sewage disposal systems or clean contaminated well water systems.

PART NINE: OBTAINING GOVERNMENT HELP ON CODE VIOLATIONS.

To obtain the assistance of local building inspectors, fire marshals, or county health officers, little more than a phone call to the local city hall, fire department, or county health department is required.

PART TEN: DUTY TO PUT AND KEEP PREMISES IN A FIT AND HABITABLE CONDITION. This part of the Residential Rental Agreements Act requires the landlord to have the premises in good and fit condition when the tenant first moves in, and it also requires the landlord to maintain the premises so that they stay that way. This is a "catch-all" requirement that covers repair and maintenance duties not specifically described elsewhere in the Residential Rental Agreements Act.

PART ELEVEN: LEGAL REMEDIES AGAINST LANDLORDS WHO WILL NOT REPAIR. If your landlord will not make repairs required under these codes and the Residential Rental Agreements Act, **DO NOT WITHHOLD RENT PAYMENTS.** Many other states have laws allowing tenants to put their rent payments in a special "escrow" account until their landlords make needed repairs. North Carolina law does not allow tenants to withhold rent payments in this or any other way, with two exceptions: when the landlord consents to it *in writing* or when a judge or civil magistrate allows you to withhold rent pursuant to a court order.

Some landlords really will consent to a tenant's withholding rent payments, or at least part of their rent payments. Consent usually comes through *written* agreements such as this: "Send me a receipt for whatever you paid the plumber to fix the drains and then deduct that amount from next month's rent;" or, "knock 10% off your next month's rent payment because of the problems with the broken air conditioner."

PART TWELVE: COURT ORDER FOR "RENT ABATEMENT" (reduction in rent).

Too often a landlord will not make repairs and will not consent to the withholding of part of the next rent payment. In this situation, a tenant may want to file a small claims suit against the landlord requesting the court's permission to withhold part of the next month's rent payment to cover the costs paid by the tenant for repairs or to compensate the tenant for the reduced rental value of the dwelling.

In seeking the court's permission to withhold the amount of money paid by the tenant to have repairs done, the tenant will need to show the following:

- (1) that the tenant has either a written or oral lease agreement with the landlord;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes, and/or the lease agreement. (Remember, lease provisions excusing landlords from their repair and maintenance responsibilities under the Residential Rental Agreements Act are **not** enforceable.);
- (3) if the problem involved broken heating, air conditioning, plumbing, or electrical appliances furnished with the rental unit, and if the situation was not an emergency, evidence that the landlord was given written notification of the need for such repairs and that the landlord then failed to make the needed repairs within a reasonable amount of time;
- (4) copies of the bill given the tenant by the repair service, plus a receipt or canceled check showing that the bill was paid by the tenant;
- (5) if the landlord denies that the problem even required repairs or claims that the cost of the repairs were too expensive, the tenant should make arrangements to bring the repairman to Small Claims Court.
- (6) some sort of evidence (usually the tenant's own testimony) showing how much the rental value of the house or apartment was reduced by the landlord's failure to make required repairs.

[Tenants needing information on how to file a small claims lawsuit can obtain a Small Claims Court information package similar to this one from the Consumer Protection Section of the North Carolina Attorney General's Office, Old Education Building, 114 West Edenton Street, 9001 Mail Service Center, Raleigh, NC 27699-9001 (telephone 919-716-6000).]

Should the Small Claims Court Judge or Magistrate be satisfied that the tenant's case has been proved, he or she may enter a "rent abatement" order allowing the tenant to withhold part of the next month's rent, or part of the next several month's rent, to reimburse the tenant for the repair bills. A tenant should read the court order carefully to make sure it grants permission to withhold rent. Some Small Claims Court Judges will just award a money judgment against the landlord, which is not the same as permission to withhold future rent payments.

Where a problem has not been repaired by either the landlord or the tenant, the Court can enter an order allowing the tenant to withhold a percentage of future rent payments until the

problem is repaired by the landlord. After hearing the evidence the Court will make a determination of how much the monthly rental value of the rental unit has been reduced by the problem needing repair. For example, if the monthly rent is \$600.00 and the Court determines that the problem reduces the value of the rental unit by one-third, the judge or civil magistrate will enter a "rent abatement" order allowing the tenant to reduce monthly rental payments to \$400.00 until the problem is corrected by the landlord.

PART THIRTEEN: COURT ORDER FOR "RENT RECOUPMENT" (recovery of rent paid). If the landlord simply took a very long time to make repairs, but eventually got around to making them, the tenant may be able to bring a Small Claims Court lawsuit seeking a money judgment for the reduced rental value of the rental unit during the months that the problem went unrepaired. This type of Small Claims suit, called a suit for "rent recoupment" (recovery of rent already paid), also requires that the tenant show the court the following:

- (1) that the tenant had a lease with the landlord when the problems occurred;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes and/or the terms of the lease agreement;
- (3) if the problem involved broken heating, air conditioning, plumbing or electrical appliances furnished with the rental unit, and if the situation was not an emergency, copies of any written notice to the landlord requesting repairs, plus some sort of testimonial evidence showing that the landlord took an unreasonable amount of time to repair the problem;
- (4) some sort of evidence (usually the tenant's own testimony) showing how much the rental value of the house or apartment was reduced by the landlord's failure to make required repairs.

PART FOURTEEN: OTHER LEGAL CLAIMS. In addition to the rent abatement and rent recoupment claims mentioned above, a tenant whose personal property (furniture, stereo, clothing, etc.) was damaged or destroyed by the landlord's failure to maintain or repair the premises, as required by the Residential Rental Agreements Act, might be able to sue for either the value or the costs of repair of the damaged belongings. In some cases the tenant can recover moving expenses.

PART FIFTEEN: SHOULD YOU CONTACT AN ATTORNEY? If at all possible, an attorney should be consulted before bringing such claims against a landlord. The attorney may come up with additional claims to pursue, or the attorney may say that some claims are not proper in a particular case. Unless personal injuries or substantial property damage was involved, however, it may be financially impractical for a tenant to hire the attorney for representation in a Small Claims Court suit. Suits against landlords usually involve only a few hundred dollars, and the attorney's fee for representation in court may be equal to or greater than the amount of money a tenant is trying to recover from the landlord. Still, the advice an attorney

can provide during a brief consultation can be important, and a brief service by an attorney, such as a letter or phone call to the landlord, may take care of the problem without requiring anyone to go to court.

Tenants having trouble locating an attorney for a consultation on landlord-tenant questions may want to try the North Carolina Lawyers Referral Service. Their toll free number is 1-800-662-7660. The Lawyers Referral Service should be able to give you the name of an attorney to consult with on landlord-tenant matters for a relatively low consultation fee.

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