Must a Tenant Introduce Opinion Evidence of Fair Rental Value in an Action for Rent Abatement?

On Tuesday the NC Court of Appeals handed down an opinion in Crawford v. Nawrath, a Mecklenburg County case involving the calculation of damages for violation of the Residential Rental Agreement Act (RRAA). The Crawford opinion is unpublished and thus does not constitute controlling legal authority but nevertheless is interesting and informative, both procedurally and substantively.

The Usual Facts

Crawford involved facts familiar to anyone with more than a passing interest in landlord-tenant law. The tenant rented a house for more than a year until the landlord gave notice of its intention to terminate the tenancy, demanding that the tenant vacate the property in two weeks. The tenant promptly requested an inspection by the Mecklenburg Building Standards Department, and the inspection revealed twenty code violations, three of which were deemed dangerous and in need of immediate repair. Evidence offered by the tenant at trial was that the landlord had promised to repair some of the defects before she took possession, but failed to do so. After she moved in, she continued to ask that the landlord make repairs, and some repairs were in fact attempted but were insufficient to render the premises habitable. Some of the specific defects established by the evidence were windows painted shut, several leaks in the roof, rusty and deteriorating kitchen cabinets, holes in the foundation, unsafe wiring, lack of operable smoke and carbon monoxide detectors, and a number of others.

The Usual Procedure

At the small claims level, the magistrate granted the landlord's request for summary ejectment and awarded the tenant $500 on her counterclaim for rent abatement. On appeal by the landlord, the primary issue before District Court Judge Rebecca Tin was the tenant's claim for rent abatement and unfair and deceptive trade practices. Judge Tin ruled against the tenant, finding that she had presented no evidence of the fair market value of the property either in its warranted condition or its unwarranted condition. Without such evidence, said the Judge, any award of damages would be no more than "speculation."

But Then Something Happened

During the following week, while researching another case, Judge Tin read the 1987 case of Cotton v. Stanley , 86 NC App 534, in which Judge Eddie Greene, on very similar facts, discussed the evidence required to determine damages in an action for breach of the warranty of habitability. Judge Tin became concerned that her decision in Crawford was not in compliance with the law set

out in Cotton and *sua sponte* filed a motion pursuant to GS 1A-1, Rule 59, to set aside her judgment and reconsider the evidence of damages in light of that opinion. After hearing arguments from both parties, she did just that, entering an amended judgment awarding the tenant money damages on both claims.

Determining Damages in an Action for Rent Abatement

The measure of damages in a rent abatement action is the difference between two figures: (1) the fair rental value of the premises as warranted (i.e., in full compliance with the RRAA), and (2) the fair rental value of the premises in their actual condition, in addition to additional damages proved by the tenant. Miller v. C.W. Myers Trading Post, Inc., 85 N.C. App. 362 (1987). The amount awarded must not exceed the amount actually paid by a tenant for the rental premises. Surratt v. Newton, 99 N.C. App. 396 (1990). In Cotton, just as in Crawford, there was abundant evidence of multiple violations of the RRAA, persisting over time and rising to a level rendering the premises uninhabitable -- but no *direct evidence* of the "as-is fair rental value." *Direct evidence*, said the Cotton Court, would consist of "an opinion of what the premises would rent for on the open market from either an expert or a witness qualified by familiarity with the specific piece of property." Is such opinion testimony essential to the tenant's right to recover?

The Cotton Court answered with a resounding "no," characterizing the argument as "meritless." Evidence of the condition of the premises is "indirect evidence of fair rental value," permitting the jury to determine fair rental value "[f]rom their own experience with living conditions." Crawford echoed this result: "[T]he trier of fact can reasonably infer the fair market value of a rental property in its unwarranted condition by considering the defects found and the trier of fact's own common sense and experience regarding how those defects diminish the value." Similar reasoning governs determination of "as-warranted" fair rental value: the amount of rent initially agreed to by the parties is "some evidence" of that value, although not binding on the court, and direct evidence is not required.

Other Useful Reminders

As I said, Crawford was not a published opinion, and it does not lay down new law. But the the opinion does remind us of answers to two other questions that often come up in rent abatement cases:

- A landlord who collects rent while having knowledge that a rental property—or just part of a rental property—is uninhabitable has committed an unfair trade practice under GS 75-1.1 and is thus subject to treble damages. Pierce v. Reichard, 163 N.C. App. 294 (2004).
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- A landlord is held to knowledge of patent defects that any landlord would have discovered in any reasonable inspection of the premises prior to handing possession over to the tenant.

A Pat on the Back for the Judge

The Court of Appeals specifically commended the trial judge for acting to correct the error in the first judgment. The Court noted that "[g]iven the small amount of damages at issue in this matter, as in many landlord-tenant disputes, compared to the cost of pursuing an appeal, it is possible this matter would not have reached this Court otherwise."